Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Inquiry into Workplace Agreements

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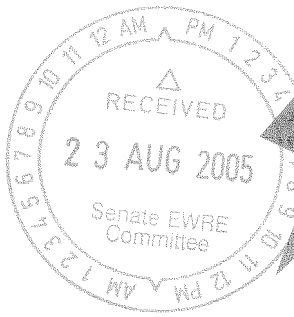

23 August 2005

The Committee Secretary
Mr John Carter
Senate Employment, Workplace Relations
and Education Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

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Dear Mr Carter

CEPU Submission to Senate Inquiry into Workplace Agreements

Please find attached a hardcopy of our Submission already sent to you by email. This is the final version emailed to you by Annette Moran (today) of this office. Yesterday, due to email difficulties, the wrong version was accidentally sent to you. I hope you will accept the correct version in its place.

We have included hard copies of the AWAs we have included as case studies in our Submission. These AWAs could not be sent electronically as we do not have them in an electronic format.

As previously indicated we do intend participating in the hearings.

Thank you for your assistance and patience in this matter.

Yours faithfully

Peter Tighe
NATIONAL SECRETARY

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CEPU Submission to the

Senate Employment, Workplace Relations and Education Committee

INQUIRY INTO WORKPLACE AGREEMENTS

INTRODUCTION

In May 2005, the Howard Government announced its industrial relations reform package. Part of the reform package is a new system for making workplace agreements. While we do not have the detail of the changes yet, we do have a statement which sets out a broad outline of what changes the Government intends to make.

On the basis of that statement, as well as changes to the workplace agreement making processes the Government is changing the way minimum wages are set, initiating another round of award stripping via the simplification process and denuding the powers of the Australian Industrial Relations Commission while effectively neutering the unfair dismissal laws.

Some of the detail of the changes which impact on the making of workplace agreements, 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.

It seems too that the Government has lost confidence in the 100 year old independent umpire. The AIRC will no longer certify agreements as this function is taken over by the Office of the Employment Advocate along with the certification of Australian Workplace Agreements (AWAs). The role of the AIRC will be much reduced to include dispute settling and dealing with the more limited number of unfair dismissal claims. The Government is establishing another industrial tribunal to take over some of the functions of the AIRC while expanding the role of the Office of the Employment Advocate. Whereas one tribunal used to have responsibility for all federal industrial matters we will soon have three tribunals somehow splitting the functions between them.

These changes are being touted by the Government as necessary in the interests of economic and hence employment growth. It is a peculiar claim to make when under the current system we are experiencing high economic growth and low unemployment. This fact alone is evidence that these changes are being driven by ideology and not from a sincere belief that the reforms will serve the interests of economic growth.

While not against reform in some areas of the industrial relations system, the CEPU does not agree that these particular changes are necessary or will encourage economic and jobs growth. We believe the result will be quite the reverse, especially for those sections of the workforce who lack bargaining power and more specifically, *individual* bargaining power, to negotiate their own rates and conditions of employment.

Given that it is self evident that many groups of employees are not a position to bargain for themselves, it is equally self evident that the Government's reforms will leave such employees worse off. We don't need statistics to prove this point. Removing the basic protection afforded by the award safety net, decreasing the role of unions and encouraging the adoption of individual agreements at the expense of collective agreements, the rates of pay and conditions of employees who lack bargaining power must inevitably worsen.

The CEPU does not agree with these changes. We believe that these changes will further tip the balance of power away from employees in favour of employers. They will not necessarily improve productivity and are aimed at increasing profit by cutting wages and conditions. The reforms also aim to decrease the power of unions and increase managerial prerogative to treat their labour force as just another factor of production on the same level as other inputs into the production process.

There is disagreement over whether or not workers on individual contracts will be worse off than those on collective agreements under the workplace reforms. While the Government and the Office of the Employment Advocate claim workers will be better off, ABS and ACIRRT statistics and the work of numerous respected academics support the view that workers will be worse off. In addition, the findings of a recent ABS survey contradict the Government's claims that the reform process will create 70,000 new jobs. The ABS survey found that the vast majority of businesses had no plans to hire new staff when the unfair dismissal laws are scrapped for companies with up to 100 employees. Even though the statistics do not support the Government's view, it is ploughing ahead with the reforms anyway.

The view that workers will be worse off is reinforced by the work of seventeen academics from nine universities who recently released a series of paper in an attempt to remove some of the rhetoric from the debate. In their summary document they state:

> *"As independent specialists in industrial relations and labour market issues, it is our view that industrial relations policies should be informed and led by research and evidence. Accordingly, we have pooled our expertise to review the actual evidence – as opposed to spin, speculation and anecdote – about the impact on Australian workers and workplaces of the policies introduced by the Howard Government."*[1]

The Federal Government's industrial relations changes will *"damage the fabric of Australian society by encouraging poorly paid jobs, with irregular hours, little security, and worsening work family balance. The focus of the Federal Government policy is to give employers power over employees instead of promoting innovative solutions based on workplace partnerships.*[2]*"*

The Government has simply dismissed their work as being ideologically motivated! At least they try and justify their claim that the reforms will leave workers worse off with actual evidence.

In the debate about whose statistics are right, the question which should be asked is being lost in the argument. And that question is whether the sort of society which will result from putting these reforms in place, is the sort of society we wish to create - or recreate more to the point.

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[1] "TheFederal Government's Industrial relations Policy: Report Card on the Proposed Changes" (2005) http://www.econ.usyd.edu.au/wos/IRchangesreportcard/

[2] Ibid

South Australian academic, Professor Andrew Stewart, in his submission to this inquiry, asks the question, which should be the threshold issue for any reform process. He asks what sort of society do we want to have? Professor Stewart summarises the position perfectly:

> *"It is not surprising that business groups have been so vocal in their support for the government's proposals.... It is not improvements in productivity that they are seeking but an increase in profitability. After all it is easier to boost profits by cutting labour costs than by trying to improve labour productivity or product quality. Especially for many small to medium firms, the use of superior bargaining power to present 'take it or leave it' contracts is a perfectly rational response.*
>
> ***The question is whether is makes sense for society to encourage this sort of behaviour**. Proponents (presumably including the government, though they refuse to admit the obvious link between their policies and reductions in employment conditions) may argue that lower labour costs will produce more jobs. This may or may not be true, but even if it is, **do we want to go down the low skills, low wage road that in countries like the United States has produced such massive levels of poverty and deprivation, with all the corresponding threats to social stability?"***
>
> *In any event we could certainly expect to see an even bigger gap developing between those fortunate enough to be in high-skill, high demand occupations or in powerful unions, and those who ... must effectively agree to whatever their employer demands.... **If the Government believes that this is the price that must be paid for improved economic performance, then so be it – but they should have the courage to come clean and say so, not hide behind spurious rhetoric as to individual "freedom" and "choice".**" (Prof Andrew Stewart in his submission to this inquiry at p 3; emphasis added)*

TERMS OF REFERENCE

Whether the objectives of various forms of industrial agreement-making, including Australian Workplace Agreements, are being met and whether the agreement-making system, including proposed federal government changes, meet the social and economic needs of all Australians, with particular reference to:

(a) the scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements;

(b) the capacity for employers and employees to choose the form of agreement-making which best suits their needs;

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

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

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

(f) Australia's international obligations.

1. THE SCOPE & COVERAGE OF AGREEMENTS - including the extent to which employees are covered by non-comprehensive agreements;

1.1 Statistics on scope and coverage of agreements are dealt with expertly in the ACTU submission to this inquiry. We do not propose to repeat this work and endorse the findings and conclusions of the ACTU.

1.2 CEPU members are covered by a large number of awards and enterprise agreements. Due to the fact that the bulk of these agreements are negotiated by the union on behalf of our members, our enterprise agreements tend to be comprehensive and largely cover the field of their wages and conditions. Awards have become increasingly irrelevant for those members covered by enterprise agreements. Due to their skills and the current skills shortage, most of our members are in a reasonably good bargaining position.

1.3 The only limits that have been externally imposed on the content of our agreements have been imposed as a result of various rulings concerning "matters pertaining" to the employment relationship. As a result we have had to remove conditions that have been found by the courts as not pertaining to the requisite relationship.

1.4 We find it curious that the Government trumpets the virtues of the parties being able to freely bargain without the interference of third parties while the Government itself interferes hugely in the process by proscribing things, such as bargaining fees, contracting out provisions and union preference clauses that are not 'allowed' (by the Government) to go into agreements. Apart from this "little" hiccup, the Government is prepared to let the parties freely negotiate ... until another thing comes up that they are not happy with and then presumably they will intervene yet again and tell the 'freely 'negotiating parties they can't have the offending item in their agreement.

1.5 As awards are further rationalised we believe that s.170LK (non-union) agreements will become less comprehensive because they relied on the safety net to pick up anything not covered by the agreement. As the awards are further eroded so too are these sorts of non-comprehensive agreements. As the conditions are dropped out of awards, they simply disappear if not inserted into agreements. The likelihood is that they will not be inserted into agreements as employees will not understand the ramifications of award simplification.

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

2.1 Whether we are talking about superannuation or the new industrial relations system, the Howard Government's current mantra is "choice", "freedom" and "flexibility". As far as the CEPU is concerned, these concepts apply one way and that is for the benefit of employers. In the new industrial relations system, the choice, freedom and flexibility will all be in the hands of the employer.

2.2 As it is clear that employers have total freedom to choose a *form* of agreement making that suits their needs, our submission will focus on the capacity of *employees* to choose a form of agreement making which best suits their needs.

2.3 When it comes to the choice mantra, points (b) and (c) of the terms of reference are linked. In this regard, the same comments applying to the lack of a capacity on the part of an employee to choose a form of agreement that best suits their needs go hand in hand with their inability to be in a position to genuinely bargain. That employees will have choice as to the type of agreement or its content in the new system is an illusion.

2.4 Most employees are presented with the industrial instrument which will regulate their terms of employment as a fait accompli. Its form is already decided upon by the employer. The form of agreement making chosen will be the form of agreement which best suits the needs of the employer. In general, an employee, or employees collectively, will be unable to choose a form of agreement making which best suits their needs if it does not suit the needs of their employer.

2.5 Despite saying that its new system is all about choice, the Government is proposing that Australian Workplace Agreements (AWAs) be the preferred method of employment regulation in Australia. So it is already introducing bias into the new system by pushing one particular type of industrial coverage.

2.6 To suggest that employers and employees are in an equal bargaining position flies in the face of reality. To even venture such a suggestion shows just how long it has been since John Howard worked in the real world. There is a natural and undeniable inequality of bargaining power that arises from being an employee. This can be mitigated by being a skilled worker in demand in a tight labour market or an employee high up on the food chain but generally speaking the bulk of the workforce is very much in the passenger seat. In the absence of help from 'interferring' third parties such as unions, an individual employee has little chance against the employer's arsenal of knowledge, information and resources and the power that comes from being the party offering the job as opposed to the party wanting the job.

2.7 Without the support of their union, workers face a simple choice. Admittedly it is a choice but a pretty limited one – the workers can choose the form of agreement on offer and the terms it contains or find work elsewhere. It's a bit like applying for a housing mortgage – in theory the bank seems to offer scope for negotiation over the terms of the agreement but the reality is quite different. If you don't like it, the alternative is to go somewhere else where the same deal as to "choice" applies.

2.8 Under the current system, inequality of bargaining power is counter balanced by a number of factors and it is the Howard Government's intention, via its IR reforms, to remove as many of these counterveiling factors as possible.

2.9 One of the main ways this inequality in bargaining power is addressed is through the support of unions in the workplace. This is closely aligned with employees acting collectively. The group has more power than the individual. By promoting individual agreements over collective certified agreements, the Government's motive is to break down the power of the collective. Other substantial measures such as restricting union right of entry are also aimed at containing the ability of unions to function in workplaces.

2.10 The Safety Net

2.10.1 The award safety net is also another counter to the imbalance in bargaining power but the Howard Government intends to effectively destroy this as well.

2.10.2 Employees who lack bargaining power have historically been protected by the award system. The award system provides a safety net which underpins all agreements both individual and collective. It has ensured a fair outcome, especially for employees who lack bargaining power.

2.10.3 The safety net creates a floor below which pay and conditions cannot fall. It creates a level playing field allowing employers to compete on things other than labour costs.

2.10.4 Removing the safety net allows employers to undercut each other on the basis of cutting their labour costs. By contrast having a safety net in place frees up employers up to compete on much more productive things than labour costs such as service, innovation, product differentials and so on. Continually pressuring employees to perform better, faster and for less creates instability and a loss of company loyalty. Better workplace relations foster productivity as workers are more settled and satisfied. It fosters loyalty and stability.

2.10.5 The award system has also created industry standards from which individual employers can ensure they pay fair rates and conditions. Even if employees have not been directly covered by an award, employers have used awards as a guide on which the employee's rate of pay and conditions are based.

2.10.6 Further, agreements often contain cross referencing to awards and so incorporate conditions into the agreement by way of this reference.

2.11 Destruction of the award system and erosion of the safety net

2.11.1 The changes to the Workplace Relations Act introduced in 1996 and the later changes which "simplified" awards, removed key protections from employees covered by awards. Many of these employees did not have the removed

conditions replaced in an enterprise or individual agreement. They simply lost the entitlements.

2.11.2 Employees who rely on awards for their wages and conditions of employment tend to be employees in weak bargaining positions. Awards at least provide a safety net for employees who lack bargaining power to do better on their own with their employer.

2.11.3 The Government proposes to further "simplify" awards by again reducing the number of allowable matters an award can contain. There are many workers who rely solely on the award system for protection. To further reduce the matters that can be contained in an award, will have a detrimental impact on these employees.

2.11.4 Under the Government proposed reforms, the award system will no longer constitute the safety net. The Government is going to remove this last safeguard by creating its 'Fair Pay and Conditions Standard' which comprises a minimum wage plus four minimum conditions. This standard will be a mockery of the concept of a safety net. These employees are already on the bottom rung of the ladder. The Government's reforms will simply widen the gap between the have's and have nots. It will create a two tier system of a class of working poor and a class of better paid employees.

2.11.5 The Office of the Employment Advocate rarely refuses to certify an AWA for failing to meet the no-disadvantage test. This is likely to be more so under the Government's reforms which will in effect gut the no-disadvantage test. It is hard to imagine any agreement failing such a test as the conditions will be so basic. Further, the Government has announced it will streamline agreement making by registering AWAs *on lodgement*. If an AWA becomes operative from lodgement there seem to be no opportunity for checking the AWA against the no-disadvantage test. Short of saying the process is self regulated, it is hard to see how the no-disadvantage test will be applied in practice.

2.11.6 Even in collective agreements, the gutted no disadvantage test will lead to worse outcomes, especially for employees with less bargaining power.

2.11.7 These measures in combination are not about creating a system whereby parties of equal bargaining power mutually choose and negotiate a form of agreement which best suits their needs. The reforms are about stripping employees of the counterveiling power that comes from negotiating as a collective and with the assistance of their union. The reforms are about making employees as vulnerable as possible. In so doing employers will be able decrease wages and reduce conditions. If the rationale was to provide for better pay and conditions, then the reforms would be unnecessary as nothing stops employers offering better rates and conditions under the current system.

2.11.8 Some employers may be fair and not wish to take away current award entitlements such as annual leave loading, penalty rates, restrictions on

working hours and overtime, public holidays, long service leave, redundancy and so on. However, the generosity and fairness of these employers cannot be relied upon. Many employers are reasonable but many are not. Without unions the "negotiation" of individual contracts will be a very one-sided process. Without the protection afforded by the safety net, decent and fair employers may be forced to ditch fairness and decency in a race to the bottom. They will have little choice but to cut wages and conditions if their competitors are doing so. The result will be a bidding war where employers seek to compete on the basis of cost cutting.

2.11.9 Some workers in strong bargaining positions may fare well under the new system but no better than they could currently do under the present system. There is nothing is the present system stopping employers offering their employees a better deal or genuinely negotiating a work family balance that works both ways. But the large proportion of the workforce, who lack bargaining power, will drop further and further behind.

2.11.10 Conceding so much power to employers is a throwback to an earlier era and a recipe for creating an underclass of working poor. This is the American model and the shame of the American economy and it is not something we should be importing into our system.

3. PARTIES ABILITY TO GENUINELY BARGAIN - focusing on groups such as women, youth and casual employees;

3.1 The higher the level of skill and education required to do a job the more likely an employee will be able to individually bargain and choose a form of agreement which best suits their needs. But for the most part, the bargaining power rests with the employer and not the individual.

3.2 When the labour market is tight then an employee's bargaining power may be better. But some employees will never have individual bargaining power. Typically those with less education and skills and more particularly women, young people, employees from non-English speaking backgrounds often working in casual or part-time employment are vulnerable and lack bargaining leverage. Another factor is regional pressure. Employees living outside metropolitan areas are far more likely to experience employment difficulty and take lesser rates and conditions just to get a job. These people also lack bargaining leverage.

3.3 Most employees are presented with the industrial instrument which will regulate their terms of employment as a fait accompli. As stated above, its form is already decided upon by the employer. In addition, its *contents* will be largely non-negotiable and a condition of employment. As stated above, in a tight labour market there is some leverage on the part of some sectors of employees but in the main an employee's ability to *genuinely* individually bargain is something largely restricted to skilled trades in shortage and paraprofessional/professional employment.

3.4 Most of the research on the operation of workplace agreements shows workers appear to have no input into drafting them. If individual agreements were a genuine bargain between two parties, you would expect to see differing outcomes between workers. There would be all sorts of variations to contracts when in fact there is nothing 'individual' about individual contracts. The bulk of them appear to be individual pattern agreements – each one the same as the last – with a space for the person's name and the date. At the end of this submission, we present five case studies which illustrate this point.

3.5 Interestingly, these case studies also contradict the view that skilled tradespeople are in a position to negotiate their own wages and conditions.

3.6 Mitchell and Fetter[3] assess whether there is a legislative requirement on the employer to individually bargain in good faith with their employees. They find little legislative support associated with the making and processing of AWAs to seriously suggest a requirement for individual bargaining.

> *"... legally the WRA provides little in the way of support for the individualisation process to be a bargained one. In reality, ... there is no obligation upon the employer to bargain, nor to act in good faith .... Anecdotal evidence suggests that the AWA process in practice may be more likely to be unilateral than bilateral."*[4]

3.7 Mitchell and Fetter[5] argue that the Workplace Relations Act plays lip service to the idea that the AWA is a result of negotiation "*... the Act anticipates that more commonly the employer will draft the AWA and present it to the employee on a take-it-or-leave-it basis ... The only recognition of the imbalance of bargaining power is found in the legislative prohibitions against duress, misleading information, threats and intimidation."*

3.8 Interestingly, even though one judge has described forcing an employee to choose between an AWA or no job as *"unconscionable conduct which no employee in a humane and tolerant and egalitarian society should have to suffer"*[6], the courts generally have not found this to constitute duress[7].

3.9 Impact of the abolition of the no-disadvantage test on the content of agreements

3.9.1 One of the most important changes in the package of reform measures is the abolition of the no-disadvantage test and its replacement with a "fair pay and conditions standard". While this has been already discussed above, it bears

[3] Mitchell R and Fetter J (2003) "HRM and Individualisation in Labour Law", The Journal of Industrial Relations, September, pp.292-325 at 297.
[4] Ibid
[5] Ibid, p.302
[6] *Australian Services Union v Electrix* [1999] FCA 211, 11 March 1999
[7] *MUA v Burnie Port Corporation Pty Ltd* [2000] FCA 1189 24 August 2000

repeating under this term of reference to underline the impact of its abolition on the ability of employees to genuinely bargain their pay and conditions.

3.9.2 Under the no disadvantage test, agreements are assessed against the test to ensure employees are no worse off than they would be under the award. It stops employers from seeking to undercut pay and conditions by providing a floor below which the agreement cannot go. It thus protects employees who lack the bargaining power to maintain their pay and conditions.

3.9.3 Howard's new minimum standard will be truly minimum. Contracts will only have to comply with the four legislated minimum conditions and contain a wage rate no less than the minimum wage. Employers will be able to unilaterally dispense with all other conditions and the only thing to stop them is the bargaining power of the individual employee. In reality there will be nothing to stop employers putting everything else on the table for re-negotiation – each time if they feel like it.

3.9.4 Professor David Peetz[8] of Griffith University argues that the new fair pay and conditions standard will encourage reductions in employee rates of pay as employers will be able to cut penalty rates including overtime, leave loading, shift allowances and all other avenues of remuneration not covered by the "fair" pay standard. He presents evidence that these are the areas that employers focus upon to achieve cost savings via wage cuts resulting in higher profits.

> *"analysis of agreements and analysis of publicly available data, suggest that already these are not being offset by adequate increases in hourly base pay, at least not at a level that matches developments in collective agreements. The abolition of the "no-disadvantage" test is likely to exacerbate these trends. ... If the Western Australian experience is anything to go by we may also anticipate worsening problems with the gender pay gap."*

3.9.5 In addition, it is hard to see how the new anorexic no-disadvantage test will be administered in practice. To streamline the certification process, individual contracts will be certified on *lodgement* rather than the date of approval. Likewise non-union s170LK agreements will (like union agreements) now be approved by the Employment Advocate and also take effect from the date of lodgement. There seems to be no point at which the agreement can be subject to the new no-disadvantage test however slimmed down it is. The new standard is quite pathetic but at least it provides a modicum of a safety net for groups of employees particularly vulnerable to exploitation.

[8] Professor David Peetz, Department of Industrial relations, Griffith University (2005) "The Impact on Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage' Test at p.15 http://www.econ.usyd.edu.au/wos/IRchangesreportcard/

3.10 Content of AWAs

3.10.1 The Committee would be aware of the debate over figures as to whether or not employees are currently better off under individual versus collective agreements. We do not proposed to repeat the arguments but note Peetz' conclusion:

> *"Overall, the ABS data confirm the conclusions from numerous other sources and studies: unions, and union-based collective bargaining, create higher wages and better conditions for workers; individual contracting creates poorer pay and conditions and does this most effectively for those with weaker positions in the labour market."*

3.10.2 The Government claims its reforms will make it easier for employers and employees to negotiate conditions that suit each of them without the "interference" of third parties such as unions. The Government of course claims that workers on AWAs earn more money than their colleagues on collective agreements.

3.10.3 If workers on individual contracts were as well off (or better off as the Government claims) than those on collective agreements, then to make up for the disadvantage they would need to be compensated with higher wages and wage increases. Has this in fact been the case?

3.10.4 Peetz[9] tries to assess whether or not the data show that individual contracts deliver higher pay, but is hindered by the fact that the Government no longer makes statistics on wage increases under individual contracts publicly available. He gains an idea of the difference by comparing the performance of non-union collective agreements against union negotiated agreements. He concludes that:

> *"Government data show that, in the Australian Federal jurisdiction since the passage of the Workplace Relations Act, employees covered by union-negotiated collective agreements have consistently received higher wage increases than those under non-union group agreements."*

3.10.5 Initially, ACIRRT was able to analyse and publish data on wage increases under AWAs as the Office of the Employment Advocate provided samples of AWAs. In 2001 ACIRRT looked at wage increases in 1189 AWAs (out of then 3738 employers) who had made AWAs with their employees. ACIRRT found lower average annual increases in AWAs compared with both union and non-union collective agreements. Union collective agreements were consistently generating wage increases better than non union agreements and AWAs. Unfortunately, since that time the OEA no longer makes this data available for analysis. Perhaps this reluctance arose out of the less than favourable light the data was shedding on AWAs and their wage outcomes.

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[9] Peetz, op cit at p.4

3.10.6 Also according to ACIRRT, AWAs are much less likely to provide for wage increases during the duration of the agreement even though they are more likely to have a duration of three or more years. In addition, most AWAs fix pay for the duration of the agreement[10]. Moreover, when wage increases do occur in AWAs, they are usually based on individual performance and are at the discretion of management.

3.10.7 Looking at AWA outcomes in greater detail, ACIRRT found that high wage AWAs were often associated with longer working hours, and with contingent wage increases such as performance pay or bonuses. Individual contracts are much more likely than collective agreements to reduce or abolish payments for working overtime, nights or weekends.

3.10.8 Peetz looks at the various jurisdictions where individual contracting has been introduced – including New Zealand, Victoria, Western Australia, Queensland and the Australian federal jurisdiction - and also concludes there is a common theme that individual contracts affect pay by changing the ways in which workers are paid for the time they work. This is often referred to as increasing the "flexibility of working hours". That is, they focus on reducing or abolishing overtime pay for working more than 38 hours a week, increasing the standard hours in a week from 38 to 40 or higher, reducing or abolishing penalty rates for working at nights or on weekends or reducing the range of hours when penalty rates may apply, or even shifting from wages to 'annualised salaries' which he terms as code for abolishing hourly wages, overtime and penalty rates.

3.10.9 In return for losing these entitlements workers have been meant to receive an increase in the base rates of pay to offset the loss of income from these changes to how hours are paid. In many cases, they may have received an increase. The problem is that this has been a once off increase which fails to compensate on-goingly for the loss of entitlements.

3.10.10 ACIRRT's 2001 analysis of AWAs shows that they provide for longer working hours than other agreements and that these are usually paid at the single ordinary time rate not overtime rates. An analysis by Mitchell and Fetter[11] of 500 AWAs found that almost all increased the 'flexibility' of working hours, and that the 'overwhelming majority' of AWAs followed the approach of boosting productivity through cost reductions rather than real productivity enhancement measures.

3.10.11 In 2003, ACIRRT conducted an analysis of the content of a broadly representative sample of 500 AWAs supplied to them by the OEA. Only 38% of agreements provided for a wage increase, and in 9% the wage increase was entirely performance based.

[10] Mitchell and Fetter quoted by Peetz p8
[11] Mitchell and Fetter, op cit, pp311-318

3.10.12 This suggests at the very least that wage increases under AWAs are very much at the employer's discretion. Wages paid under AWAs are less secure than those under collective agreements. This is due to the contingent wage increases from productivity payments and performance related pay. Income security is important to family budgets and contingency payments decrease income certainty significantly. Further, employees under certified agreements are more likely to gain wage increases from progressing up a career path, whereas employees under individual agreements seem to be far more at the mercy of his or her immediate supervisor for favourable reports on performance criteria.

3.10.13 In the face of such evidence it is pertinent to ask why the Government is so hell bent on pushing AWAs. The inevitable conclusion is that it knows that this will case downward pressure on wages and this is the desired outcome. The Government must also be aware that its policy reforms further tilt the balance of power away from employees in favour of employers – and this too must be a desired outcome. Instead of masking its intentions behind the rhetoric of choice, freedom and flexibility the Government should be honest about its motives and admit that it wants to create a system that destroys the power of the collective and puts individuals at the mercy of their employer.

3.11 Over time employees on individual contracts will be worse off

Wage increases under individual contracts are often a one off payment to compensate for loss of penalty rates and longer hours. Putting aside the debate over whether or not employees are truly better off or not under an individual agreement rather than a collective agreement, we expect that over time as this once off absorption of conditions is "compensated for" by higher wages, that the collective agreement will 'catch up' AND still contain the conditions that were bargained away in the AWA for a one off pay increase.

4. THE SOCIAL OBJECTIVES, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;

4.1 Almost all awards in Australia contain penalty provisions for work on weekends and outside "ordinary" working hours. Likewise difficulties of shiftwork are compensated for by the payment of a penalty rate and additional annual leave. Awards also contain provision for maternity leave, parental and carer's leave, annual and long service leave. They also contain loadings for casual work to compensate for lack of access to paid leave entitlements. These conditions are typically contained in collective agreements otherwise they would fail the no-disadvantage test.

4.2 Such provisions are designed to make such anti-social work less attractive to employers and to promote a healthy balance between work and family. By enshrining such entitlements in awards, those employees with less bargaining are guaranteed the same protections and rights as those employees who could bargain for these "rights".

It allows such workers not to be exploited by their more precarious position while allowing them to spend more time with their families than would be the case if employers could pay for such work at the same rate as work during "ordinary" hours.

4.3 The Government's reform package will change all this. By gutting the no disadvantage test and further "simplifying" awards, these important protections will be lost. We will see a return to the days of last century when employers called the shots and employees did their bidding. Most workers are probably not aware of how the award system protects them. They would also not be aware of the role of unions in the process of updating awards. Awards set the ground rules in workplaces even for non-unionised workers covered by non-union collective agreements and individual agreements.

4.4 AWAs attack the social objectives of balancing work and family responsibilities. By promoting AWAs and introducing its industrial reforms, the Government will be simultaneously attacking these social objectives while removing the inbuilt protection provided by the award system and the unions' role in that system. To pretend otherwise is a nonsense. As women are in a more precarious position generally, the promotion of AWAs will widen the gender pay gap.

4.5 The changes will lead to a reduction in living standards as employees work longer and harder for less. It will lead to a deterioration in family life as parents work harder and longer either through choice - or not - to earn the same money. The casualty will be leisure time and the pressure on families will increase.

5. THE CAPACITY OF THE AGREEMENT TO CONTRIBUTE to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards; and

5.1 The Howard Government claims its reform will improve:

- productivity,
- economic growth;
- competitiveness;
- flexibility;
- fairness; and
- living standards

and no doubt world peace.

We ask with whom are we competing? Is it Chinese or Mexican workers who are paid a pittance in return for their labours. If this is the yardstick, if this is worlds' best practice then we say we can:

(1) never win; and

(2) why should we?

Why should Australian workers have to compete the labour costs of the lowest paid globally? How low does this Government want Australian workers to go before it will be satisfied? Again we pose the question as to whether this is the sort of society we should be aspiring to. It should also be remembered that these same workers still need to earn enough to be the consumers of our soon to be realised increased economic growth. Somehow according to the Government making it tougher for workers does not preclude economic growth. And this is really the point. Industry will gain is a one off decrease in costs and so experience a one off increase in profitability but not an ongoing increase in productivity necessary to fuel economic growth.

5.2 AWAs really Pattern Bargains

The joke about AWAs is that, despite the rhetoric of the Federal Government, they are not used to individually tailor employment conditions for individuals. Below we have presented five case studies of companies in Queensland offering AWAs as a non-negotiable condition of employment. But the AWA is not an individual agreement tailored for each employee. They tend to be template agreements with space for the employee's name and the date.

Our five case studies demonstrate both lack of choice offered to the employees as to the form of agreement made as well as lack of choice over the agreement's content. Significantly, in view of the Government's antipathy to pattern bargaining these "individual" agreements are neither individual nor the outcome of a negotiation. They are in effect an individual pattern agreement. Each agreement is a replica of the previous agreement offered to the previous employee and no doubt to the next employee.

So blatant is the fact that this is a template agreement this that the agreement is a *photocopy already signed* by the employer with blanks to insert the employee's name and signature.

In places like North Queensland where work is often scarce, employees are not in a genuine bargaining position and are forced to take whatever the employer offers by way of wages and conditions. Case study 1, concerning Dawson Engineering is a case in point. Already pre-signed by the company and ready to go, the only thing missing is the employee's name which is to be slipped in once the employee has agreed to his or her non-negotiable "agreement". Each employee is offered to same agreement. The difference between an AWA and a collective agreement is that with the AWA the employer capitalises on the opportunity to erode wages, offer lesser conditions and in some case completely remove certain conditions. Whereas a

collective agreement struck a fair and negotiated outcome, an AWA is able to do away with any notion of fairness.

6. CASE STUDIES DEMONSTRATE THAT CHOICE IS AN ILLUSION – Individual contracts disguised pattern agreements

6.1 CASE STUDY 1 - Dawson's Engineering Non-Negotiable AWA OFFER

Dawsons Engineering is a North Queensland labour hire company based in Cairns which provides a range of engineering, fabrication and labour hire services.

Specialising in heavy engineering, fabrication of structural and plate steel and repair of mining, marine and sugar processing equipment (fixed and mobile), Dawsons have workshops in Cairns and Townsville that can service all areas of northern Queensland and are able to mobilise to any site, Australia wide, at short notice.

In May 2005, Cairns based heavy engineering and labour hire firm, Dawsons Engineering, announced it had secured a three year service contract at Zinifex Century Mine, Lawn Hill. Zinifex owns and operates the Century Mine near Lawn Hill in North West Queensland - the world's second largest zinc mine - and the associated port and dewatering facility in Karumba. Around 850 people are currently employed between the two sites and the mine has a projected life of a further 12 years.

On winning the contract, Dawson's announced they would be increasing its workforce by 70 and would like to recruit most of these new employees locally.

We have attached a job offer made to an ETU member who applied for a permanent position in amine maintenance role with Dawson Engineering. The AWA was offered as a non-negotiable part of the offer of employment.

There was no opportunity for the member to bargain about any aspect of his conditions of employment, let alone about whether he wanted an AWA or a certified agreement.

In terms of content, it is not too bad compared with many others – on the surface even the rate of pay seems reasonable - $89,000 salary - however it is all-inclusive with no separate payment for overtime, allowances, and possible shiftwork etc. It also should be seen in the context of wage rates generally for the remote localities in the mining industry.

There is no guarantee of an increase during the life of the agreement, only the assurance that; "Your remuneration will be reviewed on an individual basis each year", which could include and increase, decrease or no movement at all.

The disputes procedure does not make provision for union involvement (surprise, surprise), but does contain an ambiguous clause to the effect that "nothing in this

clause shall be taken to restrict or deny the employee exercising his or her legal entitlements."

There is an anti discrimination clause, but in terms of other entitlements:

- meal breaks are a little light on for 12 hour shifts;
- the AWA provides for unrestricted drug, alcohol and "medical surveillance" testing;
- generally complies with award standards, but contains none of the extras you would generally expect in a remote mining location on a well unionised site

The member was offered this contract on a take it or leave it basis and had no input into its contents. It is hardly a shining example of the brave new world where employees will be able to bargain for a form of agreement the contents of which are tailored to his needs.

As a postscript it should be noted that this employee is required to get to from Cairns (where he lives and the company is based) to Townsville for pickup to the job under his own steam and at his own expense. This adds considerable travelling time (some five hours each way) and expense. However, because of regional employment pressures he has taken the job irrespective of these difficulties and irrespective of his dissatisfaction with the contract offered.

6.2 CASE STUDY 2 – Riviera boat building company

The second case study applies to employees at a large boat building company on the Gold Coast. In another example of a sign on the dotted line arrangement, the Riviera Group in Queensland is offering AWAs (see Attachment 2) to its long term casual employees in return for permanent employment.

Riviera is Australia's largest luxury boat cruiser manufacturer. In its mission statement, the company says it aims to develop the skills of its employees. It is the largest employer of apprentices in Queensland largely using the schools based apprenticeship system with around 50 of its 200 apprentices being school based apprenticeships.

Again the AWA is a pattern individual contract, being offered as a blank template with spaces for the date. The employee have had no input into this agreement.

The Union started recruiting there after being contacted by some disgruntled employees who had been working as casuals for 2 and 3 years. The union had some discussions with the employer around the issue of implementing the "right to become permanent" provisions of the State Metal, Engineering and Associated Industries Award.

The employer responded by offering AWAs, which were offered on the basis of permanent employment. It was made clear to employees that that was their only route to permanency. There was a fairly high take-up of the AWAs in the first instance

because of the permanency factor. We guess this is what John Howard is talking about when he says he wants employees to have choice.

The agreement purports to be underpinned by the Award. It makes reference to 'policies and procedures' which are not identified nor defined, and which are not appended to the agreement.

It provides for a 42 hour working week, with ordinary hours worked any time between 6am and 6pm, Monday to Saturday, with staggered starts and finishes subject to a roster. Overtime is paid on weekly rather than daily hours, with hours between 42 and 55 paid at 1½ time, and in excess of 55 hours at double time.

Pay is by a flat hourly rate for all employees - $18 in the first year of the agreement, $18.63 in the second year, and $19.28 in the third. 15% loading and meal allowance for each afternoon shift worked (no mention of paid crib breaks).

Superannuation is into an in-house plan administered by the ANZ bank, and based on ordinary hours, rather than ordinary time earnings.

6.3 CASE STUDY 3 – Sure Power – small manufacturer of marine electrical harnesses

In yet another example of a sign on the dotted line arrangement (attachment 3), a small manufacturer of marine harnesses Sure Power in Queensland is offering an AWA to at least one employee in what she believes is on a take it or leave basis.

This AWA is a very basic one page document covering commencing times and meal breaks. There is a reference to a previous enterprise agreement. Again the AWA is a pattern individual contract, being offered as a blank template with spaces for the employee's name and date. The employees have had no input into this agreement.

In this establishment, (not sure of numbers, only small shop), the men are permanent and the women are casuals. The employee who contacted us has worked for this business for 5½ years as a casual.

She had an injury early last year which resulted in her having a period of time off work on workcover. Since she returned, the employer has been putting pressure on her to increase her hours from 7 to 8 per day. The other women who work around her are working 7 hours or less per day. They have no proper lunch break, only a couple of rest pauses and a 15 minute lunch break. She has not had a pay rise in over 4 years.

The employer asked her to sign this agreement which cements in the 8 hour day and some other conditions that undermine the award. Ordinary hours are 42 hours Monday to Saturday between a spread of hours of 6:00am to 6:00pm.She believes she will be sacked if she does not sign the document.

6.4 CASE STUDY 4 - Contractor to power station

- MPA Services

The fourth case (Attachment 4) relates to employees of a power station maintenance contractor, MPA Energy Services. Again, the AWA was offered to employees as a non-negotiable condition of employment.

The disputes procedure contains some interesting provisions, including a specific requirement that a party cannot commence an action for breach of AWA and various other remedies without first following through on the disputes procedure (which of course has no role for the union).

The AWA provides for ordinary hours of 42 per week on a roster that includes one Saturday per month. Overtime is mandatory on an as and when required basis, up to an average of 26 hours per month. The salary for a tradesperson is $53,982.30 per year, with escalation based on an ABS statistics. All overtime is paid at 165%.

After the probationary period the AWA provides for one month's notice of termination by either party, and there is an invasive clause about medical examinations.

Once again, whilst there are some conditions that we (and the members) would prefer to change, the major issue is the lack of choice in what form of agreement, and its contents.

6.5 CASE STUDY 5 - Electrical contractor - John Love Electrical

The fifth case study (Attachment 5) concerns an AWA being offered by an electrical contractor, John Love Electrical Pty Ltd, on the Sunshine Coast. The employer's stated objective is to work employees an average of 40 hours without overtime and to increase the spread of hours 6:00am to 5:00pm Monday to Saturday. The agreement claims to be underpinned by the Electrical Contracting Industry Award – State 2003.

All employees who sign this agreement are to be employed as casuals.

The flat rate of pay at $24.10 per hour for a casual is inclusive of overtime, sick and bereavement leave, construction and mobility allowances, tool allowance, travel time and fares, trades allowance, holiday pay and loading (some of which obviously wouldn't apply to a casual in any case). It does provide for an employee to negotiate a higher hourly rate, but we are not aware of that provision being used.

Hours of work are 10 per day, between 6:00am and 5:00pm, Monday to Saturday inclusive. Time in excess of 40 hours per week is paid at the ordinary hourly rate.

CIRT(Q) is paid only where the builder so requires.

The disputes procedure not only doesn't name the union, it also doesn't specify the QIRC/AIRC as a reference for what it calls 'mediation'.

Again the AWA is offered as a condition of employment. If the calculation were to be done, we believe this AWA would fail to satisfy the no disadvantage test.