

# Submission

to

Senate Employment, Workplace Relations and Education  
References Committee

## **Inquiry into Workplace Agreements**

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## **INTRODUCTION**

UnionsWA is the peak body for the union movement in Western Australia. UnionsWA represents 35 affiliate unions and approximately 150,000 union members in Western Australia.

We support and endorse the submission made by the ACTU to this Inquiry. We do not intend to repeat in detail those submissions. We do however wish to draw the Committee's attention to the experience in Western Australia under State individual workplace agreements in the 1990s. WA individual workplace agreements had many of the features of AWAs under the federal government's proposed changes.

We also draw the Committee's attention to the submissions of the Liquor Hospitality and Miscellaneous Union (LHMU) which is focused on the experience of employees in Western Australia under State individual workplace agreements. The LHMU submission is important in clearly demonstrating the impact of individual workplace agreements results in reduced wages and conditions for many workers.

We also urge the Committee to carefully consider the Report from ACIRRT, "A comparison of employment conditions in Individual Workplace Agreements and Awards in Western Australia", attached to the submission form the Government of Western Australia. The Report starkly establishes that individual contracts of this nature do not provide fair choices for workers.

We agree entirely with the WA Government's conclusion that Western Australians know the dire consequences that result from the types of laws the Federal Government is proposing with respect to a system of individual contracts. The experience of Western Australian workers should serve as a warning to all Australians as to a future of lower wages and reduced conditions

UnionsWA also commissioned research from ACIRRT on the impact of Individual Workplace Agreements in WA. We attach two reports commissioned by UnionsWA (then known as the Trades and Labour Council of Western Australia).

The first report titled "Understanding Individual Contracts of Employment" was produced by ACIRRT in 1996 (Attachment 1). This Report compared a number of individual workplace agreements with relevant award entitlements. We do note that the study was limited by the number of agreements it was able to study but we believe its findings have been borne out by the subsequent experience of workers in WA. The Report concluded that:

- A comparison of wage rates must include a consideration of entitlements and protection as well. So that a higher wage rate may not mean a better agreement for the employee if they no longer have a range of entitlements or protections;
- The most profound difference between individual workplace agreements and the award entitlements concerned approaches to working hours.

Most individual workplace agreements did not provide penalty rates for weekend, holiday or overtime work.

- Dispute settling procedures in individual workplace agreements discouraged the formal pursuit of grievances;
- Finally and most importantly, the Report found that individual workplace agreements were not individual agreements at all but that employers used individual workplace agreements to engage in pattern bargaining. The Report concluded that “deregulation may simply result in reduced accountability in the settlement of wages and working conditions and not the development of dynamic, innovative agreements that meet the particular needs of the individual parties involved.” (p.13)

The second report is titled “An exploratory Study of Western Australia s30 Workplace Agreements: Emerging Trends” and was completed in 1999 (Attachment 2). The Report compares a number of individual workplace agreements with certified collective agreements. The Report confirms a trend of lower wages and lesser conditions under individual workplace agreements and particularly notes the concerns about working hours. The individual agreements were more likely to not provide for ordinary hours of work or penalty rates for overtime, public holidays or weekend work.

The above mentioned reports and submissions provide further evidence of the damage of a system which promotes individual contracts over collective agreements and does not provide a fair and equitable safety net of wages and conditions.

We wish only to make a few additional comments on the specific terms of reference of the inquiry.

### **SCOPE AND COVERAGE OF AGREEMENTS**

It is very difficult to determine with any accuracy the scope and coverage of the range of industrial agreements including AWAs. We have faced difficulties in the past trying to ascertain a picture of the coverage of various industrial instruments in Western Australia. The statistics show that WA has a higher percentage of AWAs than the rest of the nation, primarily because of the use of such agreements in the mining industry and also the flow on effect of the similar individual workplace agreements used in the 1990s. Some employers in WA moved from state individual workplace agreements to AWAs after the changes to the industrial relations legislation in WA in 2001 by the current Labour Government.

We would refer the Committee to the submission of the Government of Western Australia on the issue of scope and coverage.

### **CAPACITY TO CHOOSE and GENUINELY BARGAIN**

It has been the experience of the union movement in Western Australia that employees have had very little choice in negotiating terms of employment in a deregulated workplace system. The various Reports done on WA individual

workplace agreements demonstrate that the “flexibility” in individual contracts is not about employees and employers choosing the best mutually agreeable working arrangements for both their needs, but rather about the employers dictating what is in their best interests.

The ACIRRT Report done for the Government of Western Australia demonstrates this point. The analysis of IWAs showed that the vast majority of IWAs:

- provided for below award or award wages or only \$1 more than award wages;
- did not provide for wage increases during the period of the agreement;
- did not provide penalty rates for overtime or weekend work;
- either did not have an hours of work clause or had a clause where the hours of work were Monday-Sunday and a span of hours of 12 or more per day; and
- almost half of the agreements absorbed annual leave into the rate of pay.

The experience in WA was that employees covered by these agreements did not freely choose take home pay and conditions less than the award safety net. Workers were in the main offered employment on the condition that they would be paid either below or only \$1 more than the award, while losing their annual leave and penalties for overtime and weekend work and having hours of work which were 7 days a week and 12 hours a day. This experience demonstrates not just a lack of choice in choosing the best industrial instrument but also the complete inability of many employees to engage in genuine bargaining.

As the ACTU submission makes clear the *Workplace Relations Act 1996* does not guarantee employees can choose the form of bargaining they wish to engage in. Only employers have any choice. When AWAs are able to be offered on a “take it or leave it” basis there is no real choice.

## **SOCIAL OBJECTIVES**

Western Australia has the worst pay equity situation in Australia. Western Australian women earn on average around 25% less than Western Australian men. The national pay equity figure is around 16%. This situation is not explained merely by the existence of the mining industry in WA. The gender pay gap in WA grew significantly in the early 1990s after the then State Government introduced Individual Workplace Agreements.

We believe that the introduction of individual workplace agreements was a significant factor in the growing disparity between women and men’s wages in WA. We fear that the Government’s proposed plans will exacerbate the pay equity problems not just in WA but around the country. Women workers often work in industries and occupations which make them more vulnerable to losing take home pay and conditions in a deregulated labour market. Research from

around the world indicates that women do better in more regulated employment systems.

The ability of employees to adequately balance work and family life will depend in the federal Government's new system on their individual ability to bargain for conditions that enable them to achieve such a balance. Our experience in WA is that most employees will not be in a position to bargain effectively for conditions that will enable them to balance work and life. The history of such conditions shows that they need to be fought hard for and have been achieved in the past primarily through arbitrated decisions of industrial relations Commissions not by employers negotiating them fairly with employees.

If you are presented with an AWA which has no limit on ordinary hours, that is you can be asked to work Monday to Sunday, or you are a casual at the beck and call of your employer you have little choice about when and for how long you work if you want to keep your job. Such arrangements are the antithesis of being able to balance work and family.

### **CAPACITY TO CONTRIBUTE TO PRODUCTIVITY IMPROVEMENTS, EFFICIENCY, COMPETITIVENESS, FLEXIBILITY, FAIRNESS AND GROWING LIVING STANDARDS**

There is no economic evidence to suggest that individual contracts improve productivity or efficiency. The recent report on 4 Corners on the ABC on 26 September 2005 included comments from two economists confirming that there is no positive relationship between productivity and individual agreements. The federal government needs to do more than merely assert such an outcome.

The experience in WA was that any so called improvements in business efficiency or competitiveness came at the expense the wages and conditions of employees. We witnessed a "race to the bottom" on wages and conditions in industries where individual workplace agreements became prevalent.

### **INTERNATIONAL OBLIGATIONS**

We refer the Committee to the submission of the ACTU on Australia's international obligations.

### **CONCLUSION**

Working people in Australia will be severely impacted by the Government's proposed changes to the AWA regime. The experience of workers in WA under similar individual contracts was disastrous for many. The Government's proposals will lead to lower wages and reduced conditions, particularly for vulnerable workers such as women and young people.

We would seek to give further verbal submissions to the Committee when the Committee visits Perth on 25 October 2005.