

Submission

to

**Senate Employment, Workplace Relations and Education
References Committee**

Inquiry into Workplace Agreements

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15 September 2005

Mr John Carter Secretary
Senate Employment, Workplace Relations and Education References Committee
SG.52 Parliament House
CANBERRA ACT 2600

Dear Mr Carter

Re: Submission to Inquiry into workplace agreements

It is obvious that the fundamental flaws of individual contracts are not to be removed by proposed legislation, and the performance of the OEA may cause catastrophic failure of the entire agreement making system.

I list key observations and evidence as to why the take-up rate of AWAs as a proportion of Australia's total working population is so abysmal, since their introduction over 9 years ago.

- 1) Excessive paperwork and administration in lodgments.
- 2) Chronic delays in AWA approvals. Delays of over 6 months are not uncommon. In 2004/05, over 6,500 AWAs took longer than 6 months to be approved (Attach 2).
- 3) Flawed "OEA Template" and "Framework" AWAs endorsed by the Government. The exposure of employer parties to back payment claims made by employees is significant (attachment 3).
- 4) Conflicting regulatory duties. The OEA at the same time as advising employers, is investigating and assisting employees take legal action against employers.
- 5) Faster approval times for employers utilizing "Framework" and "Template" AWAs compared to individual employees and employers exercising their right under the Workplace Relations Act to choose the best form of Agreement for their circumstances. This collectivist approach – that employees should be covered by an AWA written by the Public Service, in order to facilitate reasonable approval times, is anathema to the clear intentions of the Act about choice.

By any measure, A.W.A's have been an appalling and inexcusable failure, with less than 4% of the Australian working population currently employed on one. The inclusion of statistics accounting for AWAs lodged over 8 years ago and no longer in effect, presents an unrealistic and misleading picture of their popularity with employers.

Please find attached some proof of the delays and inefficiency of A.W.A's compared with non – union C.A's (Note: this is a sample of 'new' Employees, all of which have precedent approval) (attachment 1).

None of the Governments proposed changes to the Bill would have any material effect on the outcomes within this set of data

I can attest delays and resulting risks and uncertainties for Employers are the greatest restraint on the uptake of agreements. People in businesses are quite unmoved by Union scare tactics of learned rumination about relative bargaining power, nor do they welcome someone else from the Government offering so-called 'help'. Perhaps this is why employees on Certified Agreements (union and non-union) outnumber those on AWAs by a factor of 3:1.

The delays in A.W.A approvals present real problems for an Employer who can have A.W.A's retrospectively voided by the O.E.A, consequently exposing the Employer to claims for back payments under an award. The standard achieved here is roughly as good as has been achieved by the O.E.A. over eight and a half years for our clients. It falls far short of those at AIRC and would most likely cripple the entire non – union agreement process if applied to collective agreements when they come under O.E.A.

Clearly the efficacy of the Department needs to be urgently and objectively examined. So too does the endemic inadequacies of individual agreement approvals.

Understandably, facilitating a public platform for incumbents of approval authorities invites self justification while simultaneously failing to expose the truth, which may in turn improve the prospective Bills.

The duties/responsibilities of the Employment Advocate from 2006 and beyond will be critical. Even casual observation of the Act s83BB 1) and 2) by the lay man makes clear conflicting duties and dysfunctional responsibilities.

Consider for a moment the Employee's claim for back payments (above). The same Advocate who is to assist the Employer, can assist his Employee by investigating, advising and offering legal assistance in making a claim against the Employer arising from the Advocates' incompetence. After all of this, the Advocate can then assist the Employee (but not the Employer) balance his work and family life.

The inefficacy of the Office of the Employment Advocate to support people in Business is shown by a critique of an O.E.A. template agreement (See attachment 3). As you will see, Framework and Template agreements are made available (at the taxpayer's expense) in an attempt to increase the uptake of these agreements by small businesses.

The approving delays and critique are damning evidence that the proposed changes by the Government are merely cosmetic. If we can not have sensible legislative minimums like other developed economies, there will be no progress until the role of the agreement approving authority is limited to 'tick, file and check'.

Kind Regards,



Rob Thompson
Enterprise Initiatives

Attachment 1

Approval Delays and Effectiveness of AWAs vs. Non-Union Certified Agreements

NB. These statistics are calculated for Enterprise Initiatives' clients for the corresponding period 8 December 2004 and 17 August 2005.

Table 1 – OEA performance and AWAs

Total AWAs Lodged	Approx. 3996
Total AWAs Approved	Approx. 3175
AWAs required each year, based on Employee turnover (i.e. requiring more individual AWAs to be lodged, approved, and risk of delays)	Approx. 25% of total
Awaiting approval	
20 days – 3 months	325
3 months – 6	187
Over 6 months	309
Total Awaiting Approval beyond OEA Charter of 20 days	821

Table 2 – Australian Industrial Relations Commission and Non-Union 170LK Certified Agreements

Total CAs Lodged	Approx. 115
Total CAs Approved	Approx. 105
Employee coverage at Certification	Average Approx. 18 employees per CA
new New Agreements required to cover Employees each year	N/A
Length of time awaiting approval from date of lodgment with Registry	
20 days or less	5
Between 20 days and 30 days	90
Between 30 days and 3 months	7
Over 3 months	3

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2004-2005 ADDITIONAL SENATE ESTIMATES HEARING
17 FEBRUARY 2005**

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

QUESTIONS ON NOTICE

Office of the Employment Advocate

Question Number: W168-05

Question:

Senator Campbell asked at *Hansard* page 15:

Please provide the number of AWAs that have taken longer than a six month period for approval.

Answer:

The numbers of AWAs which have taken longer than six months to approve are provided for financial years 2002-03, 2003-04 and 2004-05 YTD, in the table below.

In 2003-04, there was a jump in the number of AWAs taking longer than six months to approve. There were two main reasons for this. First, a 61% increase in lodgements in 2002-2003 placed considerable pressure on the OEA's processing systems and resulted in a substantial number of AWAs being carried forward into 2003-04, before they could be assessed and approved.

Secondly, AWA lodgements by Western Australian (WA) employers, migrating from State workplace agreements (WAWAs), grew by 292% in 2002-03. Many of these AWAs did not meet the no-disadvantage test (NDT) when first lodged, slowing further the assessment process. NDT deficiencies can be overcome by the OEA seeking changes to AWAs – 'undertakings' – from employers. However, the process is necessarily a resource intensive one.

	2002-03	2003-04	2004-05 YTD
AWAs approved >6 mths	514	10,253	6,688
Total AWAs approved	102,479	151,021	131,767
% of total approvals	0.5%	6.8%	5.1%

Note: These figures include most AWAs approved by the AIRC, following referral by the OEA (approximately 1% of all AWAs approved).