Submission

to

Senate Employment, Workplace Relations and Education References Committee

Inquiry into Workplace Agreements

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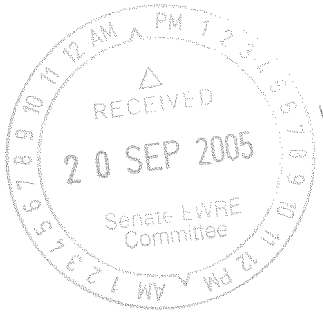

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19th September, 2005

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

Dear Committee Secretary,

RE: SUBMISSION TO THE INQUIRY INTO WORKPLACE AGREEMENTS

This submission is supplied by The Australian Workers' Union, New South Wales branch.

Having seen the submission by the Office of Employment Advocate (OEA), the AWU felt compelled to submit this report that takes into account our concerns raised by OEA.

Please contact me if you require any further information.

Yours Sincerely,

Russ Collison
NSW SECRETARY

This report from The Australian Workers' Union, New South Wales Branch, is a submission to the *Senate Employment, Workplace Relations and Education Committee* Inquiry into Industrial Relations Agreements. The terms of reference that will be addressed in this report include:

A) the scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements; and, the capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards (page 3);

B) the capacity for employers and employees to choose the form of agreement-making which best suits their needs; (page 7) and,

C) the parties' ability to genuinely bargain, focusing on groups such as women, youth and casual employees; the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities (page 8).

The Australian Workers' Union (AWU) New South Branch notes that a submission has been received by the Senate Committee from our national office. The AWU New South Wales branch submission primarily deals with concerns arising out of the submission from the Office of the Employment Advocate. Other issues relevant to the New South Wales Branch will also be raised to add further support to the submission provided by Mr Bill Shorten, the AWU National Secretary.

A) The scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements; and, the capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards.

1. The AWU NSW Branch has reviewed the submission by the Office of the Employment Advocate (OEA) submission to this senate *Inquiry into Workplace Agreements* resulting in a number of concerns. The concerns relate to:
    a. The ability to effectively achieve its stated goals;
    b. OEA ability to remain impartial;
    c. Lack current staffing levels; and,
    d. Majority of AWAs have no specific increase in wages locked into the AWA.
2. The ability to remain impartial is questioned by the fact that "OEA engages all staff under an AWA" (OEA submission page 4). The OEA submission does not discuss whether the employees had any choice or whether the additional offerings could have been undertaken within the award structure. It may also indicate that OEA has an understanding of the industrial legislation about to be introduced and has conceived OEA staff to sign before award rights are stripped away. Regardless of any assertions, we have the situation where OEA staff on AWAs are assessing whether other employees should be placed on AWAs. This raises the possibility of whether the OEA staff will act impartially. Are there any incentive payments for OEA staff to approve a certain number of AWAs?
3. The ability for the OEA to fully assess each individual employment contract is also brought into dispute. This is based upon:
    a. Number of staff employed
    b. Time given to the assessment of each contract
    c. Ability to draw a valid conclusion whether the no disadvantage test has been satisfied.

4. The statistics supplied by OEA indicates a total staff of 191 consisting of 38 employees at the managerial level and 153 at level 6 or below. The 38 senior staff positions would be more related to senior strategic roles of the organisation and may only be examining problem AWAs when brought to their attention.
5. The 41 OEA level 6 are team managers and their duties would revolve around allocating resources to their teams, reviewing team performance and other tasks leaving little time to examine individual AWAs for the initial assessment of whether an AWA passes the no disadvantage test. Consequently, this leaves a maximum of 112 staff members to examine individual AWAs.
6. The calculation of working hours per year:
    a. That all staff employed at OEA are full time.
    b. A staff member is generally employed 38 hours a week (assuming the employees at the OEA under their AWAs are equivalent to industry standards) therefore they are engaged for 1748 working hours per year (accounts for 4 weeks annual leave and 10 days for public holidays).
    c. It is conservatively estimated that only 70% of the workers time would be spent on AWA assessments since the remaining time would be taken up by training, sick days, breaks and other duties. This leaves a maximum time of 1224 hours a year dedicated to the assessment of individual workplace contracts.
    d. Multiple 1224 hours by 112 staff available is 137,043 working hours available to examine AWAs.
    e. There was 217,348 AWAs filed for the year ended 30 June 2005.
    f. This equates to approximately 38 minutes to have a detailed examination of each individual work place contract and assess it against the current award provision to establish that the no disadvantage test has been satisfied.
    g. The statistics also indicate that in excess of 1,940 individual contracts were examined by each OEA employee.

7. The above numbers assume all employees up to level 6 are involved in examining AWAs and all are employed on a full-time basis. The OEA also indicates that there are community consultation meetings, plus the establishment and support of community and business groups. Taking into account these factors this results in even less time being spent on examining each individual contract.
8. Consequently, the AWU believes that there are inadequate staff resources allocated to the proper examination of each individually negotiated agreement and matched back to the corresponding award.
9. There is every opportunity that inappropriate AWAs that do not meet the no-disadvantage test may be approved.
10. According to the report submitted by OEA, only 5.4% of the Australian working population or 459,393 workers are covered by AWAs. Consequently, some 94.6% or approximately 8,500,000 workers are not covered by AWAs. Effectively, AWAs form an insignificant proportion of the working population. If dramatic changes are instigated on the workforce through the dramatic reduction in allowable matters in the award, this will result in significant losses of wages and conditions to the vast majority of the workforce. Many Certified Agreements rely on award entitlements for example allowances. If tea money and other allowances are stripped from awards then these entitlements will be automatically lost to 19 out of every 20 workers. Every single Certified Agreement will have to be renegotiated which may create an industrial relations nightmare for all parties involved.
11. The OEA does not identify any study regarding what has happened to the expired AWAs. What proportion is still ongoing? Are there any provisions for wage increases? It is not unusual to have no wage increases scheduled since, for example, many golf club course maintenance employees are employed on above award wages then fail to see any regular wage increases.
12. The OEA submission (page 14) states that "specific provision for wage increases was made in 38 per cent of AWAs coded. Increases were provided as either fixed percentage increases, or were linked to changes in the Consumer Price Index (CPI), safety net adjustments, or performance."

13. The AWU expresses its profound concern that of the existing 459,393 AWAs that have not reached there nominal expiry date (OEA submission page 9) that close to 285,000 AWAs have no increase provision. Over a quarter of a million Australians will have to rely on the generosity of their managers whether they will have a wage increase over the next 3 years. Over a quarter of a million Australians will have the same wage rate for the next three years when the cost of petrol, mortgage, rents, health care, interest rates and other expenses are constantly rising.
14. 62% AWAs have no provision for wage increases (based on the above point). If the current AWAs are a reasonable representation of how AWAs will be in the future, given the Governments desire to see all workers on AWAs (as evidenced by every single worker in the OEA having AWAs) this will result in 5.2 million Australian workers having no provision for a wage increase and having to rely on the good nature of the employer coupled with good business fortunes, on whether a wage increase will be paid or not.
15. The OEA Employee Attitude Survey 2001 found that 34 per cent of AWA employees have not received a wage increase. That is, over 156,000 employees currently on AWAs have not received a wage increase or will probably not receive a wage increase over a 3 year period. This survey reflects a different result that shown in point 13. Assuming the survey is 100 per cent accurate, then approximately 129,000 worker benefited from the manager's generosity.
16. Workers on AWAs with no provision for wage increases would also miss out on safety net adjustments which may result in an AWA that was marginally better then the award rate when passing the initial no disadvantage test but will be below award rates by the completion of the 3 year agreement. Clearly, these AWA workers will be worse off than those on award wages.
17. AWU has coverage of the Golf and Bowling course maintenance staff and it has been brought to the union's attention on a numerous occasions that employees are initially employed on above award wages and then rarely receive any wage increases. An example is Palm Beach Golf Club whose Superintendent received only 3 wage increases in 9 years resulting in wages not keeping pace with inflation or award safety net adjustments. Since the AWU became involved he has been guaranteed wage increases over the next 2 years.

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

18. The AWU notes that there has been many occasions where employers have refused to enter into negotiations to have a Certified Agreement registered with either the Australian Industrial Relations Commission or the New South Wales Industrial Relations Commission. Most notable recent examples include:
    a. Cronulla Golf Club, deciding they prefer to have a Policy and Procedure Manual that was overviewed by Clubs NSW rather than entering into meaningful dialogue with course maintenance staff.
    b. Crown Scientific Pty Ltd, after the shares were brought out by Cospak Pty Ltd, the new management decided to end 6 months of negotiations and also attempting to end the current certified agreement that recently expired since the new management believed the redundancy provisions and other conditions were too generous.
    c. Boeing workers at RAAF Williamtown (NSW) have been asking for a union negotiated agreement. Boeing management have refused to enter into any meaningful dialogue.
19. During proceedings at the Australian Industrial Relations Commission regarding the Boeing dispute, management admitted that its refusal to negotiate with the AWU and its members was "philosophical" in nature. Boeing management also claimed that members of the AWU were not intelligent or discerning enough to properly understand material provided by the AWU.
20. The Australian Government ran full-page advertisements stating that they will "preserve the right of workers to have a union negotiate a collective agreement if they wish." If this is correct then how can Boeing refuse to negotiate with workers being represented by the AWU? Why is Boeing refusing an AWU application before the Australian Industrial Relations Commission for a secret ballot for maintenance engineers to determine the level of support for a collective agreement?

21. Mr Bill Shorten stated on 24 May 2005 that "There's no question that the double standards forcing Boeing mechanics who weren't on strike out the gate, being stood down by their very tough employer, double standards, big business is going to be the winner under the new Howard laws. The workers are going to come second, the poor are going to get poorer and the Boeing dispute, where workers merely want a union agreement not individual contracts and now they're being stood down, is a taste of things to come."
22. The AWU does not promote redundancies. However, in a Judgement and Decision of His Honour the President of the NSW Industrial Commission, on 31st January 2005 (IRC 2610, 6510, 6518, 7263 of 2004), decided that workers were entitled to the payout of redundancies rather than transmit to a Company which had little paid up capital and refused to negotiate with the AWU about an ongoing enterprise agreement.
23. Justice Wright interpreted the Certified Enterprise Agreement and relevant State Award which both weighed heavily in his Decision.
24. The matter identified as Unilever Australia Ltd, AP Foods (Sydney) Pty Ltd AWU and TWU - various proceedings regarding proposed sale of Marrickville site.
25. Unilever, having made a corporate decision to sell its manufacturing margarine / fats / oils business, then negotiated with the prospective buyer.
26. On the basis that the business was transmitting from one employer to another, Unilever attempted to avoid its Enterprise Agreement/Award responsibilities on the payment of redundancies.
27. The prospective buyers, APF, had $100 of paid up capital and no intention to negotiate an enterprise agreement with the AWU, under the NSW *Industrial Relations Act 1996.*
28. Unilever made a decision that, because the business was transmitting, and they had found suitable alternative employment, redundancy was not payable.
29. The AWU ran the case in the NSW Industrial Commission and His Honour Justice Wright found in favour of the AWU based on the facts; that Unilever must pay redundancies at the point of sale of the business and that APF did not qualify as a suitable alternative employer based on the evidence and submissions.
30. The Judgement of His Honour was not appealed by Unilever and remains intact.

C) The parties' ability to genuinely bargain, focusing on groups such as women, youth and casual employees; the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities.

31. OEA submission (page 15) states that 41 per cent of the AWAs coded had one or more loadings such as penalty rates, shift rates, overtime, allowances, annual leave, annual leave loading, sick leave, rostered days off and other payments incorporated into the hourly rate. This raises a number of concerns including:
    a. The ability to properly examine that these contracts meet the no disadvantage test given that an employee of OEA has approximately 38 minutes to fully examine and determine the validity of the employment contract.
    b. Quality of life issues in relation to annual leave and sick days being incorporated into one all-up rate resulting in workers going on annual leave and during this time not being paid since it was technically paid to them in advance. Many people will find it difficult to budget, especially with increasing petrol prices and other cost of living expenses. This will result in people not taking any holiday breaks and working for several years before a suitable holiday break is taken. This will have an adverse impact on the worker's own health, home, family life, and ability to undertake community volunteering.
32. 34 per cent of the AWA work force have annual leave absorbed into their hourly rate. If translated to the entire work force, assuming the Howard Liberal Government achieve 100 per cent take up rate of AWAs, this will mean that almost 3 million Australian workers will not have any provision for paid holiday breaks. Apart for the impacts described in point 22, the impact on the tourism industry and related industries will be horrendous and result in many job losses.
33. There are a number of alarming issues relating to the content of AWAs regarding hours of work and flexible work organisation as discussed by the OEA submission. Additional studies are required to examine the full implications of the expected new regime the workers are expected to operate in. The issues include:

a. Only 15 per cent of AWAs have a limit on the number of hours worked per day (OEA submission page 16 based on data supplied by ACIRRT). In effect, the minimum 10 to 12 hour break between shifts has been eliminated in 85 per cent of the AWAs. When considered in conjunction with the fact that 54 per cent of AWAs include penalty rates in ordinary pay rates, this will result in employers being able to pressure employees to work either extended continuous shifts or having limited breaks between shifts. This will have a massive adverse impact on occupational health and safety concerns as well as on overall performance of the employee.

b. Among AWAs that identified a daily span of hours, 24 per cent had 16 or more hours. In the retail trade industry 46 per cent of AWAs contained a span greater than 12 hours. In effect, a hairdresser could be anticipated to put in excess of 12 hours work a day, particularly during 24-hour Christmas trading which not only raises safety concerns regarding employees health but also safety concerns for the customer.

c. 38 per cent of AWAs allow the employer to direct employees to carry out duties as required. This raises implications in regards to whether adequate training and assistance will be provided to employees to undertake work outside their normal work practices.

d. 11 per cent of AWAs give the ability to move employees between sections and sites. The implication arises whether:

    i. appropriate compensation for travelling is provided;

    ii. would suitable overnight accommodation be provided if required; and,

    iii. an employee such as an aerobics instructor or hairdresser working for an employer with several locations may be required at Manly on Mondays, Blacktown on Tuesdays, Hornsby on Wednesdays, Wollongong on Thursdays and Newcastle on Saturdays. Even though the above example may be considered an over exaggeration, the AWU has seen incidences in the sporting industry where technicians were based at Enfield and were on call to go to Wollongong.

34. 52 per cent of AWAs coded did not have a provision to accumulate sick leave (based on OEA submission page 18). Accordingly, there is firstly no incentive to accumulate sick leave days since these days would be lost at the end of the year. Secondly, if a worker becomes gravely ill at no fault of their own, for instance heart attack or cancer, they would not have any accumulated sick days to allow for a full recovery before returning to work.
35. Approximately only 16 per cent of AWAs allow sick leave to be used for carer's leave. Approximately 24 per cent of AWAs have paid provision for family leave. Therefore only 40 per cent of AWA employees have access to family leave provision compared to 100 per cent of award employees. This represents approximately 60 per cent of the workforce that will be worse off under AWAs.
36. OEA states that training provisions, like many family-friendly initiatives, are found in human resource guidelines or organisational policies and practices. This raises concerns that these guidelines and policies can be changed at management's discretion and often without consultation from employees. This was seen recently at Crown Scientific Pty Ltd where a series of policies regarding redundancy provisions, discipline and others were issued without discussion with the employees. Only through proper consultation with the workforce, with support from unions, would appropriate outcomes be achieved.
37. In excess of 74 per cent of employers that have less than 100 employees have no provision for training. These employers would also be unlikely to have detailed policies developed for workplace training. Accordingly, the skills-shortage and related problems currently faced in Australia is likely to be exasperated through the lack of any supported training by employers.
38. The lack of training is further highlighted by the fact that approximately 40 per cent of employees under the age of 21 are employed on a casual basis. These employees are unlikely to have employers spend time or money on their training apart from their core duties. Accordingly, Australia's skill shortage will be made much worse under a system that has AWAs as its basis.
39. OEA (page 25) states that 'young employees were much more likely than older employees to be employed in organisations with less than 100 workers. Consequently, if the Federal Government is serious about addressing skill-shortages and youth training it needs to formulate policies that require employers to provide suitable training.

40. Employer driven AWAs will be able to take advantage of young (under 21 years of age) employees through:
    a. Young workers are willing to give up rights and conditions so as to obtain their first job;
    b. Young workers are less likely to know what existing wages and conditions are in the market;
    c. Young workers are less likely to know who to approach when they wish to have independent advice.
    d. An employer, with their experience and likely support through internal management or human resource company, is in a better bargaining position than a young employee.
41. Further evidence of workers inability to bargain can be gained from the hairdressing industry. The industry is characterised by predominantly female workers, working in a close environment with the business owner. Difficulties faced by workers include:
    a. Difficulty in entering into an enterprise agreement with the owner;
    b. Business owners frown upon any staff member joining the union. The owner generally takes it as an insult to them personally;
    c. With the proposed new unfair dismissal laws exempting businesses with less than 100 employees, there is genuine concern that union member employees will be targeted; and,
    d. There are many examples where employers do not pay the current superannuation contribution as deemed by the current NSW award. There is a particular instance where an employer has not paid super to the workers for the past 6 years.
42. Current disputes on mushroom farms also highlights where workers, predominantly women, are forced into signing AWAs. The owner tells the workers to either sign the AWA now or have your hours reduced.

43. Imperial Mushrooms places workers on a 3 month training program at $14.00 per hour and then on completion of so-called training, employees sign an AWA with an all-inclusive rate of $16.55. This all-up rate includes long service leave, annual leave, sick leave, carers leave, maternity leave, and public holiday rates. There is no guaranteed number of hours but the roster identifies the worker will work 4 days on and 2 days off. The net effect of these arrangements is that the worker will be over $600 worse off in their first year when compared to the award of a permanent part-time level 1 farmer. Since there are no regular hours, the workers should be deemed as casuals which results in the worker being approximately $3,500 worse off at the end of their first year of their employment.
44. OEA staff members has approximately 38 minutes to assess whether the AWA passes the no-disadvantage test. The issues raised at the mushroom farms include whether the AWA rate be compared to:
    a. Part-time rate or the casual rate; and,
    b. Level 1 or level 2 rate.
45. The above issues are paramount in assessing whether the AWA passes the no-disadvantage test. The AWU maintains the employment terms of the AWA should be compared to a farm employee level 2 at the casual rate. Our understanding is that the OEA does not make a detailed investigation into employment status but simply takes the word if the employer.
46. It is difficult for women with children to work at the mushroom farm since they need an identified work completion time stated in advance so as child-care services or picking children up from school can be arranged. Management often disclose the number of hours to be worked on the day.

Conclusion

47. In conclusion, the AWU New South Wales Branch submission builds on the submission supplied by the AWU Federal Secretary, Mr Bill Shorten. The AWU NSW submission addresses concerns raised by the Office of Employment Advocate with particular reference to the:
    a. Lack of staffing resources to adequately assess each individual work place contract to see if it passes the no-disadvantage test, given the current award and job classification system in place;

b. AWAs that do not have provision for wage increases;
c. Lack of adequate conditions with particular reference to working hours;
d. Lack of carers leave when compared to current Award provisions;
e. Youth and women losing out in AWA negotiations especially in small businesses. This was highlighted by hairdressing and the mushroom businesses; and,
f. The ability for management to reject workers request for a union negotiated agreement even though federal government advertisements indicate that all workers have the right to choose between AWAs or an enterprise agreement. This is particularly evidenced by the Boeing dispute.

48. The proposed industrial relation system must address these concerns and establish a fair, just and equitable system where:
    a. Workers have the right to choose to have union negotiated agreement where employers cannot refuse such a request;
    b. the AIRC has powers of arbitration;
    c. that each AWA is examined carefully and the appropriate award and job classification is justified;
    d. Family/Carers leave, annual leave, sick leave, bereavement leave and maternity/paternity leave are protected for all workers; and,
    e. Training rights are enhanced and protected.
49. This submission has been prepared and provided by :

Russ Collison
AWU NSW Secretary

Dated this 19th day of September 2005