Attachment B

Submissions of
The Australian Workers' Union,
Victorian Branch

Authorised by
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Victorian Branch Secretary

SUBMISSIONS OF VICTORIAN BRANCH - AWU

CONTENTS:

LESSONS FROM STATE – FEDERAL TRANSFER (Vic experience)

Prior to 1993 The Australian Workers Union Victorian Branch operated in both the Victorian Industrial Relations System and the Federal Industrial Relations system. The AWU was party to 38 common rule awards that operated under the Victorian Act.

Some of the Victorian common rule awards mirrored existing Federal Awards. An example of this was the *Victorian Excavation and Road Workers Award*, which mirrored in most parts the Federal *Australian Workers Union Construction and Maintenance Award.* As a result all road construction workers in the State of Victoria received the same minimum conditions of employment.

Other State Awards that mirrored Federal Awards included the following:

State Common Rule	**Federal Award**
Shearing Industry	Pastoral Award
Agricultural and Pastoral	Part of the Pastoral Award
Cement Articles	Cement and Concrete Prod
Tar and Bitumen	Asphalt and Bitumen
Excavation and Road Works	AWU Construction & Maint
Fruit Growing	Federal Fruit Growing
Wharfs and Jetties	AWU Construction & Maint
Pre Mixed Concrete	Concrete Batching Plants

Many other Victorian common rule awards did not have Federal counterparts, these included awards such as:

Cement	Nurserymen's
Cemetery Employees	Poultry Farm Workers
Sugar	Quarry
Dairy Farm Workers	Sandpit
Garden Employees	Salt Workers
Lime Burners	Sportsground Maint
Mineral Earths	Undertakers

Mineral Prospecting Vegetable Growers

Following the election of the Kennett Liberal Government all common rule awards were abolished in March 2003 and replaced by industry sector rates. The whole Victorian system was then abolished and industrial relations powers handed over to the Commonwealth.

Employees previously covered by Victorian State common rule awards were covered by Schedule 1A provisions of the *Workplace Relations Act 1996.*

DISADVANTAGE FOR THOSE EMPLOYEES UNDER SCHEDULE 1A

Schedule 1A employees were clearly disadvantaged compared to employees engaged under Federal Award conditions. Schedule 1A only provided for 5 minimum conditions of employment they are:

- Minimum wage for industry classifications
- Four weeks annual leave p.a
- Personal leave (5 days sick leave + 2 days bereavement)
- Parental Leave (unpaid)
- Notice of termination

The situation for Schedule 1A employees resembles the government proposal for 5 statutory minima.

All other conditions are removed including overtime rates, shift penalties and allowances. More than 300 000 Victorian workers traditionally covered under State common rule awards lost conditions over night. As a result the following occurred:

No Paid Overtime.

Employees who under the award received time/half and double time for working after eight hours or in excess of 38 hours per week were now only paid at single time for any over time worked. For many years schedule 1A employees received no paid overtime at all. In some instances employees working an average 10 hours overtime a week were $150.00 per week worse off. Employees could not refuse overtime as working reasonable overtime was part of their contract of employment.

No penalty rates for work on weekends, nights and/ or public holidays.

Employees in the sportsground and venue presentation sectors often were **required to work** on weekends and public holidays. Over night some employers refused to pay penalty rates which resulted in employees take home pay being significantly reduced. Although employers refused to pay penalty rates they still forced employees to work weekends and public holidays.

With no award to fall back on, employees were disadvantaged in a number of other ways:

Lower rate of pay compared to award employees (particularly in higher, more skilled classifications)

No accident make-up pay while on WorkCover

Award employees received between 26 to 52 weeks accident make up pay. With the removal of the Awards this was reduced to the minimum Workers Compensation Act standard.

Other disadvantages include:

No additional loading for regular night or afternoon shifts
Minimal regulation of employer record keeping and pay slips
No redundancy pay

HOW PEOPLE FELL THROUGH THE NET EVEN AFTER PROCESS OF COMMON RULE APPLICATION

Following the hand over of the Victorian system to the Commonwealth, the AWU (Victorian Branch) embarked on making new Federal Awards or roping companies into existing Federal Awards to protect the wages and conditions of our members. Employers within these industries have constantly opposed the making of new awards to cover those employees still on schedule 1A provisions. This is clearly because the financial advantage currently available to them by providing non-award conditions would be removed. Consequently, employer associations saw the opportunity to negotiate reduced standards. It was only in the largely unionised industries the AWU was able to transfer employees to Federal Awards.

In 2004 the Bracks' Labor Government reached an understanding with the Commonwealth to reintroduce Common Rule Awards in Victoria. These common rule awards would operate in the federal system and be based on existing Federal Awards. This was a massive exercise. It took nearly one year in dealing with procedural issues to make approximately 30 Awards apply by common rule in Victoria.

Even after having large numbers of awards declared common rule many thousands of Victorian workers are still only covered by Schedule 1 A conditions. These are mainly in areas where there was no existing Federal Award coverage. These include:

- Gardeners
- Flower and plant growers (nurseries)
- Dairy workers
- Poultry
- Exhibition/entertainment
- Fishing

For employees relying on Schedule 1A conditions rather than commonly applied federal awards, it means the following:

- No paid overtime

- Lower rate of pay compared to award employees (particularly in higher, more skilled classifications)
- No penalty rates for work on weekends, nights and/or public holidays
- No accident make-up pay while on WorkCover
- No additional loading for regular night or afternoon shifts
- Minimal regulation of employer record keeping and pay slips
- No redundancy pay

In 2002 the AWU did a comparison of the terms and conditions of Schedule 1A employees compared to equivalent federal award employees. This information was prepared as part of submissions presented to the AIRC for an amount higher than the safety net adjustment to flow on to these employees. The information is instructive because the proposed statutory minima mirror the Schedule 1A matters. There is clearly a significant financial disadvantage to minima employees when compared to their federal award counterparts. **NOTE: the following figures applied in 2002.** The gap has not been rectified.

PROVISIONS	**FEDERAL AWARD** - *gardener*	**INDUSTRY SECTOR**
WAGES	**Sportsground Maintenance and Venue Presentation (Victoria) Award 1995**	**Cultural & Recreational Services [AW774566]]**
1. Routine gardener 2. Exp. gardener 3. tradesperson	1. 437.20 / 11.50 2. 483.90 / 12.73 3. 507.20 / 13.35	1. 11.05 2. 11.50 3. 13.34 (level 5)
PART TIME		
1. 2. 3.	1. 12.65 (part timers receive +10%) 2. 14.00 3. 14.68	1. 11.05 2. 11.50 3. 13.34
CASUAL		
1. 2. 3.	1. 14.38 2. 15.91 3. 16.69	1. 13.81 2. 14.38 3. 16.68
JUNIOR		
1. 16 yr old 2. 17 3. 18 4. 19	1. 8.63 2. 8.63 3. 8.63 4. 11.50	1. 6.47 2. 7.76 3. 9.07 4. 10.36
PENALTY RATES		
	• All work after 38 OR outside spread OR in excess 8 paid at penalty rate • Part timers paid penalty rates for all work outside written agreed hours	No penalty rates No overtime pay

PROVISIONS	FEDERAL AWARD - *gardener*	INDUSTRY SECTOR
	• x 1.5 for first 2 hours then double time • double time on Sunday • x 2.5 public holidays	
REGULATION OF HOURS		
	• 30 mins no later than 5 hours or paid 1.5 • Right to 1 RDO pmth • Paid 10 mins twice each day rest break & paid crib break of 20 mins if working overtime • Right to 10 hr breaks between work or paid double time • Part timers: minimum 8 full days off per month & can only work maximum 10 days in succession without an RDO	• 30 mins no later than 5 hours
	• Min engagement casual 4 hrs • Min engagement part timer 3 hrs	No minimum engagement
TERMINATION		
	• Notice • One day's time off during each week of notice to seek employment • Redundancy (TCR)	Notice only
ALLOWANCES		
	Leading hands (10.90 – 23.40 pwk); Tractor (14.70 pwk); Curator allowance (27 pwk); Tool (9.60 pwk); Meal (6.70 p meal) First aid (9.60 pwk) Total potential allowances pwk (excluding meals) **84.30**	No allowances 0
	Full reimbursement for protective clothing & equipment	No clothing reimbursement
	Accident make-up pay for 39 wks	No make-up provision
LEAVE		
	• 4 wks annual leave • shift workers: 7 days extra • leave loading 17.5%	4 wks annual leave
	• 7 days 1st year sick leave • 10 days subsequent years	5 days sick leave
	2 days bereavement leave	No bereavement leave
	5 days carer's leave	No carer's leave
	12 months unpaid parental leave	12 months unpaid parental leave
	Paid jury service	No paid jury leave

PROVISIONS	FEDERAL AWARD - *gardener*	INDUSTRY SECTOR
Example: part time level 1 gardener usually works 25 hrs. ***Agrees to work 3 hours overtime.***	***316.25*** ***379.50 + 6.70 meal = 386.20***	***276.25*** ***309.40***
Example: casual who does 10 hrs labouring work one-off (day). ***Performs same work by night.***	***158.18*** ***273.22***	***138.10*** ***138.10***

PROVISIONS	FEDERAL AWARD – *agriculture, nursery*	INDUSTRY SECTOR
WAGES **PERMANENT**	**Horticultural Industry (AWU) Award – (as it applies to schedule B&C respondents – mostly Shepparton area)**	**Agricultural, Forestry & Fishing Industry [AW767376]**
1. picker 2. packer & sorter 3. forklift operator 4. quality control 5. tradesperson	1. 10.88 (413.40) 2. 11.32 (430.10) 3. 11.76 (446.80) 4. 12.36 (469.70) 5. 13.35 (507.20)	1. 10.88 2. 10.88 3. 11.04 4. 11.59
1. picker 2. packer & sorter 3. forklift operator 4. quality control 5. tradesperson	1. 12.78 2. 13.30 3. 13.82 4. 14.52 5. 15.68	1. 12.78 2. 12.78 3. 12.97 4. 13.62
PENALTY RATES		
	• ordinary hours averaged 152 over 4 wks within 6-6 Monday to Friday. Beyond this is overtime. • Overtime is x1.5	No penalty rates No overtime pay

PROVISIONS	FEDERAL AWARD – *agriculture, nursery*	INDUSTRY SECTOR
	• Sunday work x2 (except during harvest: x1.5) • X2 public holidays	
	• Afternoon & night shift 15% loading • All overtime x1.5	
REGULATION OF HOURS		
	• 30 mins no later than 5 hours • paid 10 rest break each morning	• 30 mins no later than 5 hours
	• Min engagement casual 2 hrs	No minimum engagement
TERMINATION		
	• Notice • One day's time off during each week of notice to seek employment • Redundancy (TCR)	Notice only
ALLOWANCES		
	Leading hands (13.50 – 28.25 pwk); wet work (4.45 p day); Meal (8.15 p meal) First aid (10.10 pwk); travel time paid & accommodation costs for work-related travel Total potential allowances pwk (excluding meals) **60.60**	No allowances **0**
	Accident make-up pay for 26 wks	No make-up provision
LEAVE		
	• 4 wks annual leave • shift workers: 7 days extra • leave loading 17.5%	4 wks annual leave
	• 7 days 1st year sick leave • 10 days subsequent years	5 days sick leave
	2 days bereavement leave	No bereavement leave
	5 days carer's leave	No carer's leave
	12 months unpaid parental leave	12 months leave
<u>Example</u>: Casual fruit packer works regular 40 hr weeks, no RDO.	***2,021.60 + 159.60 (OT) = 2,181.20 p.mth (545.30 pwk)***	***2,044.80 p.mth (511.20 pwk)***

PROVISIONS	FEDERAL AWARD – *agriculture, nursery*	INDUSTRY SECTOR
Permanent fruit packer works regular 40 hr wk, no RDO.	*1,720.40 + 135.84 (OT) = 1,856.24 p.mth (464.06 pwk)*	*1,653.76 p.mth (413.44 pwk)*
Example: trades qualified nursery horticulturalist. *Supervises 2 employees & has first aid certificate.*	*507.20* *530.80*	*440.42* *440.42*
Example: permanent forklift operator on shift.	*513.82*	*419.52*

PROVISIONS	FEDERAL AWARD – *dairy worker*	INDUSTRY SECTOR
WAGES **PERMANENT**	**NO EXISTING FEDERAL AWARD** **- regulated by State Awards** **cf. DAIRYING INDUSTRY EMPLOYEES (STATE) NSW**	**Agricultural, Forestry & Fishing Industry [AW767376]**
1. Support 2. General 3. Specialist	1. 11.32 (430.20) 2. 11.55 (438.90) 3. 13.35 (507.20)	2. 10.88 (413.44) 3. 11.04 (419.52) 5. 11.68 (443.84)
CASUAL		
1. Support 2. General 3. Specialist	1. 13.02 + 1.08 annual leave = 14.10 2. 13.28 + 1.11 = 14.39 3. 15.35 + 1.28 = 16.63	2. 12.78 3. 12.97 5. 13.72
PENALTY RATES		
	• ordinary hours av 38 pwk. Beyond this is overtime. • Overtime is x 1.5 for two hours then x 2 • All ordinary time on Saturday x 1.25 • All ordinary time on Sunday x 1.5 • x 2.5 public holidays	No penalty rates No overtime pay

PROVISIONS	FEDERAL AWARD – *dairy worker*	INDUSTRY SECTOR
REGULATION OF HOURS		
	• Min engagement casual 2 hrs • Minimum engagement for call back 2 hrs	No minimum engagement
TERMINATION		
	• Notice • One day's time off during each week of notice to seek employment • Redundancy (up to 20 wks depending service)	Notice only
ALLOWANCES		
	Meal (6.60 p meal) First aid (8.25 pwk); travel time paid; travel allowance (0.41 pkm); overnight allowance (34.90 p.night)	No allowances
	Provision of protective clothing & tools	No provision
	Accident make-up pay for 26 wks	No make-up provision
LEAVE		
	• 4 wks annual leave • leave loading 17.5%	4 wks annual leave
	• 5 days 1st year sick leave • 8 days subsequent years	5 days sick leave
	2 days bereavement leave	No bereavement leave
	May use any sick leave as carer's leave	No carer's leave
	Paid jury service leave	No paid jury leave
	12 months unpaid parental leave	12 months unpaid parental leave
Example: full time experienced dairy farmer works 50 hours pwk	***(10 hr days; OT @ x 1.5 and RDO monthly) 947.75 incl. meal allowance 980.75***	***443.84***
Example: casual support does 2 hrs milking every morning (7 days)	***141.00 + 77.55 penalty = 218.55***	***178.92***

PROVISIONS	FEDERAL AWARD – *piggery worker*	INDUSTRY SECTOR
WAGES PERMANENT	**PIG BREEDING AND RAISING AWARD 1992 [P1562]**	**Agricultural, Forestry & Fishing [AW767376]**
1. non experienced 2. skilled 3. formally trained 4. 2 yrs experience	1. 11.32 (430.00) 2. 11.91 (452.60) 3. 12.46 (473.50) 4. 12.88 (489.60)	2. 10.88 (413.44) 2. 10.88 (413.44) 3. 11.04 (419.52) 5. 11.68 (443.84)
CASUAL		
1. 2. 3. 4.	1. 13.58 2. 14.29 3. 14.95 4. 15.46	2. 12.78 2. 12.78 3. 12.97 5. 13.72
PENALTY RATES		
	• ordinary hours av 152 per month; 8 p.d within 6-6 Monday to Friday. Otherwise overtime. • Ordinary Saturday is x 1.5; overtime Saturday is x 1.5 for first two hours then x 2 • Overtime is x 1.5 for two hours then x 2 • Sunday x 1.5 • x 2.5 public holidays	No penalty rates No overtime pay
	Afternoon & night shift 15% loading	No shift penalty
REGULATION OF HOURS		
	• Min engagement 3 hrs • Paid overtime break of 30 minutes	No minimum engagement
TERMINATION		
	• Notice • One day's time off during each week of notice to seek employment • Redundancy (up to 20 wks depending service)	Notice only
ALLOWANCES		
	Meal (8.00 p meal) First aid (1.65 p day)	No allowances
	Provision of protective clothing & tools	No provision
	Accident make-up pay for 26 wks	No make-up provision
LEAVE		
	• 4 wks annual leave • additional 7 days for shiftworkers • leave loading 17.5%	4 wks annual leave
	• 5 days 1st year sick leave	5 days sick leave

PROVISIONS	FEDERAL AWARD – *piggery worker*	INDUSTRY SECTOR
	• 8 days subsequent years	
	2 days bereavement leave	No bereavement leave
	May use any sick leave as carer's leave	No carer's leave
	Paid jury service leave	No paid jury leave
	12 months unpaid parental leave	12 months leave
Example: casual 6 months experience, skilled, works 38 hrs	***543.02***	***485.64***
Example: permanent employee, completed piggery apprent'p works afternoon shifts; first aid quals.	***571.29***	***443.84***

There are many lessons we can learn from the schedule 1A experience.

Overnight employees required to work overtime or on weekends had their take home pay substantially reduced. Other Award conditions that had existed in excess of twenty.

The AWU recommends that the Awards remain comprehensive in content, represent the minimum conditions of employment and apply by common rule. Should an employee not be covered by an agreement or an agreement is terminated then the Award should become the applicable minimum standard.

AUSTRALIAN WORKPLACE AGREEMENTS

Under the new Work Choices legislation AWAs will exclude both collective agreements and Awards. Even where employees and employers are party to a collective agreement, an AWA will override and exclude existing agreements.

In most circumstances this will **completely undermine an employees right to collective bargaining**. If some employees are covered by collective agreements and some by AWAs with different expiry dates protected industrial action by the workforce at a particular establishment will be come impossible. Employers could have their entire workforce covered by AWAs with different expiry dates, which in renders impossible collective bargaining or protected action. Even where a collective agreement exists new or existing employees could be put onto AWAs with worse wages and conditions.

AWAs will offer no protection for new or industrial weak employees. The position of many employers shall be "here is the offer - take it or leave."

The AWU submits that choice needs to be based on genuine consent and genuine options for employees. Employers have substantially greater bargaining capacity. The law should compel employers to genuinely bargain with the employee/union and reasonably consider options put by the employer as to the preferred form of an agreement.

AWAs by their nature make collective negotiations near impossible. The AWU has increasing experience of disgruntled employees who seek union assistance about the employers desire to make an AWA or their own desire to get off their AWA.

The following are two recent examples the Victorian branch has with how AWAs operate to disadvantage employees.

Example 1 – nursery industry: employer not employee choice

There is no federal award for nurseries. These employees are still covered by old Schedule 1A provisions. These are minimum wage employees.

The employees got together (before calling the union) and signed a petition saying they would rather have a single collective agreement. More than 80% of the employees signed in support. The employer continued to push for AWAs and circulated individual documents. The Union was called in and we notified of our status bargaining agents for approximately half the employees. The employer refused to speak to us about that group of employees as a whole. Instead we conducted some 40 meetings to discuss each employee separately.

Three problems arose from this:

1. This is a costly, time consuming and inefficient way to address site-wide employment issues. No particular advantage could be gained given the nursery workers tended to perform one of 4-5 jobs.
2. The employer's clear intention was to NOT negotiate the content of these agreements. The delays meant that union members who wanted to negotiate (preferably collectively) were $1 per hour worse off than those who accepted the agreements without question. Despite union attempts to expedite the process, in the face of employer reluctance, this delay extended some 8 months.
3. The negotiation framework worked to naturally disadvantage employees in negotiations. A core issue for members was the creation of a skills based classification structure with clear duties and attached transparent pay scales. This claim of members was effectively defeated by the very nature of negotiations themselves. No nursery-wide claim could be discussed. This framework was essentially prejudicial to employee interests. No agreement about a classification system was reached.

Example 2 - Factory making manufacturing parts: No independent check on managerial abuse of process

Employees (about 40) are low-skilled and low-waged migrant employees. It is a highly ethnically diverse workforce. All communications require several language translations. The work is heavy, hot and tedious.

The employer is adamant about shifting all employees from the *Metal Engineering and Associated Industries Award* and onto AWAs. Employees rang the union, 100% signed as members within one week and all expressed their desire to stop 'negotiations' about AWAs in preference for a union negotiated agreement. We contacted the OEA to request that those three or four (3-4) who had signed not be approved. At that point we discovered that in fact some 60% of the workforce had already 'signed'. The employer lodged applications electronically. Only 3 employees had received letters from the OEA inquiring as to their consent. The following problems emerged:

- Electronic filing does not require demonstration of signature. No effective statutory scrutiny occurs. In this instance, most employees were not aware to having agreed to anything. The OEA was not able to confirm whether agreement had in fact been reached. An investigation is currently being undertaken.
- All employees had been called to a mass meeting with management and AWAs were circulated. Employees were told (in English) that these were their agreements. They should sign them and return them either immediately or the next day. No explanation of the agreement was offered. Few employees properly understood what was going on. No special consideration of their particular circumstances was given by the employer. Those who signed at the meeting (a breach of the statutory requirement for 14 days consideration time) were aware they had 'agreed' to something. No employee at that workplace has ever received a copy of these AWA. Any copies remaining in the hands of employees are simply those initially circulated at that meeting.
- No adequate enforcement or compliance mechanism exists. The OEA has undertaken to investigate, but this occurs laboriously (because individually despite the employer using a collective process) and retrospectively. No independent check on managerial conduct exists throughout. Had the union been involved in the process, management would have been accountable for a fair process and employees assisted.
- The OEA had consistently incorrect information about names and addresses of employees, relying as it is on employer-provided information. Information sheets were apparently sent to the wrong locations in all but 3 instances.

The OEA has been formally cooperative. Again we face the difficulty and inefficiency of dealing with each individual case, despite their jobs as machine operators being substantially identical. Each member has to prepare individual statements in a foreign language. An investigation into each individual circumstance has commenced. This is an absurdly inefficient method, given the collective nature of the process.

The problem here is that the OEA relied solely on information supplied to them by the employer. No independent check in the system was able to prevent employer abuse. Our next steps are to establish this abuse of process in relation to each individual

employee, make application for reconsideration of approval and have the AWAs overturned. We expect this to take several months. Meanwhile, employees are prohibited from taking protected industrial action to pursue a collective agreement and the employer is refusing to negotiate.

UNION PROVISIONS - RIGHT OF ENTRY

The new right of entry provisions prevents Union Officials from meeting with employees in a manner that would ensure privacy and confidentiality for members. The proposals in fact will **destroy the anonymity of members** which is essential for workers whose employment is precarious or whose employer is hostile to unions. Employers will be able to dictate where employees can meet Union officials. If a manager so desires he could request that meetings take place in full view of other employees or even outside the bosses office.

Unions will be forced to **dob** in a member we believe to be under paid. No longer will we be able to check all wage records but have to specify the employees who placed the complaint. This exposes union members to victimisation. Given the difficulty and expense of unlawful termination proceedings, it is more effective to build in protections from victimisation for union members for the duration of their employment.

The AWU submits the:

- **Proposals destroy the anonymity of members. Members will suffer repercussions contrary to the spirit of freedom of association**
- **Location of meeting important, should be lunch room**
- **Need to broaden record keeping requirements on employers re non-award employees**

FURTHER AWARD SIMPLIFICATION

Award simplification affects the conditions of the most disadvantaged

Our estimate is that about 30% of the industries that The Australian Workers' Union (Victorian Branch) cover do not have any enterprise agreements in place.
They include:

- fruit growing and packing
- horse training
- exhibition construction and servicing
- shearing
- fun parlours, fairs, entertainment
- sportsgrounds
- landscape gardening
- nurseries
- dairy
- ski resorts
- some catering facilities
- labour hire companies

Workers in these industries are the most vulnerable of Australian workforce. They are difficult to assist (working in small, isolated workplaces) and union/employee interaction tends to occur only when problems arise. Because of this, employees in the above industries depend heavily on the goodwill of their employer and any safety net decisions made by the Australian Industrial Relations Commission. This group is not in a position to bargain for pay increases. The bulk of our work for this group involves unfair dismissals and award variations. Any changes to the award system directly effects their working lives.

Specific problems with removing proposed items

Superannuation – Of the above list, superannuation is contained in the *Horse Training Industry Award, Sportsground Maintenance & Venue Presentation Award, Horticultural Award, Pastoral Industry Award, Exhibition Industry Award, Catering (Victoria) Award.* There are also a number of specific superannuation awards covering these industries, for example, *The Industrial Catering And Cleaning (AWU and LHMU) Superannuation Award* 1988.

That is, all of the industries most heavily reliant on award conditions have superannuation provisions in their awards. Each of these will provide arrangements ***superior*** to the legislation. In the Pastoral Award for example the superannuation provisions address the particular work arrangements in place for contract shearers. These industries do NOT tend to have enterprise agreements. This means that these superior superannuation entitlements will be lost.

Legislation provides that the definition of ordinary time earnings contained in an industrial instrument will prevail over the legislation. In oil and chemical industries AWU awards contain superannuation provisions. Some of these define OTE to include certain allowances. Living away from home allowances make up some 50% of our members take home pay. Until now these employees have superannuation contributions on their entire pay as a right. Now this will depend on employer agreement. The financial difference for employees is significant.

Skills based career paths – it is extraordinary to the AWU that the government would seek the removal of these provisions. They are mutually advantageous for employers and employees: increasing productivity, job satisfaction and employment security in the industry. For example, skills based paths exist in the *Wine Industry Award.* Competencies were developed through industry discussions. These discussions included peak representatives of the wineries, union and experts in competency developments (eg Swineburne University). They resulted in an agreed package which was included in the award. The AWU submits that all parties to the award would agree that these competencies have played a key part of the development of the Australian wine industry. They have enabled up-skilling, heightened employee productivity and increased the international (and domestic) competitiveness of the industry as a whole.

Trade Union training – The AWU runs a range of course (EO, safety, industrial), many externally accredited. Should these provisions be removed only our strong well, unionised sites will have access to paid training. Ironically, this is not the part of the workforce in greatest need of union representation. Union training is clearly a matter

that, if left to employer discretion, is unlikely to granted voluntarily. The AWU submits that this removal will leave numerous workplaces less informed about their industrial entitlements, less trained in negotiations and less able to fax disputes at a site level. We also note that a significant proportion of AWU training course deals with compliance with the law. Removing access to this information means delegates will not be trained in how workplace disputes should properly and lawfully be handled.

Long Service Leave – the Victorian Long Service Leave Act has just been amended to provided LSL at a rate equal with most AWU long service leave award provisions, effective January 2006. However, in two ways employees are still disadvantaged by the removal of LSL from awards:

- In oil and petro-chemical industries the *entitlement* and *access* to LSL is superior to the amended state legislation. For example many provide LSL access after 5-7 years.
- Even in those industries which provide the same substantive entitlement to LSL as the amended state legislation (13 weeks after 10 years), they calculate the entitlement retrospectively. The legislation is only effective from January 2006.

The AWU urges the Senate Inquiry to retain superannuation, skills based career paths, trade union training and Long Service Leave in awards.

REMOVAL OF DISPUTE RESOLUTION POWERS OF AIRC

This is an extremely bad move for Australian industrial relations.

The current system of industrial relations has operated in excess of a century. It is based on the principle that parties register, can seek Commission assistance in dispute resolution and are bound by any ruling of the Commission. The system provides both protections and controls.

The 1996 Act effectively removed most public arbitral powers. Except for national wage cases and award variations confined to s89A matters, very little public arbitral power has since been exercised by the Commission. Disputes are dealt with only by conciliation. However, while the AIRC could not impose a settlement on disputing parties, it could compel conciliation. To give effect to the exercise of conciliation power, the Commission is able to require attendance of certain parties, summon witnesses, compel the production and inspection of documents, issue procedural directions, recommendations and orders, conduct inspections (s111(1)). These powers have been used routinely for a century. In the experience of the AWU, there has been a rising disinclination to exercise such powers over the past decade. However, they remain a core part of public dispute resolution.

In the AWU submission it is absolutely essential that the Commission retain the power to compel parties to comply with certain procedural steps (attend conferences, produce relevant documents, refrain from or engage in certain conduct). We accept that in instances these powers will be used to compel AWU conduct. While on certain occasions we may object to the exercise of such power, in general it is essential for the effective resolution of disputes.

Consequently, the AWU recommends the:

- Arbitral functions of the Commission be restored
- Powers to compel conciliation be retained
- Commission members be expanded to meet workload requirements and that appointments reflect the diverse background of employee/employer interests
- Good faith bargaining requirement be restored in the Act
- Expansion of government Inspectorate to investigate complaints regarding Award/Act breaches. This should include compliance with record keeping regulations
- Restoration of prosecution capacity for government Inspectorate in circumstances of underpayment or breach.

CHANGES TO PROVISIONS REGARDING INDUSTRIAL ACTION

The AWU submits that as the Commission powers to resolve disputes are reduced, the incidence of unprotected industrial action will increase.

In relation to the Bill's proposals regarding industrial action, the AWU makes the following submissions:

- Without the Commission, industrial relations will becoming increasingly strike prone
- The Bill will result in rising civil litigation
- Current provision for protected industrial action works well and do not require reform. In any event requiring unions to bear part of the costs of secret ballot is unfair.

Without the Commission, industrial relations is becoming increasingly strike prone

There have been a decline in strike activity in the Australian Workers' Union (Victorian Branch) in the past two years. Prior to this saw a period of particularly high levels of industrial action, more in one year than in the past 10 years combined. This is not (despite the opinion of some) seen as desirable in our organisation. Industrial action is a symptom of unresolved tensions between employee and employers. The weakened role of the Commission outlined above means that it no longer represents an effective forum to resolve industrial relations issues.

The explosion of Civil Litigation

Section 166A of the Act was intended to slow down pursuit of civil proceedings by requiring 72 hours conciliation and an AIRC issued certificate. This is not what happens in practice.

The Australian Workers Union (Victorian Branch) has been subject to three such applications this year. On two occasions the applications were deliberately lodged at 5.00pm Friday night (despite protected industrial action having commenced several

days earlier) and the 72 hour period then expired 5.00pm Monday. There was no residual discretion available to the Commissioner to extend the deadline in order to conciliate. In both cases the industrial action was protected, and therefore ostensibly immune from civil liability according to 170MT. However, once the 72 deadline passes, the Commission *must* pass the matter over to the civil courts. The courts then deal with the threshold argument of whether the industrial action is 'protected'.

In the third case, conciliation occurred and the matter was resolved. Proceedings did not commence in the court.

There are three problems with this process:

- It makes a mockery of the notion that protected action is immune from civil liability
- There is no role for the Commission in enabling or forcing negotiations. Despite what may have been the intent of the section, there is no interim, cooling down period where parties must negotiate.
- It rapidly escalates the stakes. Industrial relations becomes increasingly expensive, adversarial, and couched in common law terms of master/servant.

The AWU submits the period of compulsory conciliation entailed in s116A applications is beneficial if used to resolve the dispute. It should be retained and discretion available to the Commission to extend the period if appropriate (eg if the timing of lodgement did not enable conciliation).

Protected Action is proving effective

The right to take protected industrial action (within a narrow time frame and given certain procedural constraints) represents a compromise position between the competing interests of employers and employees. In the experience of the Australian Workers Union it is fair, balanced and effective. What this means is:

- The employer is provided with adequate notice and precise details of the industrial action to be pursued. This provides employers with preparation time and the opportunity to reflect upon the seriousness with which their employees view the issues. *In the majority of cases*, the serving of notice acts to initiate a new round of discussions and the industrial action is not pursued. In such instances the Act is granting power resources to employees in a way that does not damage the interests of employers.
- Protected industrial action acknowledges that employees have the right to withdraw labour and express opposition to managerial action. However, by narrowing that right to bargaining periods it acknowledges employers right to not confront unreasonable disruptions to work. In balancing these two rights it provides a framework in which legitimate industrial action may be pursued and therefore the conflict is likely to remain ordered and reasonable

In our submission, this is one of the few positive elements of the first wave industrial relations reforms. It balances the needs of both parties and provides a procedure for

both expressing and containing conflict. The procedural requirements are already sufficiently robust. Some of the constraints are:

- A total of 10 days notice (7 for initiating bargaining then 3 for industrial action) must be given.
- Precise details of the action must be included or it is not protected.
- Picketing remains tortious and therefore outside the protected scope.
- No other contract must be interfered with.
- The action must not result in personal injury or damage to property.
- The welfare of part of the population must not be endangered
- It must not cause significant economic damage

These combine to adequately protect employer interests. They also provide the framework by which our members may legally stop work. This is a fair, balanced and effective expression of an employee's right to with draw labour under certain circumstances.

Problems with proposals

Industrial action will be harder to take and easier to overturn. The AWU submits:

- Current procedural steps are adequate to protect employer interests
- Overturning industrial action in the event a party is not "genuinely bargaining" should be matched with the introduction of a general requirement to bargain.
- Certain examples of "pattern bargaining" should be enabled. For example it is entirely legitimate for industry or market standards (not merely national ones) to be pursued in bargaining.

Recommendations:

- Section 166A should contain residual discretion to Commissioner in issuing certificate and impose prior obligation to genuinely bargain
- 'Protected' industrial action must carry a real immunity from civil litigation (except in extreme circumstances)
- The current notion of 'protected industrial action' balances the needs of employers and employees and should be retained in its existing form.

TRANSMISSION OF BUSINESS

The AWU has witnessed galloping levels of labour market fragmentation over the past decade. Once large workplaces have become segmented into in-house employees and contractors. In general the AWU has not opposed this process where it is driven by business competitiveness or the need for specialised skills. We have been involved for years in ensuring that entitlements are protected, the process of redundancy selection is fair and severance calculations correct. Employees' interests are rarely at the forefront of consideration when businesses are bought and sold. Likewise, when projects are tendered for, the existing workforce is not privy to negotiations which have may profound effect on their future livelihood. In an era of constant waves of corporate restructuring, job security is becoming increasingly precarious.

One core protection however has existed until now. Employees bought and sold could at least ensure their terms and conditions remained protected. This is no longer the case.

This provision, together with the following (90 days notice of termination) will render entirely precarious the employment conditions of all employees. This idea is abhorrent.

AUTOMATIC TERMINATION OF AGEREMENT ON 90 DAYS NOTICE

The AWU submits this will have a severely detrimental impact on security of employment and employee capacity to bargain.

This provision is likely to be used by employers in the following manner:

- Upon expiry of the agreement, employers will routinely file a notice of termination of agreement. Employees may respond by commencing the process of initiating protected industrial action. This is likely to require:
  - Day 1 employees decide to take industrial action, union notifies Commission
  - Day 4 listed in Commission. Estimate day hearing to determine whether statutory test of 'genuine bargaining' etc made out. Ballot ordered.
  - Day 14 results received (a 10 day period is included in the Bill)
  - Day 15 union notifies the employer of successful outcome
  - Day 19 industrial action can commence (or four days later if the employer applies for extension of notice period)
- By contrast the employer may notify of termination ***prior*** to expiry rendering futile the above steps.
- Even assuming the employer notifies of an intention to terminate at the same time as the union – only 90 days of bargaining are available.
- More importantly, what negotiating capacity do employees have when the best alternative to a negotiated outcome (BAFNA) is the total removal of existing conditions. This is clearly intended to completely neuter any bargaining capacity of employees.

The provisions amount to the effective end of bargaining. Employers may now unilaterally determine the conditions of employment at that workplace.

The current federal minimum wage is $484.40.
Our members average weekly earnings falls between $800 and $1200. The high-income section of the labour market generate these wage outcomes primarily from overtime, penalties and allowances. For example, in the off-shore oil industry, the Living Away from Home (LAHA) allowances contributes roughly 50% to take home pay. A proportion of weekly rates includes compensation for working continuous 12 hour shifts.

This Bill allows employers to unilaterally remove in excess of 60% of an employees wage. The AWU expresses absolute horror at this proposal for the following reasons:

- It is deeply unjust. Employees have established their work conditions through decades of collective bargaining, skill enhancement and sheer hard work. To

render these conditions entirely subject to managerial discretion reflects an inherent prejudice toward employers. Employees have a right expect their existing terms and conditions will be protected. The AWU may be sympathetic to reducing conditions in certain exceptional cases. However this Bill enables employers to unilaterally remove the bulk of benefits to employers ***unfettered*** and without need for justification.

- This proposal is radically contrary to the public interest. Enabling employees to substantially drive down labour costs to this extent, acts as an incentive for businesses to compete on the basis of a 'race to the bottom'. Employers attempting to produce a high value-added product or service will be forced to compete on the basis purely of reduced labour costs. This is detrimental to the quality of the product. It is also extremely damaging to the interests of employees.
- Additionally, the public interest is undermined by the probability that industrial warfare will erupt should opportunistic employers seek to remove 60% of employees conditions. The response is likely to range from mere resentment, exodus and low morale to sabotage and wildcat industrial action. We ask you to consider whether you might in fact be sympathetic should an employee engage in unprotected industrial action when confronted with a pay-cut worth 60% of their pay. A law which enables such industrial disharmony in the Australian labour market is not in the public interest.