Submission
to
Senate Employment, Workplace Relations and Education Committee

Inquiry into Workplace Agreements

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Introduction

Job Watch Inc is an employment rights legal centre, which, since 1980, has operated as the only service of its type in Victoria. The centre is funded primarily by the Victorian State Government (the Department of Innovation, Industry and Regional Development – Industrial Relations Victoria) and also receives funding from the Commonwealth Office of the Employment Advocate (OEA).

Job Watch's core activities are:

- The provision of advice, information and referral to Victorian workers via a free and confidential telephone advisory service.[1]
- A community education program that includes publications, information via the Internet, and talks aimed at workers, students and other organisations.
- A legal casework service for disadvantaged workers and workers experiencing human rights abuses.
- Research and policy advice on employment and industrial law issues.
- Advocacy on behalf of those workers in greatest need and disadvantage.

Job Watch has a statewide focus and services a broad range of Victorian workers, who number around 20,000 annually. We have played a vital role in providing advice and assistance about mainstream employment issues to the Victorian workforce since the deregulation of the industrial relations system in Victoria in the early 1990s and subsequent dismantling of the state industrial relations system.

Job Watch maintains a database record of our callers, which assists us to identify key characteristics of our clients and trends in workplace relations.

Our records indicate that our callers have the following characteristics:

- until recently, the majority were not covered by federal awards or agreements and were only entitled to the minimal employment conditions contained within Schedule 1A of the Workplace Relations Act 1996;
- the majority are not union members;
- a large proportion are employed in businesses with up to 100 employees;
- a significant number are engaged in precarious employment arrangements such as casual and part-time employment or independent contracting;
- many are in disadvantaged bargaining positions because of their youth, sex, racial or ethnic origin, pregnancy status, socio-economic status, or because of the potential for exploitation due to the nature of the employment arrangement, for example apprenticeships and traineeships; and
- many are job seekers attempting to return to the labour market after long or intermittent periods of unemployment.

As the above indicates, we have a particular interest and insight into the conditions of disadvantaged workers and, due to our client profile; we are uniquely placed to comment on industrial (workplace) agreement making from the perspective of disadvantaged workers.

Job Watch welcomes the Senate Inquiry and the opportunity to provide a submission. Our submission will focus primarily on the following terms of reference:

Whether the objectives of the various forms of industrial agreement-making, including Australian Workplace Agreements, are being met and whether the agreement-making system, including the

[1]The Job Watch advice service has 11 incoming phone lines, including a designated 1800 telephone number, which prioritises calls from rural and remote areas of Victoria.

proposed federal government's changes, meet the social and economic needs of all Australians, with particular reference to:

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; and
e. the capacity of the agreement to contribute to the productivity improvement, efficiency, competitiveness, flexibility, fairness and growing living standards.

Legislative Context

The *Workplace Relations Act (Cth) 1996* principal object is:

To provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:…

(b) *ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employers and employees at the workplace or enterprise level; and*
(c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act; and
(d) providing the means:

- *(i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards; and*
- *(ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and..*

(i) assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers.

The main forms of agreements provided for under the Act are Certified Agreements under Part VIB and Australian Workplace Agreements (AWA) under Part VID. In addition the Act sets the framework for federal awards and provides in Schedule 1A Part XV a minimum standard of terms and conditions of employment for Victorian employees not covered by federal awards or agreements.

Australian Workplace Agreements (AWAs)

Job Watch's Role

Job Watch is specifically contracted by the Office of Employment Advocate (OEA) under its Community Partners Program, to provide an advisory service to employees in disadvantaged bargaining positions in relation to their rights and obligations under the Workplace Relations Act with priority given to AWAs. We have received funding from the OEA for this purpose since 1997.

Job Watch's callers' experience

Statistical analysis

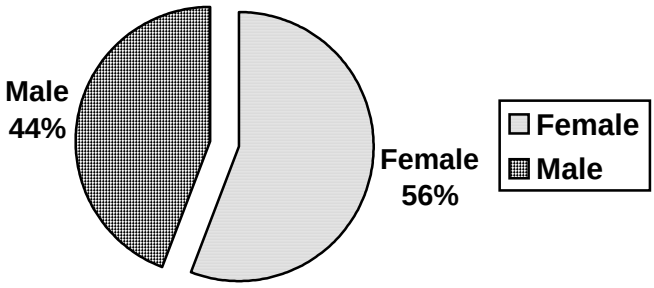
Job Watch database records show that over the last six financial years (1st July 1999 to 30th June 2005) our telephone advice service has received 595 AWA related enquiries.[2] The number of AWA enquiries received by Job Watch has historically been small, however, during the last financial year in the lead up to and the introduction of Common Rule Awards in Victoria on 1st January 2005 the number of enquiries increased. The OEA during the corresponding period experienced a 36 percent increase in the number of AWAs approved.[3]

In Job Watch's experience AWAs, which override awards, were used as lawful alternatives by a number of employers to avoid implementing the conditions provided under common rule awards.

Gender

The majority of AWA callers to Job Watch were female (see Figure 1).

Figure 1: Gender of AWA callers, July 1999 to June 2005



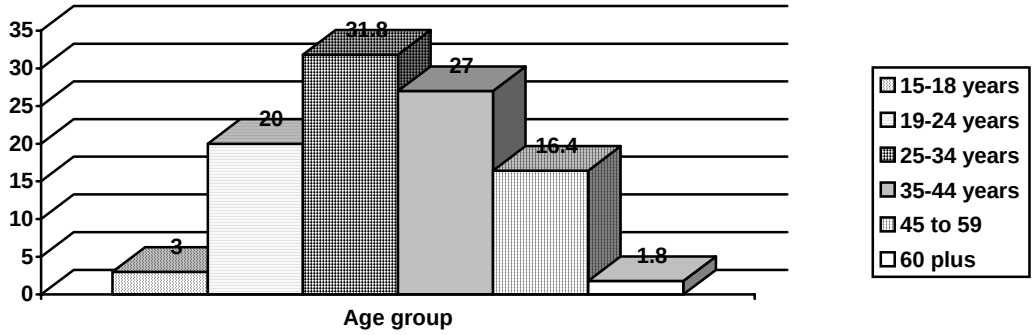
Missing =5 Source: Job Watch database

[2] Job Watch's current database records commence from 1st May 1999 and there are five AWA related problem categories: AWA – duress/coercion, AWA – general issues, AWA – money claims, AWA – other breaches, Common Rule Awards – AWAs. In some instances callers will have more than a single AWA related problem enquiry.
[3] 'Media Release: AWA approvals rising month-on-month (7th July 2005)', Office of Employment Advocate, http://www.oea.gov.au/

Age

Most AWA callers were in the 25 to 34 year age group (31.8 percent) and 35 to 44 year age group (27.0 percent). However, there was also significant representation from the under 25 age group (23 percent) and 45 plus age categories (18.2 percent) (see Figure 2).

Figure 2: Age group of AWA callers, July 1999 to June 2005

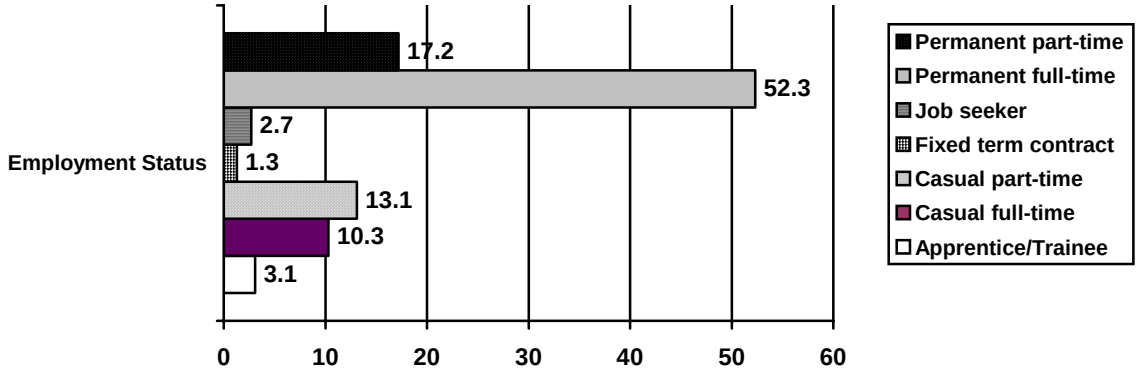


Missing =265 Source: Job Watch database

Employment Status

The vast majority of AWA callers were permanent full-time (52.3 percent) or part-time (17.2 percent) workers. However casual workers constituted nearly one in four AWA callers (see Figure 3).

Figure 3: Employment status of AWA callers, July 1999 to June 2005



Missing =44 Source: Job Watch database

Industry

The main industries that AWA callers worked in were retail trade (23.2 percent), property and business services (13.6 percent), personnel and other services (11.7 percent), communication services (10.3 percent), and accommodation, cafes and restaurants (9.9 percent) (see Table 1).

Table 1: Industry of AWA callers, July 1999 to June 2005, percentage

Industry	%
Accommodation, cafes and restaurants	9.9
Agriculture, forestry and fishing[4]	0.9
Communication Services	10.3
Construction	0.9
Cultural and recreational services	1.6
Education	0.5
Electricity, gas and water	1.2
Government administration and defence	2.3
Health and Community Services	9.6
Manufacturing	5.2
Mining	0.9
Personnel and Other Services	11.7
Property and Business Services	13.6
Retail Trade	23.2
Transport and Storage	5.4
Wholesale Trade	2.6
Total	100.0
(n)	426

Missing =169 Source: Job Watch database

Occupation

The main occupations of AWA callers were sales/personal service workers (39.7 percent) and labourers and related workers (14.3 percent) (see Table 2). As indicated, AWA callers were predominantly employed in low skilled occupations.

Table 2: Occupation of AWA callers, July 1999 to June 2005, percentage

Occupation	%
Clerk	8.6
Labourers and Related Workers	14.3
Managers and Administrators	8.6
Para Professionals	8.8
Plant and Machine Operators/Drivers	3.3
Professional	8.8
Sales/Personal Service Worker	39.7
Tradesperson	8.1
Total	100.0
(n)	421

Missing =164 Source: Job Watch database

[4] The category of agriculture, forestry and fishing was missing from the original design of the database and introduced as category on 24/12/01 when Job Watch database upgraded.

Type of AWA enquiry

Approximately 44 percent of AWA-related enquiries were about general issues such as what is an AWA. However, nearly one in five AWA enquiries were in relation to duress/coercion (see Table 3). This figure was higher for young people under 25 and casuals, one in every four AWA enquiries from these two groups were about duress/coercion (see Tables 4 and 5 in Appendix A). Gender was not a factor, with nearly one in five enquiries for both males and females being about duress/coercion (see Table 6 in Appendix A).

Table 3: Type of AWA enquiry, 1st July 1999 to 30th June 2005, number and percentage

Type of enquiry	No.	%
AWA - duress/coercion	108	18.2
AWA - general Issues	258	43.4
AWA - money claims	45	7.6
AWA - other breaches	83	13.9
Common Rule Awards - AWAs	101	17.0
Total	595	100.0

Source: Job Watch database

Case study analysis

The case studies used in the body of the submission are extracted from Job Watch's database records. The names of the callers and some details have been changed to protect the caller's privacy and confidentiality.

The capacity for employers and employees to choose the form of agreement-making which best suits their needs

A review of Job Watch database records shows that without exception employers instigated AWAs. Job Watch callers in most cases have no awareness or knowledge about what an AWA is until their employer or prospective employer presents them with an AWA.

Jackie's 15-year-old daughter Holly works as a part-time shop assistant at a bakery and was given an AWA to sign by her employer. Holly was told to read it, sign it and return it to them.

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

Most of Job Watch's AWA callers are not union members, so they are left to bargain with their employer one-on-one. This can be a daunting proposition for many workers, particularly those who are in disadvantaged bargaining positions because of their age, socio-economic status, occupation, location of residence, sex, ethnic background and employment status. In reality given their disadvantaged position this group of workers have little to bargain with their employer.

Heather has worked on a regular casual part-time basis as a cleaner for over 2 years. Her employer presented her with an AWA that takes away employees entitlements to penalties such as double time on public holidays. Her employer told Heather if she doesn't sign the AWA she will lose her hours or be dismissed. She lives in a small country town and fears that if she doesn't sign she will not be able to find other work in the town. In the end Heather signed. "We didn't have a choice. This being a small country town jobs don't grow on trees. It's alright to say you don't have to sign it but if you want to keep your job….."

Brenda's 15-year-old sister Penny has been working as a casual part-time assistant at a bakery and had been asked to sign an AWA. They had a staff meeting where employees were given the impression that they would receive fewer shifts if they did not sign. Penny was told that although the AWA has a lower pay rate than the award she should not worry about this as she will continue to receive the same rate of pay that she is currently under.

The ability of these workers' to bargain in many instances is further diminished by their lack of knowledge about their rights and protections, and not having the capacity, without the assistance of independent advice, to understand the contents of AWAs and their effect. AWAs are legal documents which can deal with complex issues such as offsetting, accident make up pay, and restraint of trade which a lay person does not understand. In addition, AWAs can in some instances be lengthy documents to wade through.

Suzanne's 19-year-old daughter Megan started a job as a hairdresser. Megan was given a 35 page AWA to sign. Suzanne had concerns about the offset clause in the agreement, which offset commission against penalty rates, and wanted clarification about a restraint of trade clause. According to Suzanne, Megan is keen to keep the job and does not want to cause too many waves.

Maryanne – 50 – has worked as a store manager in a retail outlet for a number of years on a permanent full time basis. She is being pressured to sign an AWA, which will be in force for 3 years. The AWA is long and she does not understand it. Maryanne is concerned about rocking the boat.

Pam – 25 – works as a waitress on a part-time basis at a café. She has been given an AWA by her employer. Pam is concerned about some of the clauses in the AWA, which require her to agree to exclusion from certain clauses in the Workplace Relations Act. She does not really understand what they mean – she has tried to look up the Workplace Relations Act but she has no experience reading legislation and is finding it difficult to understand.

A significant number of AWA callers, as detailed in the statistical analysis section of this submission, were subjected to duress or coercion by their employer to sign an AWA even though it is an offence under the *Workplace Relations Act (Cth) 1996* for a person to do so.[5]

The duress/coercion reported by Job Watch callers included the threat to terminate employment, reduce hours, and reduce entitlements.

Josie has worked as a waitress on a full time casual basis for over 7 years. She and the other employees were handed AWAs to sign, which provided for a flat rate of pay and no penalty rates. Josie was told that if she didn't sign the AWA within 14 days she would lose hours.

Nelly had been employed on a permanent part-time basis as a veterinary nurse for over 10 years. She was presented with an AWA by her employer who told her if she didn't sign it that they would drop her wages by $3 per hour. Nelly was also told that under the AWA she would not receive any long service leave.

Stacey works as a personal carer on a permanent part-time basis in regional Victoria. She and the other employees had been given AWAs to sign by management. The AWAs removed travel allowances (often they visit clients at home who are long distances away); provided for only a 6 hour break between shifts; removed penalties; required workers to work 10 days straight to avoid overtime payment; and workers were on call for 24 hours without an allowance. Stacey was informed if the majority signed AWAs they would all have to sign.

[5] Section 170WG

Monica – 22 - had been working as a waitress on a full-time permanent basis. She had been working at a local Italian Restaurant for over a year in regional Victoria. Monica's boss presented her with an AWA and she was told to have it back to him the next day. She was told that if she didn't sign she would be taken off the roster or sacked.

In some instances where Job Watch callers refused to sign an AWA or revoked their consent they experienced repercussions such as loss of hours, entitlements, or their job.

Mario – 55 – has been working as a waiter at a restaurant for over 11 years on a casual full-time basis. His employer presented Mario with an AWA. Mario was told that if he did not agree to it, he would be terminated. Mario did not sign the AWA and as a result his boss took his evening hours from him.

Martin works as a forklift driver at a manufacturing company. He was presented with an AWA by his employer who told him he didn't have to sign it. Martin told his employer he didn't want to sign it and was promptly told by his employer that he wouldn't be able to guarantee him any overtime. Martin works 50 hours per week including overtime and his hours would be reduced to 38 hours a week.

Don was employed as a permanent full time truck driver. He and a number of employees had been presented with AWAs a few months ago, which he and about 14 others had refused to sign. Since that period Don's pay has been cut, his start and finish times changed, and he has been required to be on call 7 days a week without any provision of standby allowance. The other employees who refused to sign were also subjected to the same type of behaviour by the boss. In the end Don ended up resigning, as he couldn't handle it any more.

Other callers indicated that they would or had signed the AWA because they feared the repercussions if they refused to sign. For many employees the threat of losing their job, or a cut in hours, or a reduction in their entitlements made them feel that they had little room to bargain. This was despite the fact that rights and protections were available under the Workplace Relations Act.[6]

Colin was employed as an apprentice in the construction industry. The employer wanted to put him and the other employees on AWAs and was putting pressure on them to sign. Colin really wants to keep his job so he thinks he will have to go along with it and sign the AWA.

How effective and accessible those protections and rights are, is open to debate. It is uncertain whether all those rights and protections will remain under the Federal Government's proposed industrial relations changes.

Sandy – 20 – worked on a casual part-time basis for a bakery for over 2 years. She worked around 28 hours a week. Sandy and the other employees were told by their employer that if they did not sign they would be the last to get hours. She contacted the OEA about the duress/coercion her employer

[6] These include:
Agreement must pass the no-disadvantage test – Section 170XA;
Persons must not apply duress or make false statements in connection with an AWA – Section 170WG;
The role of the Office of Employment Advocate includes investigating alleged breaches, contraventions and complaints relating to AWAs – Section 83BB;
The Office of Employment Advocate has the power to refuse approval of an AWA after it has been signed if duress or coercion, false statements are involved – Section 170VPF;
Existing employees can take action for either unlawful dismissal or unfair dismissal if they are terminated for refusing to sign an AWA – Part IVA – Division 3;
Existing employees can take action under freedom of association provisions of prohibited conduct by employer and prohibited reasons for conduct – Section 278K and Section 278L;
An employee or employer may appoint a person to be his or her bargaining agent in relation to an AWA – Section170VK.

was putting on her to sign. The person at the OEA took her details and said they would contact her but she never heard from them. Sandy ended up signing the AWA.

Branko – 16 years old – worked as a part-time assistant at a bakery. He and the other employees were presented with AWAs by their employer to sign. Branko's employer told them to read the documents and return them within 14 days and he would discuss it with them. His employer never talked to him about the agreement and in the end Branko signed the AWA. The AWA provided a flat rate of pay of $8.30 per hour while the award rate was $12.74 plus penalties for Saturday of $19.11 and Sunday $25.48. As part of the approval process Branko received a letter from the OEA about whether he had genuinely consented to the AWA. Branko spoke to his Dad who rang up the OEA and explained to them that his son did not really understand what he had agreed to. They then wrote to the OEA and advised them that Branko wanted to withdraw from the AWA. As a result of Branko's instructions the OEA did not approve the AWA. After his employer found out, Branko's employment was terminated.

Social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities

The contents of some Job Watch callers' AWAs indicate that the ability to balance work and family responsibilities is not being enhanced but eroded. This is due to employers for example demanding greater availability of employees to be on-call, increasing span of hours of work, decreasing minimum shift lengths and decreasing the period they notify employees about shifts.

Joan – 58 years old – had worked as a cook for nearly 10 years. She worked early morning to lunchtime Wednesday to Sunday. Her employer handed Joan an AWA to look at overnight and sign, and told her if she refused she could look for another job. The AWA she was presented with provided no entitlement to sick or annual leave, no public holiday penalties, she would have to be available on-call 7 days a week until 10 pm, she would receive a stream loading rate of $16.55 per hour. Joan refused to sign the AWA and is still employed at the same workplace; however, she and her employer are in dispute over what her pay rate should be.

Peter worked as a casual full-time bus driver for over two years for a private operator. He and the other drivers were presented with AWAs. The AWAs' removed the award entitlement to be notified three days in advance of where and when they will be working and if not, they are within their rights to refuse work if not convenient. The AWAs' provided for workers to only be notified the evening before if, when and where they will be working the following day. Peter said this would dramatically interfere with family and social life.

Jane has worked on a casual part-time basis as an ambulance driver for over 2 years. The AWA she has been presented with provides that casuals only would receive 1 hour's notice and a minimum shift length of 2 hours only. As Jane did not sign the AWA she was told that she would get no further work.

Linda - 19 years old - works on a casual part-time basis as a retail assistant. Her employer presented her with an AWA that does not contain an hours of work clause.

Capacity of the agreement to contribute to flexibility, fairness and growing living standards

The AWAs, which have been presented to a number of Job Watch callers, raises concerns about the capacity of agreements to contribute to flexibility, fairness and growing living standards. In terms of flexibility for employers and employees, as previously outlined under the social objectives section on page 10 of this submission, clauses have been designed primarily to meet employers' needs.

There are serious questions about fairness in relation to the contents of and how AWAs are made with employees in disadvantaged bargaining positions having to directly negotiate with their employer; employees lacking the necessary knowledge and/or ability to negotiate, and the use of duress/coercion by some employers despite it been prohibited under the Workplace Relations Act.

Josie was presented with an AWA for a job as a food van operator. The AWA specified that she would be employed on a part-time basis but did not specify the hours she would work. It gave her an hourly pay rate of $15 per hour, which included sick leave, annual leave, redundancy, bereavement leave and other entitlements.

Grant worked at a car dealership as a sales person. He and 200 staff were presented with AWAs, which provided for the cashing out of annual leave and long service leave.

Ally was employed on a permanent full-time basis as a childcare worker. She and the staff were presented with an AWA to consider. They had concerns about the AWA because under the AWA the employer would nominate holidays and he would have the right to search their personal belongings.

The living standards of workers have been impacted by the removal of entitlements such as casual and weekend loadings and replacement with a static rate of pay. A static rate of pay will not always compensate workers adequately for the loss of income from those other entitlements. These entitlements are ones that many in low paid jobs rely on to make ends meet.

Vanessa has been working for 6 months as a part time sales assistant. Her employer wants to put staff onto AWAs. Under the AWA pay structure cash bonuses and weekend work pay rates would be removed, this would have a huge impact on Vanessa who principally works on weekends. Vanessa's employer has told her if she doesn't sign the AWA he will reduce her pay from $16 an hour to the industry minimum of $13 while other employees have been threatened with their jobs.

Natasha works as a supervisor in the accommodation, café and restaurant industry on a permanent part time basis. She and the other employees were presented with AWAs to sign. Under the AWA she would be classified at a lower level from her current level and penalty rates will be removed with a standardized pay rate replacing them. Natasha will be worse off under the proposal because she does some weekend work. Her employer is threatening that if she doesn't sign, he is going to change the current system, that is take away her weekend work or pay her less on weekends.

Nellie had worked for 18 years as a veterinary nurse on a permanent part-time basis. Her employer had asked her to sign an AWA. Under the AWA she would receive an hourly rate that would include sick leave, annual leave, and public holidays. Redundancy provisions also would be removed.

The living standards of employees have been impacted by how wage increases are factored and calculated under an AWA. This is also likely to be a further issue in the future as under the federal government's proposed changes, agreements will run for five years, as opposed to the current three-year maximum.[7]

David worked on a permanent full time basis as a sales assistant. He was presented with a 3 year AWA that he signed. In the first year of operation of the AWA he was paid above the comparable award rate. However, the wage increases provided for under the AWA meant that in the subsequent years of operation of the AWA he was paid below the award rate of pay.

[7] The Hon John Howard MP, Prime Minister, and The Hon Kevin Andrews MP, Minister for Employment and Workplace Relations, *Media Release: A New Workplace Relations System: A plan for a modern workplace*, Canberra, 26th May 2005

James is a full time sales person who has been working for a retail business for a couple of years. He was presented with an AWA, which removed accident make up pay, and pay rises except for annual rise of 0.5%.

Federal Government's proposed industrial relations changes

The Federal Government's proposed industrial relations changes are going to have an adverse effect on the ability of employees to bargain, and will impede the agreement making system in meeting the social and economic needs of all Australians.

Under the Federal Government's proposed changes the no disadvantage test, which AWAs and certified agreements currently have to meet, will be replaced with the Australian Fair Pay and Conditions Standard.[8] The no disadvantage test is compared to conditions contained in the designated award. These conditions include casual loading, annual loading, redundancy pay, overtime pay rates, weekend and public holiday loadings, and shift loadings.

The Australian Fair Pay and Conditions Standard (AFPCS) will only include minimum wages, and the legislated conditions of annual leave, personal leave, parental leave and maximum number of ordinary hours. Conditions above that standard such as casual loading, overtime pay rates, penalty rates, weekend and public holiday loadings employees will have to be negotiated directly with the employer.

Job Watch believes parallels can be drawn between the government's proposed standard and Schedule 1A of the Workplace Relations Act which operates in Victoria.

In Victoria, since January 1997 (the Kennett State Government referred its industrial relations power to the Commonwealth in November 1996) workers who are not covered by Federal Awards or Certified Agreements are entitled to 5 minimum conditions provided under Schedule 1A of the Workplace Relations Act 1996.[9] These five conditions included: 4 weeks' annual leave, 5 days' sick leave, parental leave, notice of termination and payment for the first 38 hours of work at minimum rates. These conditions were based on Schedule 1 of the Victorian Employee Relations Act 1992, the legislation introduced by the Kennett Government to abolish state awards and deregulate the Victorian Industrial Relations system.[10]

In 2000 the Victorian Government appointed an independent taskforce to investigate and report on the operation of the Victorian industrial relations system. The taskforce was made up of representatives from employer groups, unions, and community groups. Job Watch together with other interested parties prepared submissions to the taskforce.[11] Part of the taskforce terms of reference included; to investigate and report on the social and economic effects arising from the abolition of the system of Victorian awards by deregulatory industrial relations legislation and to chart the nature and extent of any disadvantage suffered by Victorian employees whose terms and conditions of employment were primarily regulated by Schedule 1A of the *Workplace Relations Act* 1996 (Cth).[12]

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[8] Ibid

[9] From 1st January 2004 conditions and entitlements were improved to include: employees are entitled to be paid for work performed excess of 38 hours a week; employees are entitled to eight days personal leave – which can be taken as sick leave, with up to five of the eight days available to be taken as carer's leave; employees are entitled to two days bereavement leave on the death of a member of their family or of their household.

[10] Dickinson, Louisa, *Submission to: The Senate Employment, Workplace Relations and Education Committee Workplace Relations Amendment (Improved Protection for Victoria Workers) Bill 2002,* Job Watch Inc, Melbourne, 2002, page 3

[11] Wiles, Vivienne, *Submission to the Taskforce – Review of the regulation of the Victorian Industrial Relations,* Job Watch Inc, Melbourne, 2000

[12] Victorian Industrial Relations Taskforce, *Independent Report of the Victorian Industrial Relations Taskforce: Part 1: Report and Recommendations,* The State of Victoria, Melbourne, August 2000, page 7

The Taskforce commissioned research by the Australian Centre for Industrial Relations Research and Training (ACIRRT) on the earnings and conditions of employment of Victorian Schedule 1A employees, federal award employees, and employees in other Australian state jurisdictions.[13]

The research revealed that 33 percent (561,000 employees) of the Victorian labour force was regulated under Schedule 1A of the Workplace Relations Act. Of those 561,000 employees, approximately 205,000 were employed as managers and administrators; professional and associate professionals; or in related occupations.[14] These people negotiated common law contracts, which contained entitlements and conditions generally above those prescribed in Schedule 1A.[15]

However the remaining 356,000 Schedule 1A employees relied almost solely upon the 5 conditions provided under Schedule 1A with two thirds of this group only in receipt of minimum rates of pay.[16] These were people in Job Watch's experience likely to be in disadvantaged bargaining positions due to their age, sex, socio-economic status, occupation, residence, ethnic background, and employment status and who had little or no capacity to negotiate terms over the minimum conditions provided under Schedule 1A.[17]

As Job Watch submitted to the Senate Employment, Workplace Relations, Small Business and Education Committee inquiry into the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999:[18]

> *…It is simply not realistic for these employees* (Schedule 1A employees) *to easily negotiate with an employer about entering into either a Certified Agreement or an Australian Workplace Agreement. This is a consequence of Schedule 1A employees having minimal protected statutory rights; they in fact have nothing with which to bargain or trade. In practical terms, there is little to encourage or motivate an employer to negotiate with an employee or group of employees to enter into a Certified Agreement, or even an Australian Workplace Agreement. An employer in this situation would have to agree to provide conditions to those employees greater than those that contained in Schedule 1A, and such agreements would have to satisfy a No Disadvantage Test (as the law currently stands). In this context, the 'choice or freedom to bargain' in a contract of employment is non-existent.*

Job Watch believes that under the Federal Government's proposed changes the outcome will be the same. Workers in disadvantaged bargaining positions are likely to receive only the conditions and entitlements provided under the standard. This is certainly what occurred with Schedule 1A employees in disadvantaged bargaining positions in Victoria as findings from the Independent Taskforce revealed (see page 14 of this submission).

Employers will have no incentive and disadvantaged workers any bargaining power to negotiate an agreement with terms and conditions above that standard. Workers currently covered by federal awards or certified agreements, which meet the current no disadvantage test, are likely to find themselves presented with AWAs and new certified agreements, which only meet the Australian Fair Pay and Conditions Standard.

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[13] Ibid, page 35
[14] Ibid page 37
[15] Ibid
[16] Ibid
[17] Wiles, Vivienne, op cit, p8
[18] Wiles, Vivienne and Barron, Oonagh, *Submission to the Senate Employment, Workplace Relations, Small Business and Education Committee Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999*, Job Watch Inc, Melbourne, September 1999, page 5

Research for the Victorian Industrial Relations Taskforce found that:
- 41 percent of Schedule 1A workplaces paid a higher rate of pay for overtime;
- Less than one quarter of Schedule 1A workplaces paid penalty rates for working on weekends;
- 6 percent of Schedule 1A workplaces paid their employees shift allowances;
- Just over a third of Schedule 1A workplaces paid annual leave loading;
- The lowest paying Schedule 1A workplaces, with the exception of shift allowances, were also less likely to pay benefits.[19]

Other key findings were:
- Schedule 1A employees were over-represented in low wage work; they made up 52 percent of employees who were under the $10.50 per hour bracket.[20]
- About 42 percent of Schedule 1A employees were sitting on minimum rates whereas the figure for Federal award employees was 26 percent in comparison.[21]
- Victoria had a greater proportion of its workforce in low wage jobs compared with NSW and with the national average.[22]
- Hourly earnings were on average lower in Victoria than in NSW and nationally.[23]
- While the situation for low wage workers in Victoria improved during the 1990s, the improvement was not as great as in NSW or nationally. In relative terms, Victoria went backwards.[24]

In other words Schedule 1A employees and employees in Victoria were worse off in comparison to employees covered by other industrial instruments and in other states.

The effects on the living standards of Schedule 1A employees' were profound, as illustrated by this detailed submission to the Victorian Industrial Relations Taskforce by Mark Brown, a 26 year old hairdresser who had been employed in the hairdressing industry since the age of 13. [25]

> *As a result of the working conditions currently in place for Victorian workers who are not covered by the Federal Award, I am forced to endure many hardships which I cannot bargain for as a qualified hairdresser.*
>
> *As a full time hairdresser, I am forced to work between forty-five to fifty hours in a given week. I have no choice but to work these exorbitant hours. It would seem to me that the people who write the provisions for Victorian minimum standards do not understand that it is not normal for a full time hairdresser on minimum conditions to work thirty eight hours. Businesses are open now for sixty five hours a week.*
>
> *The hours I am expected to work include one, and sometimes two twelve-hour days. On weekends..I'm forced to work with sometimes as little as fifteen minutes for lunch or no breaks whatsoever. These days include public holidays and I am told by my employer that if I do not work I will not get paid for the holiday. I have no room within the Victorian minimum*

[19] Victorian Industrial Relations Taskforce, *Independent Report of the Victorian Industrial Relations Taskforce: Part 2: Statistical Research on the Victorian Labour Market*, Volume 1, The State of Victoria, Melbourne, August 2000, pages 28-30
[20] Ibid page vii
[21] Ibid
[22] Victorian Industrial Relations Taskforce, *Independent Report of the Victorian Industrial Relations Taskforce: Part 2: Statistical Research on the Victorian Labour Market*, Volume 2, The State of Victoria, Melbourne, August 2000, page i, ii and iii
[23] Ibid
[24] Ibid
[25] Victorian Industrial Relations Taskforce, *Voices from the Workplace: Submissions to the Victorian Industrial Relations Taskforce*, The State of Victoria, Melbourne, August 2000, page 7 and 8

standards to negotiate this, let alone negotiate for lunch hours on a daily basis, tea breaks on twelve hour shifts, the supply of equipment or holidays I wish to take. I've not taken a holiday over the Christmas period since the age of fourteen and I have, in the past, worked an eighteen-hour shift on the day before Christmas Eve. I am forced, due to the nature of my profession, to take lunch sometimes as late as two thirty, three o'clock in the afternoon some five and half to six hours after I have started my shift.

I cannot afford not to work, as an employee on minimum standards I have no choice but to work on a flat rate of pay, approximately twelve dollars an hour before tax.

….It is hard living and working under these conditions, financially, emotionally and physically. I'm a twenty six-year old man who has burnt out on three separate occasions. How embarrassing do you think that is for me to admit?[26]

The experiences outlined by Mark Brown were not isolated. Schedule 1A callers to Job Watch's telephone advice service also mentioned similar experiences.

The Prime Minister outlined in his formal announcement of industrial relations changes in May this year that:

Australia needs a more flexible labour market to maximize economic growth and employment opportunities and to maintain and improve our standard of living in an increasing globalised economy.[27]

However, the Victorian Industrial Relations Taskforce found that:

While Victoria operated under a significantly deregulated labour market after 1992, there has been no significant increase in jobs growth levels or decrease in unemployment levels compared with the national average or in relation to other states. In contrast, New South Wales has had a higher proportion of its workforce operating under a more regulated system since 1996. Throughout this time, New South Wales has consistently enjoyed the lowest unemployment rate of all Australian states, as well as the significant jobs growth.[28]

Workers capacity to bargain will be further eroded with the government exempting businesses with up to 100 employees from unfair dismissal laws.[29] Unfair dismissal laws have provided employees with protection against harsh, unjust and unreasonable termination. It has also provided some recourse for employees when negotiating terms and conditions with their employer, in the case of both AWA and non AWA agreements.

Although workers have access to unlawful dismissal in relation to being terminated for refusing to sign or negotiate an AWA, this is a narrower and less accessible option than unfair dismissal laws. An unlawful dismissal matter is conciliated at the Australian Industrial Relations Commission, however, if the matter cannot be settled at this stage it proceeds to a hearing at the Federal Court. Proceedings in the Federal court involve complex legal proceedings where detailed legal submissions, preparation of witnesses' statements and knowledge of existing case law and rules of evidence are all required. Accordingly, legal representation is essential. Although the onus of proof is on the employer, the

[26] Ibid
[27] The Hon John Howard MP, Prime Minister, and The Hon Kevin Andrews MP, op cit, page 1
[28] Victorian Industrial Relations Taskforce, *Independent Report of the Victorian Industrial Relations Taskforce: Part 1: Report and Recommendations*, The State of Victoria, Melbourne, August 2000, page 44
[29] The Hon John Howard MP, Prime Minister, and The Hon Kevin Andrews MP, op cit, page 1

applicant still has to present an argument and case. It is also a costs jurisdiction where costs can be awarded against a party to the proceedings. These factors contributed to the decision of Job Watch's legal practice to initiate in Branko's case unfair dismissal action rather than unlawful dismissal action.

Branko – 16 years old – worked as a part-time assistant at a bakery. He and the other employees were presented with AWAs by their employer to sign. Branko's employer told them to read the documents, which they needed to be returned within 14 days and he would discuss the AWA with them. His employer never talked to him about the agreement and in the end Branko signed the AWA. As part of the approval process Branko received a letter from the OEA about whether he had genuinely consented to the AWA. Branko spoke to his Dad who rang the OEA and explained to them that his son did not really understand what he had agreed to. They then wrote to the OEA and advised them that Branko wanted to withdraw from the AWA. As a result of Branko's instructions the OEA did not approve the AWA. After Branko's employer found out about this Branko did not receive any further shifts despite being permanent part-time and was told that his position was no longer required. Branko was represented by Job Watch's legal practice that took unfair dismissal action on his behalf and negotiated a settlement.

Another major change announced by the Federal Government is that AWA and Certified Agreements will take effect from the date of lodgement with the OEA instead of the date of approval or certification.[30] In other words once the parties sign it and so long as it meets the Australian Fair Pay and Conditions Standard the agreement will be operational. This removes an important filtering process as the case study of Branko illustrated. As part of the approval/certification process Branko was sent a letter from the OEA about whether he had genuinely consented to the AWA. This alerted Branko that the employer had not explained the AWA as he was required to; and that he could contact the OEA for assistance and was able to withdraw his consent. As a result the AWA was not approved.

Conclusion

Job Watch believes that the industrial agreement making in the form of Australian Workplace Agreements is not meeting the social and economic needs of all Australians, particularly those in disadvantaged bargaining positions. It is also not meeting the objectives of industrial agreement making of enabling both employers and employees to choose the most appropriate form of agreement for their particular circumstances. We believe this situation will be further exacerbated by the industrial relations changes proposed by the Federal Government.

[30] The Hon John Howard MP, Prime Minister, and the Hon Kevin Andrews, op cit, page 3

Appendix A

Table 4: Age group by type of AWA enquiry, 1st July 1999 to 30th June 2005, percentage

Type of enquiry	Age group			
	Under 25	25-34	35-44	45 plus
AWA - duress/coercion	25.0	15.2	14.6	20.0
AWA - general Issues	44.7	50.5	44.9	41.7
AWA - money claims	2.6	7.6	7.9	3.3
AWA - other breaches	15.8	18.1	14.6	13.3
Common Rule Awards - AWAs	11.8	8.6	18.0	21.7
Total	100.0	100.0	100.0	100.0

Missing =265 Source: Job Watch database

Table 5: Employment Status by type of AWA enquiry, 1st July 1999 to 30th June 2005, percentage

Type of enquiry	Employment Status				
	Casual part-time and full-time	Permanent part-time and full-time	Apprentice/ Trainee	Fixed Term Contractor	Job Seeker
AWA - duress/coercion	26.4	16.4	17.6	14.3	20.0
AWA - general Issues	36.4	44.4	47.1	14.3	53.3
AWA - money claims	4.7	8.4	0.0	0.0	6.7
AWA - other breaches	10.9	14.6	17.6	57.1	13.3
Common Rule Awards - AWAs	21.7	16.2	17.6	14.3	6.7
Total	100.0	100.0	100.0	100.0	100.0

Missing =44 Source: Job Watch database

Table 6: Gender by type of AWA enquiry, 1st July 1999 to 30th June 2005, percentage

Type of enquiry	Gender	
	Female	Male
AWA - duress/coercion	18.2	18.0
AWA - general Issues	42.7	43.7
AWA - money claims	7.3	8.0
AWA - other breaches	13.0	15.3
Common Rule Awards - AWAs	18.8	14.9
Total	100.0	100.0

Missing=5 Source: Job Watch database