Attachment A

Submissions of
The Australian Workers' Union,
Queensland Branch

Authorised by
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Queensland Branch Secretary

INTRODUCTION

The Australian Workers Union of Employees, Queensland is the largest State registered union of employees in Queensland with over 50,000 members employed in the State. Of all unions in Queensland, the AWU(Q) has the broadest coverage of employee's across different industries, and one of the broadest ranges of coverage of all Unions in Australia.

This unique position puts the AWU(Q) in an ideal position to understand the working conditions and industrial arrangements of Queensland workers across a vast array of workplaces and industries in the State.

Below is a list of industries in which the AWU(Q) is either the principle union, or a significant union representing workers in that industry in the State of Queensland.

- Private hospitals, nursing homes and aged care
- Non-government disability and community services
- Laundries
- Life saving
- Dairy industry generally including manufacturing
- Local Government Authorities
- Racing Industry
- Hotel motel and club industries
- Café and restaurant industry
- Fast food industry
- Tourism and resort industry
- Theme parks industry
- Casinos convention centres and events
- Hospitality industry generally
- Recreation industry
- Boarding houses and schools
- Clothing industry
- Veterinary industry

- Pest control industry
- Hairdressing and beauty
- Ferries and boating operators
- Sugar industry
- Primary and rural industries generally
- Agriculture industry
- Agriculture Food (food processing, coffee, aerated waters, etc.)
- Pastoral industry
- Feed lots industry
- Tallow industry
- Retail industry (including garage service stations and van salesmen)
- Warehousing industry
- Rubber and plastics industry
- Fruit and vegetable growing industry
- Horticulture and nurseries industry
- Cold storage industry
- Building and construction products (incl. Cement & concrete, clay, forestry)
- Forestry services and timber industry
- Quarries industry
- Bitumen and asphalt industry
- Transport industry
- Passenger vehicles industry
- Construction and mining construction industries
- Manufacturing industry
- Metalliferous Mining industry
- Oil, Gas & Hydrocarbons industries
- Electricity industries
- Ports/Bulk Handling industries
- Refining industry
- Chemicals industry
- Explosives industry
- Fertilizer industry

- Gas Reticulation industry
- Shipping building industry
- Public hospitals and public nursing homes (State Government)
- Department of Disability Services Qld (State Government)
- Department of Families (State Government)
- Queensland Motorways (State Government)
- Department of Main Roads (State Government)
- Environmental Protection Agency (State Government)
- Department of Primary Industries (State Government)
- National Parks

Because the AWU(Q) has such a breadth of involvement with workers across the workforce generally the AWU(Q) has a good understanding of the likely impact on Queensland workers of the proposed Workplace Relations Amendment (WorkChoices) Bill 2005.

The AWU(Q) states at the outset that the proposed changes to the existing legislation in the Bill will have an overwhelmingly negative impact on the rights, and terms and conditions of employment of Queensland workers working in callings covered by the AWU(Q). The general impact of the Bill will be to depress wages, and substantially weaken the future bargaining position of workers in the above listed industries if the proposed legislation becomes operative at some time in the future.

The proposed laws will dramatically strengthening the bargaining position of Queensland employers. This will occur to the point that in most instances genuine bargaining over conditions will no longer actually occur at workplaces in Queensland at all, and over time the principle form of employment contract reached between workers and their employers will be reached on a "take it or leave it" basis. This is not the manner in which the employment relationship in Australia has been conducted for the better part of the last 100 years.

This dramatic shift in the balance in the employment relationship will occur to workers working in many callings covered by the AWU(Q) in the above list of

industries because the many of these workers do not come to the relationship with their employer holding skills or qualifications that are in great demand, or for which a major shortage currently exists in the Queensland labour market. Many of these workers also live and work in regional, rural, and/or remote areas where alternative employment opportunities are limited or non-existent, if the present or prospective employer was not refuse to bargain fairly or at all for reasonable conditions of employment.

This fact is made even more alarming because for most workers represented by the AWU in these industries, it is generally the view that in historical terms the current labour market is a good market for employee's at this point in the economic cycle with unemployment at comparatively low levels.

When the economic cycle turns to a less favourable employment market (as it inevitably will) workers who do not hold skills or qualifications in demand will be subject to irresistible pressure to accept employment conditions which are well below traditionally acceptable community standards in Queensland and Australia. The mechanisms built over the life of this nations history that humanise and protect the workforce generally, and those in the weakest position to bargain in particular, will be removed.

Since the beginning of the last century Australia as a nation has developed on a general national political consensus that Australia is committed to the value of "a fair go", particularly when it comes to fair and decent minimum working conditions for workers. Industrial conditions have steadily improved throughout the last 100 years (with certain brief periods of exception, for example the period of the Great Depression).

This steady improvement continued during the period the Australian economy was achieving rapid productivity growth throughout the 1990's. Significant increases in investment in new technologies and a focus on skills development was a feature of this period of growth. This period also coincided with increased co-operation between workers and managers with the advent of enterprise bargaining underpinned by a safety net of Industrial Awards for such bargaining. The Federal Government has

claimed that these latest proposed industrial changes in the Work Choice Amendment Bill are required as there are signs of a slow down in productivity in the economy. This slow down also coincides with a drop in investment in skills development and training.

The AWU(Q) believes these proposed changes reflect a view on the part of the Government that the Australian workforce and its managers are not capable of competing internationally on the basis of skill, innovation and creativity. To the contrary the Governments proposed bill effectively abandons the traditional Australian ethos of the last 100 years that rejects exploitation of employees as an acceptable means to achieve competitiveness, or to improve productivity.

The proposed laws walk away from the Australian tradition and surrender to a widely understood American tradition that accepts a low wage underclass economy that Australians have always rejected, in order to prop up an economy that has failed to adequately invest in education, training, skill development and innovation.

It is in this context that the AWU(Q) will argue in this submission against the proposed amendments in the bill. The AWU(Q) will argue it is not to late for the government to turn back from heading down a path which the clear majority of the Australian community rejects.

INTERNATIONAL COMPARISON

Australian Society has for a century maintained an independent, transparent and fair industrial relations system at both State and Federal levels. This system balances fair wages and conditions for workers with business needs based on reasonable community standards.

The Federal WorkChoices proposal will fundamentally change the standard of living for working Australia. This will also lead to a change in the international image of the country. Australia risks being known as a country that considers capital above all else. The proposed system will create a poor nation by significantly increase the working poor in the country.

We have in the past decade, changed the system to adopt isolated provisions from similar nations such as the United States, Canada and the United Kingdom. This process has been destructive and deleterious in that the changes have brought flexibility for business but failed to bring adequate protection for workers. Having said this, the proposed legislation will see Australia surpass those nations that are perceived as having draconian legislation, such as the US.

The US allows –

- closed shops through bargaining fees in more than 50% of the States;
- make it compulsory at union sites for management to provide information about business activities and operations at the request of union members;
- does not have individual agreements;
- makes collective agreements final and legally binding through the Labor Relations Board;
- most importantly as collective agreements are the primary mechanism for delivering wages and conditions, there in no prohibitions or limitations on what the agreements can contain.

In comparison, in addition to the Australian Government having already made bargaining fees unlawful, the new WorkChoices Bill –

- removes genuine recognition of the role of unions at the workplace and the right to reasonable access to union representation;
- undermines the objective of collective agreements being final and binding by allowing AWA's to be enforced over the top of the agreements, while in operation;
- denies parties the right to collectively bargaining for all of their workplace needs by prescribing a range of unlawful provisions.

The Bill also –

- undermines States rights by removing State workers from jurisdictions that have recorded less lost time in strikes, higher business investment, lower unemployment and overall a better performing economy;
- removes the safety net of wages and conditions that underpins the industrial relations system.

The award and agreement structure proposed creates a two tier system in Australia by guaranteeing future workers a lower level of entitlements to those allegedly protected by savings provisions within the Bill. This is obviously an attempt to deceive workers under existing fair State and Federal Awards and Agreements into thinking that they are not going to be disadvantaged. This is clearly misleading as to its actual implementation.

AUSTRALIAN FAIR PAY COMMISSION

The AWU(Q) believes that the perception and the reality of the proposed Australian Fair Pay Commission is that it will not have the respect, independence or impartiality that the AIRC has been noted for in the role of wage setting. The very fact that reference to the term "fairness" has been expressly removed from the wage setting parameters of the AFPC, compared to the AIRC is a clear indicator of the true intent behind the establishment of the AFPC. The AWU(Q) submits the wage fixing role should not be removed from the AIRC

The process set out in section 7K of the Act places no requirement on the AFPC to have regard to the views any particular persons or organisations that will be directly affected by its deliberations. Further the legislation makes no requirement that the AFPC must make wage determinations with a particular frequency. Because there is no requirement for the AFPC to deal with an application as the AIRC had to, there are no guarantees at all about wage increase decisions being handed down in future years.

The wage-setting parameters set out at Division 2, 7J of the draft Bill have been drafted in such a manner that the Fair Pay Commission must in reaching its determination place employment at the centre of any determination. This shifts the balance from the current emphasis where equal weight is placed on the interests of those in employment (now numbering in excess of 10 million nationally) and those unemployed, currently approximately 5%.

No significant body of research can be relied on to show a reduction in the wages of the low paid in the community will lead to a significant consequential improvement in employment figures. This change introduces for the first time in Australian industrial law the concept that the cost of wages should be held down to the point that employers are prepared to pay.

The AWU(Q) rejects the attacks that has been directed at the manner in which the AIRC has determined national wage cases as not being rigorous enough. To the contrary the extent of economic analysis has always been significant in these cases and evidence has always been lead by the applicants going to the question of impact

on employment. The AIRC has relied on independent expert evidence on such questions. As a party to the proceedings before the AIRC, the government has always been able to introduce greater economic rigour into the case by way of evidence if it saw the need.

It has been argued that the proportion of the workforce directly affected by the outcome of national wages cases historically (and state wage cases that adopt the outcome of national wage cases), has been steadily dropping with the spread of enterprise bargaining across the workforce. This perception has been guided by the statistics showing the falling proportion of employee's being paid on the awards only.

This perception is misleading. In the experience of the AWU(Q) the majority of enterprises that negotiate enterprise agreements still have regard to the outcome of wage case decisions when determining the pay increase the employer regards as reasonable in the particular climate. It may not be the only factor but it is almost always one of the major factors.

In some industries, for example aged care, retail and hospitality there is often a very close correlation between pay increases negotiated in enterprise bargaining agreements and the wage outcomes in national wage case decisions. It is common for many wage increases in certified agreements in these sectors to be expressed as being the equivalent of the wage case decision granted in that year by the Commission. This is often agreed to between the parties on the basis that a small differential is maintained between the award rate of pay and the current rate paid at the enterprise in the industry, with the enterprise rate being marginally higher.

What this means is that it is incorrect to assume because a minority of the workforce are paid on the award only, that a lower outcome in wage increases flowing from the AFPC on the basis of a changed emphasis in wage setting parameters will not have a wider impact on wage outcomes in areas that have a history of achieving enterprise agreements.

The reality is lower wage outcomes from the AFPC will have a direct impact on the wage outcomes in enterprise bargaining agreements for a significant proportion of the

workforce that use national wage case outcomes as a form of benchmark in enterprise bargaining wage outcomes.

The AWU(Q) asserts that seeking to argue that the breadth of the impact of lower wage increases flowing from the AFPC is narrow on the basis it will only impact on the low paid (those on awards only) is misleading. It will have a direct impact on the wage outcomes achieved in agreement making across the wider workforce as well as those on awards.

Seeking to justify lower wage increases flowing from the AFPC on the basis that lower wages will create higher employment is not supported by clear evidence, and is not a rational basis for directly lowering the wages of millions of Australian workers.

POWERS OF THE EMPLOYMENT ADVOCATE

When the proposed new section 88BB is compared to the current 88BB dealing with the functions of The Employment Advocate the proposed change in role is dramatic. It is well understood for those that work on a regular basis in the industrial relation's field that the OEA has a reputation under the current act as being a rubber stamp for AWA's filed in it's office, regardless of whether those AWA's comply with the requirements of the Act (i.e they pass the "no disadvantage test") or not. Numerous examples of AWA's being approved by the OEA that do not pass the no disadvantage test are on the public record.

The past performance of the OEA highlights the obvious question that if the OEA has manifestly failed to fulfil it's current and extremely important regulatory function of policing the legitimacy of AWA's, why then would a Government greatly extend the OEA's current responsibility beyond AWA's to now cover all types of agreements covering Australian workers.

And further if the OEA has failed to properly regulate AWA's, why would a government deliberately loosen the current regulatory functions of the OEA to the extent that it is really now only an office to oversee a lodgement based process where there appears to be no statutory requirement that the OEA enforce any standard when receiving agreements.

This is all the more frightening because this office is now charged with the administration of all types of agreement making. Whereas previously all certified agreements, whether between employers and unions or employers and employees had to demonstrate to the AIRC through a certification process they in fact complied with the Act and did pass the "no disadvantage test" (which in many instances requires some level of expertise and enquiry to determine). It will now be assumed that all agreements comply and will be approved on filing. This is an extraordinarily irresponsible approach to protecting the rights and entitlements of the Australian workforce.

The AWU(Q) understands that the process of enforcement will be moved to the Office of Workplace Services. The obvious flaw in the proposed model is that there is no mechanism or safeguard to prevent agreements of all types (collective or AWA) being approved and commenced in operation in an illegal form.

It then falls to the staff of the OWS to "cure the disease" of agreements that are illegal after the event. This will only ever occur if someone (presumably an employee) complains, and the OWS commences a prosecution against an employer. Such a complaint based system will become very unattractive for employees under the proposed bill, as complaining about the actions of the employer will be very risky indeed, particularly if the employer has less then 100 employees (which is over 95% of employers). The only option available to an employee to enforce their legal entitlements under this proposed law is court action. This will be costly, time consuming and not viable for the great majority of the workforce.

Until now, the system that has operated since the introduction of enterprise bargaining in the early 1990's has required agreements to satisfy the requirements of the Act **before** being allowed to operate.

Preventing agreements from applying before underpayment starts is clearly preferable to allowing all agreements to apply regardless of whether they comply with the act or not. Simply leaving it to the OWS to hopefully pursue a very small proportion of non-complaint agreements after they have been underpaying for a period of time is vastly inferior to the current system of needing to demonstrate an agreement complies at the outset. It will be only a small minority of cases where employees who have been underpaid will take the risk of complaining. Such a system is completely unfair, and places all of the risk and responsibility for enforcement at the feet of the employee, and little or none at the feet of the employer. What it will undoubtedly achieve is a dramatic increase in the incidence of underpayment of employees.

A. FAIR PAY AND CONDITIONS STANDARD – PART VA

The FPCS will over time completely replace the comprehensive award safety net with only 5 basic minimum entitlements.

(a) Basic rates of pay and casual loading

The basic rate of pay will not be like the award rate of pay as we now know it. Award rates currently move up across the board following wage case decisions and the AIRC has to varying degrees maintained recognition of pay relativities in classification structures developed by parties to awards. This will no longer occur and the basic rates of pay, while increasing by smaller amounts due to the changed parameters of the Fair Pay Commission decisions, will still eventually render awards irrelevant as they are frozen in time.

(b) Maximum ordinary hours of work.

The proposal to have maximum ordinary hours of an average of 38 over a period which is not guaranteed, except to say it shall be no greater than 12 months, is a complete removal of any safeguards for employees with regard to rostered hours of work. The other obvious outcome is the end of the concept of overtime. This is for two clear reasons. Firstly the employer can manipulate the rostered hours of an employee at anytime in a calendar year to work additional hours when the set hours the employee understood they would be working are not enough from the perspective of the employer. Secondly, because proposed clause 99C (1)(b) includes the requirement that employees must work (in addition to an average of 38 hours per week over any period required by the employer) reasonable additional hours. The employer has open slather to require an employee to work additional hours to the average of 38, whatever that may be in any given work cycle, and any additional hours as well. None of these hours attract overtime. It is very difficult to imagine any circumstances where employers will be required to pay overtime at all if the hours of work arrangements apply as set out in clause 91.

Employees are in no position to negotiate of course because there will be no avenue for review or appeal of a dismissal if it is because an employee does not agree to a roster as proposed by the employer. As the employer has full control of the destiny of the employee, if the employee does not accept the hours of work as sought by the employer, there can be no real negotiation if a disagreement exists.

(c) Annual Leave

The proposal to allow the cashing out of annual leave is a retrograde step that weakens further the opportunities for families to have sufficient time together. The end result of this cashing out provision in combination with the broader impact of this proposed bill will be that those on higher incomes will have the luxury of being able to afford the retention of existing leave entitlements, while those on low incomes who lose a significant proportion of their income through the abolition of entitlements like penalties rates, overtime and weekend rates (that have in many cases provided around 25% of employees wages) will be forced to cash out annual leave just in order to try and recoup some of the lost income through the introduction of these proposals. The migration from 4 weeks annual leave to 2 weeks annual leave will occur primarily amongst the low paid and shift workers, and will not occur by choice. It will primarily be a decision taken out of financial necessity by workers who simply cannot afford the significant wage reduction imposed by the loss of other industrial entitlements.

(d) Personal Leave

Section 93N has introduced for the first time a requirement on employees to produce a medical certificate to their employer if the employer requires one. The generally award standard protection that a certificate may be required after 2 days sick leave has been overridden. This means any employer need only state it is the policy of the employer that for any sick leave entitlement to be recognised an employee must produce a medical certificate. This will undoubtedly happen. Or in the alternate, an employer may require it of certain employees the employer determines should always provide a certificate, while not requiring it of others.

The result will cause many thousands of visits to general practitioners that are unnecessary because employees will be well aware they have for example a heavy cold or flu symptoms, that render them unfit for work on that day, but have no need to see a doctor and will receive no treatment from a doctor when they visit one. What the employee will receive is a bill for $50 for a medical appointment that was unnecessary and an overloading of the Medicare system.

There will be a more sinister consequence of this ill-considered reduction of the community standard in Awards from a 2 day period before an employer could require a doctors certificate to any leave period. That consequence will be that employees on low incomes who simply cannot afford to pay $50 for a medical consultation that is unnecessary despite there having a genuine illness, will not stay home when they are sick but will in fact report for work in an unfit condition endangering their own health and safety and the health and safety of their fellow workers as a result. This will occur because the employee who cannot afford an extra $50 dollar expense is the same kind of employee who cannot afford to lose a days wages if the employer refuses to pay for sick leave that is not accompanied by a medical certificate.

(e) Parental Leave

The provisions included in the bill with regard to parental leave have included none of the provisions of the AIRC's *Family Provisions Test Case* decision. Not to reflect the outcome of this decision in the legislation is very disappointing and will inevitably mean the benefits of the decision of the AIRC will be completely negated, denying families access to the protections and entitlements that were determined as appropriate on the basis of rigorous evidence.

The entitlement arbitrated by the AIRC for employees to have a right to request a return to work on a part-time basis until a child goes to school will be an entitlement barred as a non-allowable award matter in section 116B(1)(b). This will be a large step backwards for parents trying to balance work and family responsibilities.

B. WORKPLACE AGREEMENTS – PART VB

The overall proposed agreement process under the bill is flawed. There is no genuine basis to move from an open transparent process that allows relevant parties to be heard on issues of disadvantage, to a closed secretive process that allows little to no reasonable assessment of fairness.

The most blatant example of disadvantage is the proposed right of employers to entering into non-union Greenfield agreements. Greenfield agreements are for workplaces that do not have workers employed at the time of making the agreement. Presently, the two parties are the union/s and the employer. The role of the union is to ensure that the agreement protects the rights of workers and provides reasonable wages and conditions for the future workers at that site. By removing the union from the process, employers are being allowed to entering into agreements with themselves. This is contrary to all of the known principles of contract law. An agreement cannot be made with only one party. Any attempt to argue that the other party is the "future employees" is erroneous and silly. As they are yet to be employed they cannot accept the terms of the agreement at the time of making and filing with the Office of the Employment Advocate.

The obvious ability of employers to reduce wages and conditions through either collective or individual agreements can only lead to pressure being put on workers. This pressure will extend to their families and their ability to provide the education and health coverage that they desire. In addition, with reduction of take home pay by removal of allowances and penalties, workers may be required to work longer hours or obtain second jobs. This will put pressure on society's social structure. At a time when workers are working more hours than ever, either one or both parents may be required to spend more time away from the home. This will put further strain on the childcare needs in communities. Australia is already at crisis stage with a lack of affordable and quality childcare. This legislation will only add to this ongoing problem.

It has been stated by the Government that the current agreement process is administratively prohibitive. The Bill is an extreme solution to an administrative

deficiency. To leave the protection of an independent umpire and the ability of the parties affected to raise concerns prior to approval and to place it in the hands of a Government entity that promotes individual contracts and has been proven to be deficient itself, cannot be reasonably explained. Not since before the introduction of the Industrial Conciliation and Arbitration Act 1916 has the imbalance of bargaining power been so extreme.

Section 98 provides for an information statement to be provided and at least a 7 day consultation period, however, the information statement is not required to spell out changes in the employee's conditions of employment under the proposed agreement. The role of bargaining agents is limited. Under section 97A, an employee can appoint a bargaining agent to represent them in the making of an AWA. There are no guidelines as to what a bargaining agent means in relation to section 97A. An employee may appoint a bargaining agent under section 97B in the making of an employee collective agreement under section and section 97B(1) suggests that this is limited to 'meeting and conferring with the employer'. Bargaining agents must meet the criteria set out in the regulations (section 97) however, there is no guidance as to why bargaining agents require qualifications or what qualifications are necessary.

There are contradictory processes proposed for the making of agreements, for example sections 96G and 98C relating to the making of agreements. While the process for making an AWA requires that the employee sign the agreement, for certified agreements, the process under section 98C(2)(b) contemplates either a ballot or some other process which is ill defined (compare this to sections 109 through to 109ZR setting out detailed procedures for secret ballots on proposed protected action!). There are no safeguards for making employee collective agreements in relation to the approval process where a ballot is not adopted. It could simply be a show of hands in the presence of the employer.

The Bill proposes that there be deemed 'protected award conditions' covering breaks, loadings, allowances etc, as set out in section 101B. While these conditions may be

varied, however, there is no requirement that employees be made aware of these protected conditions in an information statement prior to considering an agreement.

Section 98 refers to a requirement that employees be given ready access and an information statement. Subsection (6) refers to the requirement that a workplace agreement may incorporate terms from an industrial instrument referred to in section 101C(2). Section 101C(2) sets out how such an industrial instrument will apply, but it will be up to the employer to know which instrument applies and relate this information to the employee.

Section 100B of the proposed Act states that an award has no effect in relation to an employee while a workplace agreement operates in relation to the employee, whether it be an AWA, collective union agreement, collective non-union agreement or Greenfield agreement.

Under the current industrial system it is generally understood that currently only 20% of the workforce rely solely on awards. The overwhelming majority of the remainder of the workforce are paid under collective agreements that operate in conjunction with an existing award. Under the current law where the collective agreement is silent on a condition of employment the award condition continues to apply at all times.

At the moment in the case of collective agreements, such agreements cannot be certified by the Industrial Commission if they do not pass the no-disadvantage test against the relevant award, so that if an agreement sought to operate to the exclusion of the relevant award it still has to pass the no-disadvantage test. The no-disadvantage test requires that the proposed agreement on balance does not lead to a reduction in the overall terms and conditions of employment.

The no-disadvantage test is to be abolished under this proposed legislation. The protection against a reduction in the overall terms and conditions of employment under agreements will be removed. Instead all agreements of any form whether they be an AWA, collective union agreement, collective non-union agreement or Greenfield agreement will now only need to meet the minimum conditions in the Fair

Pay and Conditions Standard. All other conditions will be theoretically subject to negotiation.

That "so called" negotiation process will be so completely tilted in favour of the employer that, as stated earlier in this submission, in most instances, with the passing of time genuine bargaining over terms and conditions previously but no longer protected by awards, or the no disadvantage test for agreements, will not actually occur at workplaces in Queensland. The principal form of employment contract reached between workers and their employers will be made in the form of a "take it or leave it" offer from the employer being imposed without genuine choice.

The proposed legislation will overtime completely block out the operation of awards. Section 103R **'Consequence of termination of agreement – application of other industrial instruments'**, achieves this by requiring that any form of workplace agreement (an AWA, collective union agreement, collective non-union agreement or greenfield agreement), or an award has no effect in relation to an employee once an employee is covered by any form of agreement, and once that agreement has been terminated.

Sections 103K through to 103Q deal with the issue of terminating agreements. The total imbalance in the employment relation being imposed in favour of the employer is best demonstrated by section 103L of the bill. Section 103L provides that an employer can terminate an agreement of any form with 90 days notice following the expiry of any form of agreement and there is nothing an employee or an employees representative can do to stop that happening. This provision will over-ride any provision in an agreement governing how an agreement can be terminated. At the moment under law the termination of any collective agreements requires the approval of an independent umpire, being the Industrial Commission, to ensure the impact of such a termination would not have grossly unfair consequences. The proposed Section 103L allows an employer to lodge a declaration under section 103N seeking to terminate an agreement within the nominal period of an existing agreement. This means that if the declaration is lodged well before the nominal expiry date of the current agreement employees will lose all of the conditions under a current agreement

and be reduced to the 5 APCS conditions before the formal bargaining period for a replacement agreement has even begun.

The power being handed to employers under sections 103L and 103R has a monstrous knock on effect. Firstly the Act removes any operation of an employees Award through Section 100B once they become a party to any form of agreement. Then once the award has been permanently knocked out of operation forever, an employer can then at a time of their choosing also knock out the effect of the agreement that replaced the award by terminating it through the provisions in section 103 without any avenue for appeal available to the employee.

In summary an employer can completely remove all an employees entitlements except for the 5 conditions in the Australian Fair Pay and Conditions Standard by two simple steps. First the employer enters any form of agreement with an employee, and then at the expiry of the agreement the employer exercises it's right to withdraw from it giving 90 days notice, but the 90 days can commence well before the expiry of the current agreement.

The Bill dramatically curtails so called 'pattern bargaining' and section 106B defines it narrowly as including seeking 'common wages or conditions of employment' with 2 or more proposed collective agreements, excluding those conditions determined by the AIRC decision establishing national standards. This would in effect catch in the net most state based standards such as long service leave improvements, particular public holidays and various leave provisions etc that the AIRC has not traditionally set national standards. The test is simply too broad under section 106B.

New provisions concerning initiating new bargaining periods are more onerous. For example, clause 107F provides that the AIRC may prevent a party from initiating a new bargaining period if a previous bargaining period has ended or another party wants to withdraw. This may be used as a ruse to simply prevent legitimate bargaining from occurring. This is particularly important as clause 108 onwards sets out in detail limits on what constitutes protected action. The proposals limit the extent to which protected action may occur. Section 109 onwards provides minute detail on how secret ballots for protected action are to occur.

Section 104 sets out conditions that prohibit coercion and duress when making, lodging, varying etc an agreement Section 104(6) but as stated earlier excludes duress in relation to making an AWA a condition of employment for new employees. As the role and significance of awards are reduced and the provisions that 'protected award conditions' may be varied in an agreement, there is considerable likelihood that a new employee will become more vulnerable to a reduction in employment conditions as there is no bargaining at the point of engagement in such circumstances.

Currently, employers can make signing an AWA a condition of offer of employment as found by a Full Bench of the Federal Court in *Burnie Port Corporation Pty Ltd vs the MUA (FCA 1768, 6th December 2000)* which determined that the current section 298L(1)(h) prohibiting an employer from refusing to 'employ a person because the person 'is entitled to the benefit of an award'.... applied only to a current benefit rather than a prospective entitlement to the benefit of an industrial instrument. However, under the Bill, the current 'No Disadvantage Test' is removed thereby reducing considerable the ability of employees to have access to an AWA which is a fair bargain.

Another way this bill provides for the removal of entitlements of an employee under a collective agreement is to put them onto an AWA with inferior terms and conditions. This can be done through the operation of section **100A Relationship between overlapping workplace agreements,** which provides that a collective agreement has no effect in relation to an employee while an AWA operates in relation to the employee.

A supporter of the proposed bill may seek to make an argument that AWA's override collective agreements under the current legislation. One of the critical differences however is that AWA's cannot be approved under the current legislation if they do not pass the no-disadvantage test against the award. Under this legislation that is not necessary. Further under the current legislation many collective certified agreements have made it a term of the agreement that the employer will not seek to negotiate AWA's during the life of the agreement, thus providing employees with some sense

of certainty at least for the life an agreement recently finalised. The inclusion of such a clause in a collective agreement will be illegal under the proposed bill.

The effect of 100B and 103L together mean that employers will have an unfettered ability, with no recourse for employees, to completely remove all but 5 basic employment conditions.

Under section 100 workplace agreements come into operation on the day that it is lodged with the Employment Advocate. This will occur regardless of whether the steps required under legislation of bargaining agents are fulfilled or not.

Section 101D Prohibited content has left open the door for the Government to elect to make any terms or conditions that employees (or employers for that matter) wish to include in agreements prohibited from being included. This is achieved by legislating that the regulations may specify matters that are prohibited at some later time of the Governments choosing. The bill is seeking to provide the apparatus of the State complete control over the affairs of employers and employees by dictating what employers and their employees may agree on between them in the Australian workplace. The government as a third party could at anytime interfere in agreements of any form and strike a red pen through any clauses agreed to between employers and their employees.

Section 101M seeking to include prohibited content in an agreement makes it a contravention of the Act merely to seek to include a clause in a workplace agreement that contains prohibited content. For example if a union sought to negotiate an arrangement with an employer with less than 100 employees that gave an employee a right to an independent review of a decision by the employer to terminate them, the union is exposed to massive civil penalties as set out in Division 11 of Part VB of the Act.

The absurdity of providing substantial civil penalties against persons who dare to ask for a particular condition in a workplace agreement is very clear evidence that this bill is being driven by ideological objectives and not common sense solutions to

workplace relations. Such law would be unacceptable in any other western democracy.

The Australian workplace culture has fortunately not been primarily characterised or defined by fear in recent generations. New legislation in the form of section 101M seek to change that. What precedent can be pointed to in Australian industrial law that provides that an employee representative (or unrepresented employee for that matter) who attempts to negotiate a beneficial term or condition of employment will be subject to massive fines ? This proposition seeking to control the freedoms and liberties of Australians in their dealings with one another in the workplace will be flatly rejected by the Australian community. The proposed bill makes it illegal, and imposes civil penalties in the order of $33,000 for seeking to negotiate,

- Training leave for elected employee representatives seeking to better understand how to negotiate with their employer and understand industrial laws,
- Paid time for employee organisations to meet with employees to explain employees rights, entitlements and obligations under the law,
- A role for employee organisations in disputes at the workplace,
- That the employer commit to negotiating with their employees on a collective basis rather than as individuals,
- That the employer will not seek to negotiate AWA's immediately after settling a collective agreement with employees,
- That employees be afforded some agreed form of protection from unfair dismissal.

While implementing imposing civil penalties merely for proposing any of the above items, on the other hand the bill specifically allows employers to apply duress to employees to make an AWA, by making the entry into an AWA as a condition of employment. This is expressly provided for in section 104(6). The difference in the manner the bill proposes to treat employers and their interests, as opposed to the interests of Australian employees is breathtakingly biased.

The rhetoric of choice used in connection with this bill is no more clearly exposed as a misrepresentation of the truth then section 104(6). In relation to AWA's your choice as an employee consists of one choice, take it or leave.

INDUSTRIAL ACTION – PART VC

The proposed legislation will make lawful industrial action almost impossible. The effective use of the right to strike as a legitimate bargaining tool will be so compromised so as to be rendered useless in most cases. The obstacles intentionally placed in front of a legitimate desire of employees to take industrial action are so cumbersome and difficult to traverse that the bill, if enacted, will frustrate most attempts by employees to exercise rights that until now have existed and were reasonably straight forward to exercise. This change, in conjunction with the ease with which an employer can terminate a bargaining period will prevent concerted industrial campaigns from gaining any traction or momentum, again dramatically strengthening the hand of the employer.

Section 109 of the Act sets out exhaustive requirements for a union requiring it to apply to the AIRC for a secret ballot to authorise industrial action. The union will need to notify the employer this is happening. Currently a union or employer can notify the other party with 3 days notice of an intention to take industrial action if the appropriate paper trail commencing a bargaining period is in order and the current agreement has been expired for the requisite period. It would be estimated under the process proposed under the bill that an employer would have at least one months warning before any action could be commenced.

The AIRC, if it decides to grant an application for a secret ballot now required under the bill, will direct a service provider (AEC or another provider) to conduct a ballot and the ballot need only be concluded in 10 days. Employers and any employees who wish may make submissions to the AIRC to oppose the granting of the application for the conduct of a secret ballot may do so.

In order for the ballot to be carried it requires 50% of the workforce to vote, and then 50% plus 1 of those who voted to vote in favour. Then if the ballot is successful the Union has a window of 30 days to take protected action and then the order expires. The Union is still required to give 3 clear days notice of the action.

Section 109ZG requires that the applicant for a ballot order is liable to pay the cost of holding the ballot. Section 109ZH provides that 80% of the cost will be met by the Commonwealth if the ballot is conducted by an authorised ballot agent, or if the ballot is conducted by the AEC, the applicant is discharged from liability to pay 80% of the cost. In practice this means that unions will now have to pay 20% of the cost of conducting secret ballots by organisations other than the union itself. Unions incur no such expense now.

PATTERN BARGAINING

The prohibition against pattern bargaining is again designed to weaken the bargaining position of employees. Section 106B(5) of the proposed bill places the burden of proof on the party (which will almost always be the relevant union) that is seeking to show they are not pattern bargaining to provide that is the case by reliance on section 106B(3).

ORDERS AGAINST INDUSTRIAL ACTION

The AIRC has been given a wider range of reasons under which it can make orders suspending or terminating bargaining periods, or restricting the ability to initiate bargaining periods, which can then restrict the ability to engage in protected action.

A much more radical proposal is found at section 112 of the Bill. Under this section the Minister will be given the authority to terminate a bargaining period if the Minister is satisfied of the grounds set out in the section to do so. The grounds set out in section 112 for which the Minister can act are in almost identical terms to those found at section 107G(3) dealing with the powers of the AIRC to suspend or terminate a bargaining period. The Minister need only satisfy him or herself to exercise this power. This layer of direct Government influence and control in the affairs of Australian workplaces is new, and usurps the independent role of the AIRC. The Government proposes to give itself the power to over rule the AIRC or act in a different manner to that of the AIRC at any time of its choosing.

Under the bill the AIRC must terminate a bargaining period if any of the grounds in the section are made out, however the power of the AIRC to arbitrate in these circumstances has been removed in this bill. The real impact of this change is that the AIRC has been given power to stop employees conducting industrial campaigns but stripped of the power to resolve the issues in dispute once it has stopped employees pursuing an outcome. The only circumstance where the AIRC can arbitrate is where the bargaining period is terminated due to impact of the action on the safety of the population or the economy.

In the event the Government is dissatisfied with a decision of the AIRC in this regard it can act to stop an industrial campaign it determines should be stopped, despite a different view from the AIRC. The Minister will also have the power under section 112 to order workers return to work and cease action, as well as remove protection from industrial action.

Under section 106A of the bill the burden of proof will be on the employee if employees cease work on Occupational Health and Safety grounds. Employees will

be required to prove that their action does not constitute industrial action because it was motivated by reasonable concern of an imminent risk to their health or safety.

AWARDS – PART VI

It appears that it is not sufficient for the government to attack the agreement process and allow employers to have free reign to coerce workers and reduce working entitlements. The award system that has served this country for 100 years is also under attack. For decades both businesses and unions have worked to develop comprehensive career paths that recognise national training qualifications. The Bill seeks to "simplify" the wage classifications. This will undermine the work done to build the skills in Australia --- skills that are seriously needed at a time when skills shortages are a key issue with businesses.

A reduced system of federal awards will be retained, but an Award Review Taskforce will be established to simplify them and reduce their number (new Division 4). Any specific provision in an agreement will modify or remove award conditions according to the terms of the agreement. This means that award provisions that are more generous than the Fair Pay and Conditions Standards will continue to apply, though they can be subject to negotiation if employees move to agreements in the future, or reduced under an AWA offered to a new employee as part of the employment offer. There will be a new list of allowable matters in awards (clause 116) as follows:

- ordinary time hours of work
- incentive-based payments and bonuses
- annual leave loadings
- ceremonial leave;
- public holidays
- monetary allowances
- loadings for working overtime or for shift work
- penalty rates
- redundancy pay, within the meaning of subsection
- stand-down provisions

- dispute settling procedures
- type of employment, such as full-time employment, casual or part-time employment and shift work
- limited conditions for outworkers.

Moreover, all awards must contain a clause permitting the employment of regular part-time workers, and are encouraged to include "facilitative" provisions (clause 116H), that is, provisions allowing agreement at the workplace or enterprise level (as opposed to running to the courts or commission) on how a particular term is to operate. There is no guidance on how such facilitative provisions will operate. Certain matters will not be allowed in awards (clause 116B) including:

(a) rights of an organisation of employers or employees to participate in, or represent an employer or employee in, the whole or part of a dispute settling procedure

(b) transfers from one type of employment to another type of employment;

(c) the number or proportion of employees that an employer may employ in a particular type of employment;

(d) prohibitions (whether direct or indirect) on an employer employing employees in a particular type of employment;

(e) the maximum or minimum hours of work for regular part-time employees;

(f) restrictions on the range or duration of training arrangements;

(g) restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;

(h) restrictions on the engagement of labour hire workers

(i) union picnic days;

(j) tallies;

(k) dispute resolution training leave;

(l) trade union training leave;

(m) any other matter prescribed by the regulations.

The AIRC will not be given the power to create any new awards unless it is to rationalise existing ones. While the AIRC may also still vary awards, it is only as long as any variation is consistent with Fair Pay Commission decisions, part of the award simplification process and promotes agreement-making at the workplace level. The role of awards as a safety net will be eliminated. The Bill proposes that there will be certain preserved conditions in awards that are preserved in agreements. These include:

- public holidays
- rest breaks (including meal breaks)
- incentive-based payments and bonuses
- annual leave loadings
- allowances
- penalty rates, and
- shift/overtime loadings.

However, these conditions are only "preserved" (see clause 117) if they are not specifically referred to in the agreement. They can be the subject of bargaining by the employee(s) and employer. A collective agreement or AWA will be able to modify or remove these conditions by indicating in the agreement how they will be either changed or removed. In the case of new employees under AWA's, they can be removed altogether. It opens the way from a gradual erosion of employee entitlements.

Section 116(3) explicitly states that an Award may include allowable award matters only to the extent that the terms provide minimum safety net entitlements only. This section could only be included with the express purpose of preventing awards from keeping pace with the industrial conditions and standards prevailing in the industry in which the award applies. Such a provision in the Bill is designed to freeze awards and to speed up the process of making awards irrelevant.

Section 116(4) is seeking to limit entitlement to redundancy to deal only with circumstances where an employee is genuinely redundant, which appears to mean if someone who has traditionally been entitled to redundancy where they have accepted an alternative position on lower pay rather then ending the relationship completely will be made ineligible for redundancy.

TRANSMISSION OF BUSINESS – PART VIAA

The transmission of business provisions completely rewrite the way such arrangements apply to the detriment of employees who will have the misfortune of working for a business that changes owners if this bill becomes law. This area of industrial law has been the subject of several major test cases in recent years where Court rulings have clarified the circumstances in which a transmission occurs and employee's entitlements are preserved where transmission occurs. The legislative changes will undermine existing legislative entitlements that have been upheld in the Courts. The bill by statute will completely over-ride the protection of entitlements that have been upheld in the important Court decisions referred to earlier.

Under the proposed legislation conditions in awards and agreements will not transfer to a new employer from an old employer if no employees accept employment with the new employer. The transmitted awards, collective agreements and AWA's will only apply to the transferred employees at the new business. Other employees working at the business who did not transfer across from the previous owner can be employed on completely different arrangements to workers alongside them performing the same work who transferred from the old employer.

Following the transmission of a business a transmitted collective agreement, AWA's and award provisions that did apply will have a maximum period of 12 months to continue to apply. After 12 months employees will be covered by whichever instrument is capable of applying to them.

What this new system clearly allows for is the dragging down of the conditions of an existing workforce at an existing workplace if they work for an employer who sells the business. What the new law does is make it much easier to have a workforce performing the same work for the same employer at the same workplace on completely different terms and conditions.

A hypothetical example could be, an employer who owned and operated a laundry has a collective agreement with 10 employees at the laundry that are paid a pay rate of

$16 per hour, and long service leave accruing at 1.3 weeks per years of service in addition to other standard conditions. The owner sells the laundry to a new owner.

The new owner is required to observe the existing conditions of employment only for the pre-existing 10 employees but all new employee who commence from that point can be employed on a lower pay rate (for example $12.75 per hour) and will accrue long service leave at a less generous rate (for example at .86 weeks per year instead of 1.3 weeks) for performing the same work alongside the rest of the workforce at the same laundry. After 12 months because the business changed hands the pre-existing 10 employees will cease to be entitled to the conditions that had always applied at their workplace, and the employer can drop the whole workforce back to the inferior conditions.

Under this bill, unlike the current law, whenever a business changes hands and a genuine transmission of business occurs, after 12 months all employees who continued in employment following the transmission will go backwards and lose the right to all entitlements provided previously in agreements and awards. There will no longer be a requirement on the purchaser of a business to observe the pre-existing employment conditions for future employees. This is a one step forward two steps back approach to employee's terms and conditions of employment, and will only lead to fracturing and disharmony in workplaces for very obvious reasons.

UNFAIR DISMISSAL

Again in the area of Unfair Dismissal employees will suffer a massive erosion of existing rights. The concept of a "fair go" referred to as being lost in the introduction of this submission is no better demonstrated then in this part of the bill. As has been well documented nearly all employers in Australia fall into the category of employing less then 100 employees.

The proposition that those excluded from the unfair dismissal jurisdiction of the Industrial Relations Commission can still pursue unlawful dismissal before the Court system if they have been terminated for a prohibited reason completely misleads the broader public who are not familiar with the meaning of these expressions. In the various state industrial jurisdictions and in the federal system, unlawful dismissal applications only represent a tiny proportion of applications filed. Perhaps 1 or 2 in every 100 applications filed.

The overwhelming majority of dismissals that are contested by employees are contested because they were unfair, not because they were unlawful as defined by the legislation. Unlawful dismissal applications under this system will require the bringing of an action in the Federal Court. This is clearly beyond the scope of the overwhelming majority of employees. The $4000 proposed Government assistance in this regard is merely to provide advice about the prospects of a case, it does not fund the running of such a case which could easily run into tens of thousands of dollars.

The bill knocks out the capacity of approximately 4 million Australian workers from any form of redress if they are unfairly dismissed. For those employers with more than 100 employees who still may access the jurisdiction, the system of processing unfair dismissal applications has been changed to allow for the AIRC to deal with applications on the papers if it chooses.

Further to this, even larger businesses with greater than 100 employees will be exempt for all employees with less than 6 months service. Seasonal workers will also be excluded altogether.

Dismissals based on operational reasons of the company will be exempt. This means that an employee will no longer have the opportunity to argue that they were unfairly selected for redundancy.

The changes to the unfair dismissal laws are contrary to ILO conventions that require society to provide fair and reasonable remedies to harsh and unreasonable termination of workers by employers. There is no justification to target businesses of 100 or less employees. Even those left within the system have their exclusion period doubled to six months. No evidence has been produced that supports contentions that such changes will increase employment. Even if the Government's rhetoric is to be believed that companies have not been employing workers because of the unfair dismissal laws, it is equally probable that companies have been avoiding down sizing businesses for fear of unfair dismissal claims. These companies may now freely dismiss their workers without any fear of recourse to claims. On this basis, Australia may see an increase in dismissals instead of an increase in employment.

The reality is that the primary goal of business is to increase profit. If there is reduction in labour costs through cheaper wages and conditions, employers are not of a matter of course going to increase labour. It is more likely that the additional savings will be put into profits.

Overall these provisions will lead to increased job insecurity, additional strain on social needs, a lower cost of living creating more working poor. How can Australia promote itself as a progressive, innovative country when it seeks to introduce laws that have proven to be destructive to workers in the countries we seek to mirror, countries that have significant unemployment and people living in poverty. Reasonable minimum wages and conditions are fundamental to Australia, to attack these is to take this country into a future of uncertainty and insecurity that has never been seen before. Which even at the most basic level will effect family income leading to a reduction in disposable income and eventual effect on the economy.

RIGHT OF ENTRY

s.221 of the draft bill has included wording regarding right of entry for discussion purposes. That right is restricted to where an employee "carries out work on the premises which is covered by an award or collective agreement that binds the permit holder's organisation; and is a member or eligible to be a member off the permit holder's organisation". This would effectively rule out any possibility of a union getting right of entry to a workplace to talk to employees who wish to speak the union, and are in fact even members of the union if the workplace is covered by a non-union agreement. This is a completely unacceptable curtailment of the most basic rights in a democratic society.

Unions face much tougher right of entry requirements under the bill and permits will only be available to those who pass a "fit and proper" test, though no guidance is given here on what constitutes 'fit and proper' (section 203). No right of entry for "discussion" purposes will apply when all employees are on Australian Workplace Agreements (AWAs). A union will only be able to enter a workplace to investigate breaches of AWA conditions with the written consent of the relevant employee. When investigating breaches of workplace laws, union officials will have to provide employers with specific details about their inquiry (clauses 208-209). This will jeopardize an employee's ability to confidentially have breaches of employment conditions investigated. Employers will be able to specify that meetings or interviews will occur in a particular room or areas of the workplace, and even nominate a specified route to the location and unions must comply with all reasonable employer requests on this matter thereby reducing the capacity of the official to investigate breaches, especially if the designated meeting area is 'just outside the managers door'!. Important and onerous sanctions are imposed:

- revocation of the union's right of entry permit
- suspension of the union's right of entry permit
- placement of limiting conditions on right of entry as determined by the AIRC. .

REGISTERED ORGANISATIONS

Under the new Bill, there are 2 options for state registered unions to participate in the new IR system. State based unions that are substantially the same as their federal counterpart will in the future appear to be limited to regulating state awards and instruments covering unincorporated organisations.

These types of unions will gradually have their coverage weakened or lost. State based unions could potentially,

(a) amalgamate with their federal counter part and potentially lose differing State coverage, or
(b) remain separate during the transitional period and during the 3 year transition period, seek to show that they are different in character from their Federal counter part and are therefore eligible to become Federal unions.

The AWU(Q) believes that the test for a state registered organisation to be granted full registration as a federal organisation on the basis that it is not substantially the same as an affiliated federal organisation needs to be a liberal one.

The AWU(Q) has, jointly with the Queensland Branch of the AWU, employed and elected staff and officials, and has certain other organisational similarities, however, there are significant differences in the eligibility rules and list of callings between the State registered AWU(Q) and the AWU Queensland Branch.

Differences between the organisations include eligibility for membership of a wide range of workers in Queensland who traditionally have been represented by the AWU(Q). While the federal AWU has some coverage similar to AWU(Q) callings, this is limited. The AWU(Q) has for example, traditionally and independently represented a range of industries and callings, this list is not exhaustive but examples include:

- health industry: public hospitals, private hospitals, aged care, hostels, in home care, and disability care,

- a range of state government departments including work in youth detention and national park rangers and the department of primary industries,
- the broader hospitality and tourism industry, caravan parks and eco tourism
- fast food industry
- boarding houses and boarding school accommodation,
- shop assistants, van and travelling salesmen,
- sugar industry workers generally in both crushing and non crushing seasons,
- all workers in the local government industry,
- employees in the entertainment, and theatrical and film industries,
- rubber and plastics industry,
- dairy industry,
- timber and timber products industry,
- warehousing and distribution industry, transport including cold storage,
- all forms of bulk handling,
- transport industry,
- all general labour including builders labourers in the building industry,
- prisons,
- lifesaving,
- cleaners and watchmen
- veterinary and animal husbandry
- paper and cardboard manufacturing

These industries and callings represent a substantial component of AWU(Q) membership and activity. The probability of demarcation concerning overlapping coverage remains a significant possibility if existing coverage arrangements in State jurisdictions are not reflected in a significant shift from the State jurisdiction to the Federal.

If State unions such as the AWU(Q) and Federal unions such as the AWU (and other unions perhaps) maintain the de facto status quo of union coverage, upon a transfer to the Federal system, the potential for demarcation disputes will be greatly diminished. This will ensure that membership will continue to remain industrially represented by

unions and officials that have historically represented these employees industrial interests.

CONCLUSION

Currently in the United States, Walmart, one of that country's worst employers for its anti-union behaviour and poor wages and conditions, is calling for an increase in the minimum wage. This call is made because Walmart has noticed that its customers do not have sufficient disposable income to buy non-core items.

This is Australia's future, a Bill that guarantees a minimum wage that will not drop below the 2005 rate. The minimum wage in the US has not increased in 8 years. It is currently $5.15 per hour. For those workers in the service industries that receive gratuities, the minimum wage is $2.13 per hour.

The similarities between the US system and the Government's proposal is more than a coincidence. The reduction in underpinning minimum standards, the reliance on agreements, the removal of unfair dismissal laws and the removal of fair and reasonable access to union representation. The difference is that the Government's proposal goes further as outlined above. The restrictions on what can be bargained, the ability to do individual agreements and the undermining of the principals of contract law by allowing AWA's to override the collective agreement.

It is not difficult to see the future direction of the Government. The US has a body that controls the minimum wage and on a national level regulates the collective agreement process and enforcement. Minimum standards being the minimum wage and hours of work are prescribed by the Fair Labor Standards Act. Any improvement on these wages and conditions are solely delivered through bargaining agreements. No remedies to unfair dismissals exist, only unlawful dismissals.

Unlike the US system however, Australia is proposing even harsher labour laws through AWA's. The Bill seeks to shift the minimum wage system, limit awards and standards, limit access to unfair dismissals and have bargaining agreements as the primary mechanism for wages and conditions, but with significant restrictions.

The most significant difference is however, as harsh and anti-worker as the US laws are and the unequal bargaining power that exists, Australia will be much more

detrimental through limiting what bargaining agreements can contain and allowing such agreements to be overridden by individual contracts. Australians will not be able to freely negotiate with their employer for all of their employment needs. This includes prohibiting pattern bargaining, a right that exists in the US. By limited collective agreement terms, common law contracts that fail to provide average workers easy access to deal with grievances and enforcement, will be the only option to deal with the prohibited issues. This is not sustainable.

The more beneficial provisions of the US have of course been ignored in the development of this Bill. Such provisions as compulsory bargaining fees upon obtained 51% unionised workers at a workplace, the ability to require businesses to produce operational documents and the ability to have these rights enforced by the Labor Relations Board.

The AWU does not promote or support the US system in the selective manner adopted by the Government. A thorough analysis of what is suitable to the Australian working culture and economic stability is required before any political party in Australia should consider replacing a system that has served Australia well for 100 years. The Union brings the similarities with the US to the attention of the Senate for the purpose of giving a glimpse of where this country is heading if common sense and a thorough consideration of all factors is not adopted. Australia is risking its social structure by adopting and extending the most anti-worker detrimental laws of the US system. This is not a future that the Government should be wanting for Australia. This can only promote Australia on the international stage as a poor nation and lacks foresight into the promotion and protection of its own workers. The gap between the wealthy and the poor will only increase under the proposed system. The Government's vision is not unique, Australia needs to learn from the mistakes of other countries not copy them.

The AWU submits that the Senate should ensure extensive public hearings are held throughout Australia to allow adequate opportunity for all interested community, union and business groups to be heard. A system that has been in place for 100 years should not be replaced without proper regard being had to all submissions and public appearances. To do so would be at the detriment of the democratic political system

that Australia seeks to promote. There is an obligation, traditionally held by the Senate to ensure proper consideration into matters of such importance.