Attachment 2

LHMU CASE STUDIES: WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

CASE STUDY 1 – WAGES

The power to set and adjust wages will transfer from the AIRC to the Fair Pay Commission. As a consequence, there will be a delay of at least six months for the 2006 safety net adjustment.

The Fair Pay Commission will "set and adjust a single minimum wage, minimum wages for award classification levels, minimum wages for juniors, trainees/apprentices and employees with disabilities, minimum wages for piece workers, and casual loadings".

Existing minimum and award classification wages "will be protected at the level set after the inclusion of the AIRC's June 2005 Safety net review" decision. Minimum and award classification wages "will be locked in" and cannot fall below this level. They will increase as decided by the Fair Pay Commission.

The first decision of the Fair Pay Commission will be "no later than Spring 2006". For the past eight years, Safety Net Adjustments have applied in Autumn.

Illustrative example 1: Gareth

Gareth works in a packaging company, packaging and wrapping goods, and doing light manufacturing tasks. He has a mental disability. He works with other workers who have varying disabilities. Gareth lives with his mother, who is retired. They live in a housing commission house and survive on the disability pension.

Until 2005, Gareth's wages had never been objectively assessed. He earned about $50 a week. This year the LHMU applied to have his work assessed objectively, in accordance with a tool that the union, employers and the federal government had developed. Gareth's wages were increased to around $75 per week, after tax. Gareth's wages are assessed according to his competency and productivity, and he receives about 15% of the minimum wage. Gareth also receives abound $200 a week in disability support pension. Gareth says:

> **I am worried that if the minimum wage is not increased every year in a timely fashion that I will not have enough money for my mother and me to live on, because things get more expensive every year and I hardly receive any pay rise** anyway. If **the living wage is cut I will get even less. I enjoy working. I work 35 hours a week. If the living wage is cut, I don't know how I will manage**.

Illustrative example 2: Angelo

Angelo lives in Macquarie Fields, New South Wales. He is 55 and is married with three children. He has been employed at a Sydney hotel as a full-time food and beverage attendant for the past 10 years, under the provisions of the Hospitality Award. He works 38 hours per week, with varying shifts during the week and also on the weekends. He usually work both days on the weekends. He works weekends because he gets a higher rate of pay on the weekends. He relies on working weekend shifts to make ends meet.

In 2005, Angelo was paid $13.40 per hour in wages (for Mon-Fri work). He was paid the minimum award rate – his employer is not interested in enterprise bargaining. (The award rates which Minister Reith claimed in 1996 would be minimum rates are, for most employees in the hospitality industry, actual rates. Employers don't have to pay more and they don't do so). Angelo relies solely on the annual AIRC Safety Net Review for wage increases.

Angelo's pre-tax earnings in 2005 were approximately $633. He pays tax of about $125. His net income is therefore $508 per week. His family receives $192 per week in social security, bringing his total family income to $700 a week. From this he must allocate $225 each week for rent, $37 for public transport costs, and an average of $225 for food. Angelo says:

> **I worry about money, and supporting my family, constantly. Every time my work roster comes out I worry that I will not be given Saturday and Sunday work. If I am not given work every weekend, all weekend, then I do not earn enough to cover all of the family's expenses.**
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> **When I go grocery shopping, I always have a list. On this list I put what I have to buy, and also what cost I have allowed for the item. If the price of the item is more than what I allowed for, I will try another supermarket to see if I can get it cheaper. If I can't and I must buy it I either reduce my kids' pocket money, or not buy something else, like meat. I cannot buy things that are not on my list, and my wife and I must carefully plan out meals for the family for the whole week to prepare our weekly budget.**
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> **My three children are aged 13, 10 and 8. I try to give them $10 a week pocket money out of which they must buy any clothes or toys they want. I want to make sure they have some money to spend and will often make sacrifices so I can give them pocket money. I don't get to spend much time with my family because I work all weekend.**
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> **The last time I had a holiday with my family was in 1995. I cannot afford to take my family away on holidays on a regular basis. My wife and I never go out socially. We might go out for dinner once a year. I never buy new clothes for myself as I cannot afford to, and I would rather that the rest of the family got new clothes. I buy second hand clothes for myself every six months or so.**

If a domestic appliance breaks down, I cannot afford to replace it immediately. I have to save $5 a week (taken away from my other expenses) until I can buy a second hand replacement. I have never sought assistance from community organisations.

My wife receives a family support allowance from the government. If we did not receive this payment I do not know how we would make ends meet. My income has a big effect on my day-to-day living. I constantly worry about money. If something unexpected happened, we have no savings to rely on. I would love to be able to work less on the weekends and see my children more, or take them on a holiday, if I was paid more.

It would be great to worry a little less about money. The Living Wage Case increase I have received every year has just covered the increase in food and living expenses. This is especially true this year as petrol is so expensive. The 2005 living wage increase barely covered my increased petrol costs.

CASE STUDY 2 - UNFAIR AND UNLAWFUL DISMISSAL

The Government proposes to exempt businesses from "the burden of unfair dismissal laws" if they have up to and including 100 employees. There is no corresponding exemption from "the burden of unfair dismissal" for the many thousands of hospitality workers who work for employers who employ fewer than 100 employees.

- For business with more than 100 employees, employees will only have access to unfair dismissal laws if they have been employed for six months.
- Only constitutional corporations will be covered by the new unfair dismissal laws.
- Federal termination of employment provisions for both unfair and unlawful termination will cover the field for employees of constitutional corporations.
- State laws that provide a remedy for termination of employment will be overridden, including state unfair contracts jurisdictions.
- Applications by seasonal workers and by employees whose employment was terminated on the ground of operational requirements ("redundancy"), or grounds that include that ground, will be excluded from the unfair dismissal regime.
- The proposed legislation will also reverse the onus of proof in cases where constructive dismissal is alleged.

Illustrative examples 3 and 4: Clarence and Simone

Clarence worked as a cleaner at a small to medium sized manufacturing site. Clarence worked regularly as a casual for over two years. Clarence broke his hand and had to take five weeks off work. He provided a doctor's certificate to his employer for that period. Clarence was told by his employer that there was no longer a job for him.

Simone was employed at a child care centre as a child care worker. When she was eight months pregnant, she was dismissed after being told that her employer didn't think she deserved maternity leave. Simone took her case to the AIRC, where it was settled in conciliation within four weeks of Simone lodging her case.

Being dismissed for a short term illness where a doctor's certificate is provided, or for being pregnant, will continue to be unlawful, as these will continue to be prohibited reasons for termination under the new legislation. However, for Clarence, running an unlawful termination case in the Court would be expensive and lengthy. Currently the AIRC provides a cheap and quick process to achieve justice for workers who have been unlawfully dismissed, as Simone's case shows.

Illustrative Example 5: Chris

Chris started working for a cleaning company in August 1998 in Canberra. Chris had many positions with his employer as a cleaner, often cleaning a number of sites on a regular basis while also being on call for emergency work. Chris worked a day shift and also worked a permanent part time night shift , after he finished his day work. Chris worked for 58 hours a week at various sites.

In July 2001 Chris was told by his employer that the company was implementing a new system and that all employees were to become subcontractors. He was told nothing would change with his employment. Chris wasn't happy about becoming an independent contractor. He wanted to stay directly employed, to retain his public holidays, sick leave and annual leave. He was concerned about his job security. At the time, his wife was seriously ill and could not work. Chris needed job security to keep supporting his wife.

He was told by his employer that he had to become an independent contractor, or else he would not be given any more work. He had little choice in the matter, and signed the papers he was given by his employer. He was paid out his leave entitlements but did not receive any redundancy payment.

Chris continued to work in the same manner he always had. He continued to fill out time sheets. He still had a company van and mobile phone. He never talked directly with the clients whose premises he cleaned, and had no ability to alter his work patterns. He continued to be supervised by company supervisors. He was paid rates of pay from which accident and public liability insurance payments were deducted, as well as payments for long service leave and superannuation. He did not negotiate his rate of pay: it was determined by his employer. He was not able to approach the client directly and negotiate his payment.

In January 2002, Chris was told he was no longer required to do his night job. He was later also taken off his day shift. Chris took his case to the Australian Industrial Relations Commission, who told him they lacked jurisdiction as he was an independent contractor and not an employee. The LHMU took Chris' case to the Federal Court, arguing that he was not a genuine independent contractor, and was in fact an employee and should therefore be able to access the jurisdiction of the Australian Industrial Relations Commission for harsh, unjust and unreasonable termination of employment. The Federal Court found in favour of the LHMU as to his employment status. The issue of independent contractors is an important one, particularly for LHMU members. Often employees are simply "told" they must become a contractor to their employer, without any benefit to the employee. In fact, often they lose rights such as the right to pursue an unfair dismissal. Chris had to fight his case for years with the assistance of the LHMU so that he could pursue his unfair dismissal case. His employer had fewer than 100 employees. Under the proposed legislation, Chris would have had no arbitral remedy. His employer's sham contractor arrangement would go unchecked, as Chris would not be entitled to file an unfair dismissal claim.

CASE STUDY 3 – RIGHT OF ENTRY

- The Federal legislation will "cover the field" of right of entry. There will be no right of entry for "discussion purposes" where all employees are on AWAs. Entry to investigate a breach of an AWA will be allowed only where the employee party provides written consent.

- Union officials will be required to provide "particulars" to the employer of a breach they propose to investigate. Union officials will only have access to records of union members when investigating a breach, unless the AIRC orders that non-member records can also be inspected.

- Unions officials will be required to comply with "a reasonable request" of an employer that the meeting or interview should be conducted in a particular room or areas of the premises and that a specified route should be taken to that venue.

- The new legislation will allow (as alternatives to revocation) for union right of entry permits to be suspended or made subject to limiting conditions by the AIRC. The grounds for revoking or suspending permits will be expanded. The AIRC will be given power to make orders that include revoking or suspending all permits issued to a particular union that has engaged in "a systematic abuse" of right of entry laws, or imposing limitations on all or some of the permits.

- The right of entry provisions will still allow entry for OHS purposes under State legislation where the union official holds a Federal permit and "has complied with all requirements of the relevant OHS legislation".

The LHMU has several major concerns with the proposals:

If freedom of association is a genuine goal then workers must have the right to a process that provides for proper consideration of joining, or not joining, the union – and that generally means discussing the matter freely in the workplace with a union organiser.

The Committee needs to look very hard at what the intentions of the proposed Right of Entry provisions are, particularly in relation to the proposed restrictions on locations where workers and organisers can meet.

If the Committee genuinely believes that it is every Australian worker's right to have the opportunity to choose whether they wish to join a union or not, then it must ensure workers have reasonable access to union organisers to firstly hear about the local union and then to have the opportunity to discuss joining and, if inclined, to join.

The LHMU asks Committee members to imagine themselves in the following situations:

- You work evening shift in the banquets section of a large 4 star hotel

- You are a 17 year old starting your first job in child care
- You are employed as a casual in an aged care facility
- You are a new immigrant just started working in the cleaning industry
- You work as a support worker in a large metropolitan hospital

These are typical worker profiles of LHMU members.

A typical working day for many…

- In our industries labour turnover means that around 40% of the workforce have either changed jobs or newly entered the labour market in the preceding 12 months.
- Our industries are often 7 day a week, 24 -hour operations.
- Our industries are highly casualised and while many are small and scattered (eg childcare) many others are amongst the largest single site workplaces in the country (casinos and hospitals) employing thousands of workers.

The question we pose is this - will it be physically possible for an organiser to comply with proposed section 222 (which limits workplace visits to "employees' mealtime or other breaks") and have the opportunity to find and meet:

- The 23% of workers who start a new job each year (or in the case of industries like hospitality, the 43% of new starters)?
- The 14% of the general workforce (or in the case of industries like health 32%, hospitality 31%, or in security and cleaning - the majority of workers) who work shiftwork and therefore may not be at work the day or time the organiser visits?
- The 30% of part time workers in the general workforce or again, the majority of workers who work in our many service industries, who may not work the day or time of the organiser's visit?

Are service sector workers not entitled to an accessible, realistic and fear-free environment to talk privately with an organiser?

- In large sites it is rare to find a single common meeting point. Workers don't necessarily use the same canteen or gathering points.
- When they are part-time workers often don't have a break in their shift - they have no time to leave their work position.
- Another major impediment to workers feeling free to meet with a union organiser on site when access is unreasonably constrained is fear.

Imagine that you are that 17-year-old child care worker. You've heard the union organiser is visiting later today but if you want to meet her you have to meet her in the room opposite the Director's office. If the young worker is at all nervous about being seen to 'seek out the union' there is no way they would meet with the organiser in this situation.

If you are a casino worker, a casual with no guaranteed shifts, would you meet with a visiting organiser to talk when you have to do this at a designated 'union table' in the lunchroom that just happens to be away from where workers normally lunch and next to the table where supervisors have their own lunch?

Restricted access will limit the development of local democratic structures and representation

It takes time for the members to think through the type of representation and organisation they might want. Very often workers who consider standing for delegate roles want to discuss the role and responsibilities with the organiser, fellow workers and/or family before formally nominating. The process should have an opportunity for people to nominate and then for an election to be held and then for members to meet with the successful delegate and organiser to talk through their local representative role.

Will these changes restrict workers freedom to associate?

Many Australian workers will miss the opportunity to join a union each year if right of entry is restricted. We would be hard pressed to find in the sectors the LHMU covers a single workplace where all workers are at work at the same time, and all have their break in the one spot simultaneously. The Bill reflects an aberrant view of the modern Australian workplace.

If it is accepted that all Australian workers, regardless of their location in the labour market, should have fair and reasonable access to information about their relevant union and an opportunity to pursue membership, and elect democratic local structures, this right must be facilitated, not curtailed, for the millions of workers who work in the high turnover, shiftwork environment of medium and large sized employers in our burgeoning service sector.

The question we ask the Committee to genuinely consider is this:

Is this aspect of the legislation about restricting an organiser's right to enter a premises or is it much more fundamentally about restricting a worker's right to freely, in an informed and un-pressured environment, exercise their right to freedom of association should they so choose?

CASE STUDY 4 – Annual leave

Annual leave will cease to be an allowable award matter, and now form one of the four national "standards" – guaranteeing most workers access to four weeks annual (five weeks if they are continuous shift workers) while allowing for agreements to "cash out" up to half of this entitlement.

An employee needs the authorisation of the employer to take leave at a time of the employee's choosing. The employer can withhold authorisation for "operational" reasons. There is no arbitral appeal – a dispute over a "standard" can be referred to the Australian Industrial Relations Commission, but the Commission has no power to do anything other than facilitate mediation or make a recommendation.

Illustrative example 6: Slavica

Slavica worked under a Federal Award for a medium-sized company as a cleaner for six years. She applied for annual leave so that she could fly back to Macedonia for a family reunion, which was taking place at the time of her niece's wedding. She was to see a nephew she had never met before and possibly see her ageing parents for the last time. She applied for leave seven months before the planned trip.

The employer refused to give her leave, citing "operational reasons". The LHMU made an application to the Australia Industrial Relations Commission to vary the award so that employers could not unreasonably refuse annual leave, and to ensure that Slavica was able to take her leave to go to the wedding. The Commission varied the award, and ordered the employer to give Slavica her annual leave at the time of her choosing. The Commission was critical of the fact that the employer was not able to cite, or produce any specific evidence, of the "operational reasons" it relied on to refuse Slavica leave.

The employer appealed the decision to the Full Bench of the AIRC, claiming the Commission did not have jurisdiction to make the decision it did. The employer lost the appeal. Slavica went on holiday to Macedonia. The employer sacked Slavica while she was on holiday. The LHMU pursued an unfair dismissal case on Slavica's behalf, which she won.

The proposed changes to section 89A of the Act will prevent the AIRC arbitrating on cases such as this, as only the quantum of annual leave will be protected by the Standard, and the Commission's power to deal with disputes over Standards are heavily circumscribed (see proposed section 176I) and annual leave will no longer be an allowable award matter. And because the employer employed fewer than 100 employees, Slavica would not be entitled to pursue an unfair dismissal case in similar circumstances. It is doubtful that the "family responsibilities" provisions of the Act would extend to enable Slavica to take the more expensive "unlawful" dismissal route. Slavica would be left without a remedy, and such capricious acts by an employer would be protected by the proposed new law.

CASE STUDY 5: WORKPLACE AGREEMENTS

The new legislation will allow agreements to be "lodged" with the Office of the Employment Advocate (OEA) along with a statutory declaration attesting that the agreement was negotiated in compliance with the law. The agreements will commence on lodgement. The will need to meet the Fair Pay and Conditions Standard throughout the life of the agreement.

The legislation will provide for the following types of agreements:

- Employee collective agreements (negotiated between a group of employees in a workplace and an employer);
- Union collective agreements (negotiated between employers and unions that represent employees in a workplace);
- AWAs – agreements between individual employees and their employer.
- Union greenfields agreements negotiated (for new businesses, new projects and new undertakings that do not yet have employees) between the new employer and a union that could cover future employees of the business. They will have a nominal expiry date of 12 months.
- Employer Greenfield agreements – "the employer makes the agreement without negotiating with a union", that is, the employer negotiates with itself, determining its own wages and conditions for future employees.
- Multiple business agreements (either employee or union collective agreements). The OEA must authorise the agreement as not being contrary to the public interest.

Illustrative example 7: Maria

It is mid 2006. Maria has been employed for the last six years at a regional motel in Victoria and supports two school age children by servicing the accommodation rooms on Wednesday through to Sunday mornings for 4 hours and sometimes up to 5 hours. The minimum engagement for each day under the Motels Award for a regular part-time employee is only 3 hours. The employer has just offered Maria an AWA that reduces her Saturday work penalty from time and a quarter to single time and her Sunday penalty from time and three quarters to time and a half. Maria is worried about refusing to sign the AWA and sticking with the award penalties as she thinks the employer might reduce her hours to three and get one of the new girls to work longer hours. She thinks they may have signed the AWA but isn't sure. Maria can't afford to have her hours cut now or in the future, but neither can she afford for her rate of pay to be cut. Neither John Howard nor Kevin Andrews has returned Maria's calls.

Illustrative example 8: Simon

Simon is an experienced cook, but had been out of work for four weeks after his small business employer of seven years collapsed in mid 2006 owing employees annual leave and other entitlements. Simon discovered the employer had not made real provision for these entitlements. He was denied severance pay because the company employed fewer than 15 people at the time of its collapse. Simon is waiting to see if the taxpayer-funded GEERS scheme will make good his former employer's default, as had happened for John Howard's brother's company in similar circumstances.

Simon noticed an advertisement for an experienced cook at a medium-sized accommodation hotel. Attending the interview, Simon was told the job was conditional upon his accepting an individual Australian Workplace Agreement. The employer's representative gave Simon a verbal outline of the job offer, but refused to give him a copy of the written agreement on offer. The offer provided for a wage rate of $15.00 an hour, on the basis of a 38-hour week averaged over 12 months. Overtime payments would be made only when Simon's notional working hours (inclusive of paid leave) exceeded 1824 hours in any 12-month period.

Simon knew that the minimum *Hospitality* Award rate for a qualified cook prior to the commencement of *WorkChoices* was $15.22 per hour, and that overtime payments were calculated under the Award on a daily and weekly basis. He also knew that restaurant work was notorious for fluctuating demand, and that in some weeks excessive overtime work could be required. He realised he would be in danger of being required to work extensive hours some weeks without overtime penalty payments and then would be given unwanted short shifts at other times.

Simon mentioned these issues at the interview. The employer's representative told him: "The Award is irrelevant now. We operate on AWAs, and we only have to pay you the minimum wage. We don't have to pay you overtime". Simon was aware from ACTU advertising he has seen on television that the *WorkChoices* legislation had given employers a free hand to force employees onto AWAs, with Section 104(6) specifically exempting employers from duress claims "merely because the employer requires the employee to make an AWA with the employer as a condition of employment". He had read John Howard's four page advertisements prior to the passage of the *WorkChoices* Bill, but had not realised the employer was also to be given the **choice** of whether to pay overtime or not.

Simon had only one **choice.** He knocked back the job. He realised this might have consequences for him at *Centrelink*, but he reasoned that he was a free man, not a slave.

Illustrative example 9: Tommy

Tommy is an employee of a small licensed pizza restaurant in suburban Brisbane called Gourmet Pizza. Tommy has two children. His wife, Lin is a stay at home mum. Tommy services a mortgage.

Tommy has been employed with Gourmet Pizza for two years and works under a collective agreement negotiated between the employers and the owners of Gourmet Pizza and registered in the Queensland Industrial Relations Commission. Tommy is happy with the Collective Agreement, because it has above-award rates and has higher allowance for when business is fast and Tommy has to use the delivery vehicle.

In late 2006, Tommy was told by his employer that the business was being sold to another company and that he will have to go for an interview in own time to see whether he will be employed by the new employer.

One week later Tommy attends an interview with the new employer. The new employer tells Tommy that he has new ideas for increasing the restaurant's business, and that he is prepared to offer Tommy a job conditional upon Tommy signing an Australian Workplace Agreement ("AWA") with the company. The AWA has a higher rate of pay per hour but lower penalty rates and no allowance for deliveries. Tommy asks if it is possible to remain on the old collective agreement. The new employer says that he can remain on the old agreement for as long as he is employed with the old employer. However to be employed by the new company, a condition of employment is that he accepts the new employer's AWA.
Some of Tommy's co-workers have signed an AWA – but say they can't talk about it. Tommy telephones the Office of Employment Advocate ("OEA") who tells him to contact a community legal centre. Tommy says that he thought they gave advice on AWAs – a person on the end of the phone line says to look at their web site. Tommy telephones the community legal centre who advise that transmission of business rules would apply if Tommy had not been offered an AWA as a condition of employment. The community legal centre advises that a section of the Workplace Relations Act deems the offering of an AWA as a condition of employment not to be duress or coercion. Tommy asks what happens if he does not accept the AWA? His is advised that the new employer probably won't employ him in his current job. Tommy says he won't be able to pay the mortgage or feed his children without the job.

Tommy signs the AWA with the new employer because he has little choice. He ruminates about the government advertising that said industrial relations was going to be fair and he was going to be protected by LAW.

CASE STUDY 6 - Impact on State agreement workers

The cleaning of sites managed by the New South Wales Department of Education – particularly schools and TAFE Colleges - is the subject of a series of Government contracts for the procurement of private sector services. The procurement of these private sector services is by process of tender, and contracts are awarded every five or six years.

Current successful tenderers are all "constitutional corporations", and the employment of employees to perform work under these contracts would be captured by the changes proposed in the *WorkChoices* Bill.

The contracts themselves deal with a number of employment matters relevant to NSW Government policy. The contracts call up, and rely upon the *Cleaning and Building Services Contractors (State) Award*, an award of the NSW Industrial Relations Commission.

That Award provides in Clause 6(c)(1) for the LHMU, NSW Branch, to reach agreement with the employers of employees under Government cleaning contracts on to the timetabling of annual leave and Rostered Days Off of employees. This process is crucial to the smooth operation of contractors in NSW Government schools, in particular, because contractors need to arrange their operations around NSW Government school holidays, and periods of annual schools close down. The Award provision has had widespread industry support because it suits the needs of contractors, and enables leave entitlements to be timetabled across contracts in a way that suits the operational requirements of contractors, and ensures that Award entitlements are met.

Under the changes proposed in Bill a provision that provides for the union to reach agreement with relevant employers as to state-wide annual leave and Rostered Day Off timetabling arrangements will almost certainly become unenforceable as prohibited content.

This would increase the operational pressure on contractors, who would need to put significant management resources into the timetabling of leave arrangements on a site-by-site basis, placing at significant risk the capacity of contractors to delivery uniformity of service to socially important infrastructure such as schools.

Subcontracting in the Cleaning Industry

The Cleaning Industry in NSW is characterised by high levels of subcontracting to other entities from the principal contractor at a site. It is the experience of many employees in the industry that parts of the workforce on any given site are employed by a subcontractor, who holds an ABN, and invoices the principal contractor for the work performed. The subcontractor is the employer for the purposes of work actually performed on site.

This process leads to real problems in the enforceability of employment-related conditions. Often, employees find that that they are faced with cash payments, for

below-award amounts, and work without the benefit of superannuation contributions, or workers compensation insurance.

For many employees, too, it is difficult to ascertain the exact corporate identity of their employer, because they are not issued with payslips that quote the correct corporate details. This makes it impossible to identify an employer for the purposes of enforcement. Often, when the principal contractor is approached with a view to enforcement of a basic employment entitlement, the principal contractor is able to avoid liability by virtue of the operation of a subcontract that moves the employment relationship away form the principal contractor, at least at common law.

For a number of years, now, reputable employers, as well as the Union, have been concerned about this problem. Not only does disreputable subcontracting erode employment conditions, it places enormous pricing pressure on reputable, quality contractors in the industry. This is aside form the cost to the public purse of tax evasion, owing from the failure of many subcontractors to remit appropriate taxation to the Commonwealth.

For this reason, the parties to the *Cleaning and Building Services Contractors (State) Awar* in NSW agreed to insert in Clause 39 of that Award provisions which enable employees and their unions to notify and make liable principal contractors who subcontract to corporate entities that evade the payment of employee entitlements. It is an Award provision that has enabled all parties to the Award, not just the Union, to seek to reign in price-eroding practices in the NSW cleaning industry.

Under the changes proposed in the *WorkChoices* Bill, the existing State Award will become a preserved federal agreement and many employees in the cleaning industry will be caught by the changes. Clause 39 of the Award will almost certainly become a prohibited matter, since it is a provision that seeks to regulate the employment of any contractor to an employer party to the Award. The loss of this provision will rob employees of the capacity to enforce employment entitlements such as superannuation and annual leave, and allow disreputable subcontracting to flourish, to the detriment not only of employees, but to the reputation and quality of the industry, and the loss of public revenue to Government.

Illustrative example 10: Bruno

It is early 2006. Bruno is a 19-year-old casual bar attendant regularly working five 6-hour shifts a week at an inner Sydney hotel. He is studying for a communications degree part-time at Macquarie University and shares a small flat with his girlfriend in Eastwood, where they both grew up. He is paid the minimum rates[1] specified by the *Hospitality* Award. Because he is a "liquor service" employee he is entitled to adult wages[2]. He earns $13.40 an hour for Monday to Friday work, $20.10 an hour for Saturday work and $23.45 an hour for Sunday work[3]. Saturdays and Sundays are the employer's busiest and most profitable days, and Bruno is normally rostered for two Saturdays and two Sundays each four-week period. Bruno's average fortnightly pay is $968.00, although sometimes he earns more with overtime and penalty payments for work after 7pm on weekdays. He is happy in his work, and likes the economic independence his income brings.

Bruno had worked regular hours for eight months when, several weeks after the commencement of the *WorkChoices* reform, he was called in by his employer. Bruno's employer said the company was converting all casual staff to part-time employment, and was offering them all individual Australian Workplace Agreements. He produced a pro forma AWA downloaded from the Office of Employment Advocate's website, which he said many other hospitality employers were now using. This provided for an hourly rate of $12 for Monday to Friday work, and $16 for all weekend work. It provided for a minimum 30 hours work a week, but overtime rates would not apply unless Bruno's working week exceeded 38 hours, averaged over a month. Extra hours up to 24 each month would be paid for at the "normal" hours rate. Bruno also noticed that the AWA provided for only three week's annual leave. It contained a paragraph stating that the parties had agreed to Bruno's specific request that he be entitled to "cash out" the fourth week of annual leave and that 30 cents an hour had been included in Bruno's hourly rate as the "cashing out" amount.

Bruno calculated on the back of an envelope that his take home pay would drop from $968 to $816 a fortnight. He told the employer he would prefer to stay as a casual and work under the award at adult rates. The employer told him he had no choice. The new legislation defined[4] "junior employee" as someone under the age of 21, and Bruno met the definition. As the employer no longer needed to pay adult rates to 19-year-olds, he wasn't going to. Bruno recalled that the award stipulated that no employer could force an employee to convert from casual to part-time, and that this clause had been inserted by the AIRC with the agreement of the LHMU and the Australian Hotels Association. The employer said the stipulation no longer applied to Bruno, as it offended new section 116B(1)(b) of the *WorkChoices* legislation[5].

[1] $509.20 per week for a Level 2 employee after the 2005 AIRC Safety Net Adjustment
[2] see clause 15.5.3(b) of the *Hospitality* Award.
[3] See clause 15.2.2 of the *Hospitality* Award.
[4] New clause 90B, page 70 of the *WorkChoices* Bill.
[5] Included as a "not allowable award matter" is "transfers from one type of employment to another type of employment".

Bruno noticed that the proposed term of the AWA was 12 months. He asked the employer if that meant he could sign on for 12 months, and then revert to the award at the end of the period. The employer said: "No. I will have a choice at the end of the year whether to offer you an extension, or whether to terminate the AWA and you will then revert to the five minimum standards, not the award".

Bruno asked: "You seem to have a lot of choices, but what choice do I have under the new legislation?" The employer answered: "None, really. You are a casual and we can sack you any time. We have fewer than 100 employees so there is no review, and in any event, you have been here less than a year. You'll take the terms we give you or we'll find the men who will[6]".

Bruno resolved to campaign amongst his family and friends against his local Federal Member at the next election.

[6] See Jacobs and Palmer (1951), "***The Ballad of 1891***".