

Submission

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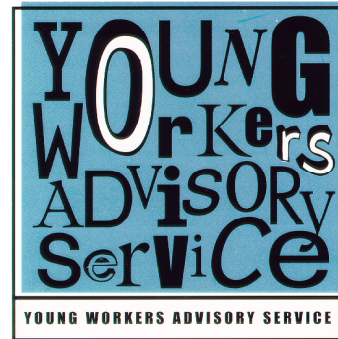
Senate Employment, Workplace Relations and Education References
Committee

Inquiry into Workplace Agreements

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



Dear Secretary

Re: Senate Inquiry into Industrial Agreements

The Young Workers Advisory Service (YWAS) is pleased to have the opportunity to provide a submission to the Senate Inquiry into Industrial Agreements.

The following submission is provided from the prospective of a community-based organisation that is at the pointy end of workplace issues for young people in Queensland. YWAS commenced operations in April 2002 as a three-year project funded by the Queensland Department of Industrial Relations to provide information, advice, representation and advocacy to young people under 25 years old on a range of employment issues. Since the commencement of the organisation, YWAS has provided the following services:

Specialised assistance	Over 4,400 young people
Information Sessions – Secondary and community organisations	275 separate sessions reaching approximately 10,000 students
Casework representation at the Anti-Discrimination Commission Queensland, Human Rights and Equal Opportunities Commission, Federal and State Industrial Relation Commission.	Approximately 600 young workers
General Enquiries – including referrals	Over 1,200 callers

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The initiation for creating YWAS arose from growing concerns that some young people are being exploited in Queensland workplaces. Through advisory and advocacy services as well as educational workshops and presentations, YWAS has developed first hand knowledge of the concerns of young people in the workforce. YWAS' involvement in community networks, research projects and promotional activities has deepened our appreciation of some of the themes running through our clients' issues.

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;**

As YWAS is a safety-net organisation established to provide young people with advice about their workplace issues, it is acknowledged that the nature of YWAS tends to be an issues based service. The increased tendency of young people to participate in work, in addition to full-time education, can be partly attributed to the deregulation of the labour market and the growth of employment relationships that now deviate from full-time positions, with a more variable and flexible scheduling of work. This is reflected in the proliferation of low skilled, casual and part-time work in the retail and services sectors, where the determination of the spread of work hours for individual workers is largely at the discretion of the employer.

YWAS does not specifically gather data outlining the agreements covering young people in employment. However we do see a number of agreements covering young workers and we are relaying the following concerns:

- Pay and employment conditions
- Unreasonable overtime and hours of work
- Restraint of Trade/Restrictive Covenants

- Contracts claiming to be AWA's that are not registered
- Misleading information with respect to classification and security of tenure (ie permanent casual, probationary period for casuals etc)
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(b) The capacity for employers and employees to choose the form of agreement-making which best suits their needs;

In order to choose the form of agreement making, which best suits, their needs, assumes underpinning knowledge and understanding of industrial instruments. The experience of YWAS is that most young people are not aware of the terms and conditions of their respective industrial agreements. Most young people cannot identify relevant industrial instruments; there is limited or no access to the award in the workplace.

All EBA's and AWA's are subject to a 'no-disadvantage' clause stating that employees under them must be no worse off than a comparable employee under an award. The Federal government's proposed 'Fair Pay and Conditions Standard' may erode this 'no disadvantage test'. The standard will become the test for all new collective or individual agreements, and may comprise just 5 legislated minimums. 'Free market' negotiations between the employer and employee may provide other employment conditions. This largely ignores in particular from a young worker's perspective, that there may be significant power imbalances, lack of requisite bargaining skills or knowledge of the right to bargain (a skill which many only develop after years in the workforce) to negotiate for conditions above the bare minimum.

CASE 1

'James' (22) contacted YWAS for casework assistance. James believed that he was terminated from his position for not signing an AWA. James attempted unsuccessfully to negotiate the terms of the AWA. The company provided James with a pro forma offer for continued employment only under an AWA. There were a number of clauses that James

did not agree with, as such he attempted to negotiate a change of these clauses with the company. James informed his employer that he did not wish to sign the agreement as is. Subsequently, James was verbally informed, that despite regular and systematic work as a casual for the past 2.5 years that unless he was an AWA employee there were no shifts available for him. Although James was able to lodge an application for reinstatement, there was great difficulty given the burden of proof for invalid reasons to present his case at the Commission.

CASE 2

Elliot (17) is currently working in retail for an organisation that offers AWA's as conditions of employment, the AWA is coming to the expiry date and he has been offered an additional AWA to state that the employer has discretion to terminate an employee if they do not match the 'look' of the organisation. Elliot has informed our service that he believes that this is a direct attack on the fact that he told the employer that he was looking to change his hairstyle – which he believed to be an expression of himself.

CASE 3

Sally (16) was terminated from her position as a short-term casual employee working in the hospitality industry after refusing to sign an AWA. She requested some time off so that she can balance work and study and the employer informed her that he was sick of her getting to work late and calling in sick. The former employer blames her personal lifestyle for the reason she needs time off - she denies that she was late (her dad drops her off) and she has only informed her employer that she was sick for legitimate reasons.

Current State and Federal unfair dismissal protections for short-term casual employees do not cover invalid reasons. In particular a short-term casual employee who is terminated for refusing to sign an AWA is excluded from filing seeking relief for an unfair, invalid or unlawful termination. The practicality for young people is that they are offered conditions and terms of employment (and subsequent agreements) on 'take it or leave it basis'.

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

The ability of the employee to negotiate employment conditions through industrial instruments such as Australian Workplace Agreements (AWA's) will determine the fairness of the outcome. In a debate concerning the inclusion of junior wages into AWA's, Natasha Stott-Despoja (then acting leader of the Democrats) commented, "*AWA's were designed to suit high value, high-income workers where some additional flexibility above the award might have been appropriate.*"¹ In the July 1999 issue of Labour Force, Australia (ABS Catalogue Number 6203.0) it was reported that "*[c]asual employees tend to work in lower skilled occupations, and in seasonal industries.*"² Defining indicia of a true casual employee includes being engaged on a temporary and irregular basis, and/or no expectation of ongoing work.

In most cases there is rarely a choice to be a casual employee.³ Often employment is offered to employees on the employer's terms, if employee does not accept the terms there are usually a number of other unskilled young unemployed people willing to accept the terms. Young people are more likely to be employed on a casual basis.⁴ The disadvantaged bargaining position of casual employees in the labour market means that instruments like AWA's have the potential to undermine employment conditions, relative to more permanent status or highly skilled employees.⁵ Market forces may also drive down the wage rate or minimum employment conditions where there is a large labour supply of 'low skilled' workers. Assertions that AWA's allow market forces to determine employment conditions on a fair basis largely ignore the power imbalance between employer and employee, especially relating to unskilled employment usually undertaken by young people.

¹ Quoted in Workplace Express, "Democrats say no to junior rates in AWAs", (Monday 10th July 2000).

² (Labour Force, Labour Special Article - Casual employment (Jul, 1999))

³ Pocock, B., Buchanan J., and Campbell, I., *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Chifley Centre, April 2004. p23

⁴ Commission for Children and Young People and Child Guardian, "*Queensland Review of Child Labour: Discussion Paper*", August 2004, p 9

Despite protections such as the no-disadvantage test,⁶ AWA's can undermine union negotiated awards and conditions such as annual leave, breaks, hours of work, long service leave and other forms of paid leave (essential for a balanced and healthy lifestyle) in favour of additional monetary gain. The value of access to these minimum employment conditions should not be undermined. Given their low remuneration (junior wages) young workers they would more readily opt for higher pay as a 'trade off' for loss of these types of leave. General decline in the recruitment of young people (during and before employment) to unions means that young people are more likely left to negotiate on their own. Grace Grace, General Secretary of the Queensland Council of Unions, in response to an article in the Courier Mail provided a press release stating that it is ironic that employers want their workers to work as a team but pay them under individually negotiated agreements.⁷ Individual agreements have the potential to create an 'egocentric attitude' in the workplace and can result in internal conflict between staff, forcing a shift from 'work colleagues' to 'work competitors', competing against each other for the largest slice of the pie. AWA's have the potential of rewarding employees based on their negotiating ability rather than work performance. The labour market ideology largely ignores the respective bargaining powers especially of young people. The balance of power in negotiating terms of employment between an employer and employee, notably favours the employer. These reasons for this have been well documented.⁸

The Department of Parliamentary Services identifies that young people are more likely to be in casual employment. In June 2000, over 60% of employees 15-19 years old were casual, and approximately 30% of employees 20-24 years old were casual.⁹ These statistics are in line with Queensland statistics published in the Children's Commission

⁵ see n.3: p39.

⁶ Section 170XA *Workplace Relations Act 1996 Cth*

⁷ QCU, *AWAs not only agreements to offer cooked breakfasts for workers*, 2004 (<http://www.qcu.asn.au/13495.html>)

⁸ Such as Burgess, V., 'Redressing the power imbalance' (18 May 1996) *Canberra Times*; p.14.; Lissenburgh, S., *Occupational Gender Segregation and Wage Determination*, PhD. Dissertation, (1995) University of Cambridge, and, Sachdev, S, and Wilkinson, F., *Low Pay the Working of the Labour Market and the Role of the Minimum Wage*, (1998) Institute of Employment Rights.

⁹ Department of Parliamentary Services, 2004, p 2.

discussion paper. Over a quarter of Queensland employees are casual,¹⁰ of which 41% are aged 15-24¹¹. There is a direct relationship between a young person's ability to bargain the conditions of their employment and the status of their employment. Anecdotally speaking, a person is more likely to 'stand up for their rights' if equipped with the knowledge that there are protections for any negative repercussions of self-advocating. Given that there are limited opportunities for young people to advocate in various Commissions given their employment status, it is rare that the worker will ever be in a position to bargain the terms of their employment. Contracts of employment are offered on the employer's terms – safety netted by State and Federal Industrial Awards.

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

There are relatively few young people who have contacted YWAS about childcare arrangements, gender pay gap issues and the balance of work and family. This does not however undermine the importance of these issues and needs to be addressed. Generally the concerns of young workers include balancing study, work, family commitments and social commitments such as instrument practice, sporting events.

CASE 4

'Graham' (21) had requested time off work for his 21st birthday. The employer refused to allow him any flexibility in his employment despite the fact that he was a casual. After negotiating with the employer, 'Graham' was informed that 'if he could find someone else to cover his shift he would be able to have the day off'. All associated costs including telephone calls and time were at the employee's own expense.

¹⁰ *Ibid.*

¹¹ *Ibid.*

CASE 5

Kamarlee (16) is in her final year of high school and her employer won't give her any time off to study. She has attempted to resolve the issue with him, but he claims that no one else can open the store. She has also requested that she has more time off after exams to participate in schoolies events.

The correlation between study and work has been documented in a report "Student Workers in High School and Beyond: The effects of part-time employment on participation in education, training and work". The link to the report is: <http://www.acer.edu.au/research/LSAY/ExecSummary/execsumm30.htm> The report makes a number of important points on the relationship between excessive working hours and academic results.

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

As a matter of fairness, there are concerns that minors may have AWA's legally enforceable against them. There are specific protections under the *IR Act* in relation to Queensland Workplace Agreements (QWA's). In particular, the document must be explained in a manner that a young person understands the document they are signing¹². Additionally minors are exempt from entering into a QWA by virtue of section 192(4) of the *IR Act*. Other age specific statutory protections for casual employees are found in state legislation such as the *Anti-Discrimination Act 1991 Qld*, however young people are generally reluctant to make a complaint to relevant statutory bodies or internally. Factors affecting a young person making a complaint may include the fact that they are unaware of their rights, fear of further harassment or bullying, have difficulties in gathering evidence of their claims and other sociological (or peer based) factors.

Young people tend to change their employment during early stages of their employment.

¹² Section 202(4) *Industrial Relations Act 1999 Qld*

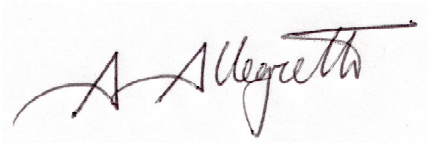
The benchmark for determining the wage rate of an employee should be based on their skills, competencies or experience not their level the key to industrial agreements is that their job position and experience in a position underpin the level of pay, rather than their ability to negotiate their employment conditions. YWAS receives many complaints from young people about their employment conditions, not receiving breaks, unpaid trials, alleged breaches of employment contracts, workplace health and safety issues, discrimination, sexual harassment and workplace bullying – often the young person is reluctant to make a complaint, and if they decide to make a complaint it is not usually until they have left the workplace.

(f) Australia's international obligations.

One of Australia's international obligations is the United Nations Convention on the Rights of the Child. Under this Convention, children in employment have a right to be protected from exploitation or harm at work. There should also be a minimum age and conditions of employment. Having 5 minimum standards in industrial agreements fails to meet this criteria, there are currently no minimum working age in Federal and most State Legislation. A clear policy statement backed by legislation that comprehensively addresses the issues surrounding the employment of children is absent in Queensland. Such regulation would provide a clear statement on the rights and obligations of employers, child employees, parents and educators, and would be useful in guiding actions and decisions that need to be taken by these groups in relation to the obligations under the convention.

For further information or any other related queries, please do not hesitate to contact the Coordinator of the Young Workers Advisory Service Mr. Aaron Allegretto on 07 3211 1447.

Regards

A handwritten signature in black ink, reading "A Allegretto". The signature is written in a cursive style with a long horizontal stroke extending from the end of the name.

Aaron Allegretto
Coordinator
Young Workers Advisory Service