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THE UNITING CHURCH IN AUSTRALIA

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Attn: Mr John Carter
Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
via email to: eet.sen@aph.gov.au

Dear Mr Carter,

Re: Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005

Please accept the Uniting Church in Australia's submission to the *WorkChoices Bill* Inquiry.

We would welcome the opportunity to discuss our submission with the Committee. Please contact my assistant Jenny Bertalan on (02) 8267 4202 or jennyb@nat.uca.org.au in order to arrange a suitable time.

Yours sincerely,

Rev Dr Dean Drayton
President
Uniting Church in Australia

Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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The Uniting Church In Australia

Submission to the

INQUIRY INTO THE PROVISIONS OF THE WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005

November 2005

Contact:

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National Assembly

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INTRODUCTION

The Uniting Church in Australia welcomes this opportunity to comment on certain aspects of the Government's *WorkChoices* legislation.

The Uniting Church in Australia seeks to bear witness to God's call for the continuing renewal and reconciliation of all creation[1] through its worship, service and advocacy, and in partnership with other Christian churches. Part of the witness of the Uniting Church in Australia is to challenge the structures that create and perpetuate poverty and injustice at all levels: individual, state, national and international.

At its seventh Assembly in 1994, the Church adopted its Call for Justice Concerning Employment. It states:

> *Society has a responsibility to ensure that the economy is based on appropriate values and goals, and is directed according to the wishes of society. It is not appropriate that the economy shape and control society.*

The Uniting Church continues to advocate for a just employment relations system fulfilling the needs of members of the Australian community, both employed and unemployed. Employment forms an important and enduring part of our social identity; it affects and structures our time with families and friends, and relationships with our local and national communities. Government policy at all levels should reflect the inherent need of humans to work with dignity, to contribute to the community and to provide the basic necessities and comforts of life. Dignity in employment, and the ability for the unemployed to access dignified employment, is the Church's concern in its response to the proposed legislation.

The Uniting Church seeks also to contribute to the inquiry from the point of view of a large employer, whose operations will be affected by the changes proposed in the legislation. We are concerned that the new Fair Pay and Conditions standard may prove inadequate to ensure an ethical standard of minimum employment, an assessment informed by the competing needs of maintaining quality staff and ethical employment standards, and market competitiveness in tender processes.

The Church believes that every individual is equal before God regardless of background. The world is a community in which all members are responsible for each other and the strongest have a special responsibility for the vulnerable. In its Statement to the Nation at its inauguration in 1977, the Uniting Church pledged

> "to hope and work for a nation whose goals are not guided by self interest alone, but by concern for persons everywhere – the family of the One God – the God made known in Jesus of Nazareth (John 10:38) the one who gave his life for others."

In this spirit, the Uniting Church offers its submission to the Senate's inquiry into the *WorkChoices* legislation.

[1] *Basis of Union*, paragraph 1

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SUMMARY OF RECOMMENDATIONS

The Church has significant reservations about the impact of the introduction of the WorkChoices legislation on its operations. Currently the Award system works well as a benchmark for minimum ethical employment standards, and prevents the erosion of underpaid community sector employees' conditions.

- We need the legislation to clarify whether it applies to the whole or to parts (in this case, which parts?) of the Uniting Church, so that our legal obligations as employer are clear and our workers (and their unions) know which legal system now applies.

- If the WorkChoices legislation applies to any part of the Uniting Church, then we would prefer that it applies to the whole Uniting Church.

As a large employer in the not-for-profit and care sectors, representing disparate interests, the Church recommends the following:

1. The whole not-for-profit community services sector be either clearly covered by or excluded from the bill, so that the same rules apply throughout the sector.

2. The bill be amended to include a clear process by which award pay and conditions can be upgraded over time, so they continue as a useful standard. At the very least, the Australian Fair Pay Commision (AFPC) should be required to maintain the real value of wage rates in awards, and to take account of issues of equity.

3. The bill be amended to require the AFPC to have a public process of consultation with employers, unions and workers. This process should be specifically laid out in the bill so as to avoid confusion.

4. The Australian Government clarify the basis on which it will determine what are reasonable wages costs for the purposes of commercial and not for profit providers tendering to provide services to or on behalf of the Government

5. The Australian Government not require employers to offer Australian Workplace Agreements (AWAs) to their employees as a condition of government contracts.

6. The bill be amended to remove section 113, which exempts employers with 100 employees or less from accessing unfair dismissal procedures.

7. The bill be amended to remove the changed definition of operational reasons for termination of employment in section 112 of the bill.

8. Instead of sections 112 and 113 of the bill, that the bill be amended to tighten the unfair dismissal provisions to preclude vexatious and unsubstantiated claims within a framework that adheres to the principles of natural justice and to provide more certainty for employers when standard

termination processes are followed or where workers clearly lack the competence for the position to which they have been appointed.

9. The bill be amended to remove sections which further restrict the right of entry of unions to workplaces.

10. The bill not include sections about prohibited content of agreements.

The Uniting Church is also concerned by the impact of the proposed legislative changes on the most vulnerable workers and on the job prospects of the unemployed. We believe that the Government's new minimum conditions of employment are not adequate and will not be effective in maintaining an appropriate standard of living for low-paid workers and their families. Lowering the floor for working arrangements, failing to include greater protections and resources for workers on individual agreements, and encouraging an approach wherein personal litigation in the Federal Court is the only means of redress for these workers will impact heavily on these vulnerable people. In particular we are concerned for the legislation's interaction with the Welfare to Work reforms, its impact on outworkers and on the status of women in the workforce. As an advocate for vulnerable members of our society, informed by our faith and our extensive experience in service provision, the Church recommends the following:

1. The Award System should remain the measure of minimum employment conditions, and the Standard be revised to this effect. This is imperative to ensure that real wages and conditions do not fall under the new system.

2. Penalty and Overtime payments must be preserved for the future, and not simply for one generation of agreement making; employees must be adequately compensated for working anti-social hours.

3. 'Reasonable hours' of overtime work must be defined in the Act [S91C] to give a clear indication of acceptable employer behaviour;

4. The bill should be amended to require a full wages review at intervals of no more than two years.

5. The bill should include a requirement that the review process involve public consultation, including the receiving of submissions and public hearings.

6. The bill must require that Commissioners are appointed with regard to maintaining an equal spread of skills and expertise representation on the Commission.

7. To allay any concerns about a future 'wage freeze', at the very least there should be a guarantee that minimum wages take into account cost of living increases.

8. The Commission should be required to set the minimum wages and conditions with an eye to social cohesion as well as to the needs of the economy.

9. Section *3 Principal object* and *Subdivision A – General matters Commission to take into account (1) (b)* and *(2) (b)* should be revised to include reference to social cohesion and a commitment to the common good of Australian society

10. Agreements should not be operative on lodgement. Rather, they must undergo tests to ensure comparative fairness prior to becoming operative.

11. The No Disadvantage Test (NDT) or a similar global test of disadvantage should determine whether new agreements are compliant with minimum conditions; and this minimum should stem from the Award, not the Standard, which is insufficient to ensure that traditional conditions are maintained in any form.

12. Plain language information about the Award must be provided to all workers prior to signing an AWA, to ensure an informed choice. Workers must be given the choice between the Award and an AWA

13. A commonsense definition of 'duress' must be written in to legislation, to simplify workers' ability to claim that they have been coerced into signing an AWA.

14. The current court-based system, with its common-law definition of 'duress', is not accessible enough. The application of duress should be determined by the AIRC.

15. New Section 98A should be struck from the legislation – workers should not be able to sign away access to their agreement during the 7 days prior to lodgement. This time is needed for a thorough consideration of the agreement.

16. Prohibited matters in agreements should not be proscribed by regulation. If they must exist, they should be laid out in the body of the agreement.

17. Expensive Federal Court litigation should not be the only avenue of redress in cases of termination. An appropriate quick and inexpensive procedure must be maintained, to enable low-paid employees adequate and accessible avenues of redress against unfair and unlawful termination.

18. It is inappropriate for the Government to subsidise private litigation for Unlawful Dismissal. Rather, the case should be taken up by the Office of Workplace Services, who should be empowered by the legislation to do so.

19. The Senate must specifically consider the legislation's detrimental effect on the status of women in the labour force.

20. Greater effort and funding must be given to monitor and enhance the status of women in the workforce. The Office for Women or another Government body should conduct integrated research into strategies for enhancing all women's financial, skills and labour market status, and into the effects that casualisation and labour market deregulation on vulnerable and low-paid women. This research and modelling must be taken into account when promulgating workplace relations policy and legislation.

21. It is important that Australians on low incomes do not find themselves caught in a deregulated environment in which wages plummet, activity requirements increase,

income support payments are cut, and unfair dismissal procedures are largely inaccessible. Minimum labour conditions must be maintained to ensure equitable treatment of people who may lose their welfare should they refuse to sign a substandard agreement.

22. With the increase in casualisation, and contracting out of jobs, many people need the supply of payments to keep going between jobs. This is an issue that must be addressed with a workforce-wide strategy.

23. We generally endorse FairWear's submissions on amendments to the legislation to provide for Outworkers, who are an especially vulnerable group of workers with proven needs for special regulation (See Part 2 Section 7).

PART 1
THE UNITING CHURCH AS EMPLOYER

The Uniting Church is in one sense a very large employer – some statistical breakdowns can be viewed in an appendix to this submission. The NSW Synod, for example, has over 11000 employees, full time, part time and casual. However, within the Uniting Church there are a large number of separate employing bodies – local and regional boards for community services, local church councils, regional bodies known as presbyteries, and synods themselves. Most of the Church's smaller employing bodies are convened on a voluntary basis, although some of the employment role is delegated to professional managers, eg in parish missions, aged care facilities and synods.

This wide array of interests and activities means that the Church's experience is varied and heterogenous. It should not be assumed that what might be best for commercial employers will be best for community sector employers, or that what is best for our employers will serve employees equally well. The use of Awards has been important in ensuring that small, local employing bodies with in the Uniting Church provide wages and employment conditions that are based on relevant benchmarks and provide some level of justice for employees. At the same time, it is efficient, in that it guides local employing bodies with regard to employment conditions.

The Uniting Church seeks to be a responsible employer. We know, from our experience, that being a good employer is easier within a framework of industrial relations law which is based on a commitment to human rights and labour standards and instils a sense of accountability in employers (including all those to whom they delegate employment functions). A number of Christian concepts and values are relevant to our assessment of the Government's proposed reforms to workplace relations. These include respect for human dignity, human need and human rights, the importance of family life and community participation, the recognition that labour is not merely a commodity but is about human endeavour, the human need for time for rest and worship, and the value of unions and collective bargaining. We also recognize that there is an imbalance in power between the employer and individual employees. Our right to carry on our operations needs to be balanced with internationally recognized human rights and labour standards that protect employees.

i. The Church As Employer Principles: A Summary

As one of the ways of dealing with the tension between the needs of those we serve, and the needs of our employees, there has been considerable reflection on the principles that should apply if our beliefs and commitment to social justice are to guide our work. A very short summary of one of these documents is provided below. The sections of the document relevant to *WorkChoices* are provided in an appendix to this submission.

Please note that this is an extract from a document adopted by the NSW Synod (covering NSW and the ACT) and the Synod of Tasmania and Victoria.

> The Uniting Church in Australia has a foundational commitment to creating a just, caring and participatory society for all people – a commitment that is integral to the

Church's role and responsibility as employer. Uniting Church agencies must meet legislative requirements and be fair and just employers, reflecting appropriate community standards. Their challenge is to create workplaces that are living, dynamic expressions of the church's mission and values.

The purpose of this project is to develop principles to guide the church as employer, and the relationship between the church as employer and the relevant unions. In summary, the NSW and VIC synods expect their employing bodies to:

• operate in a way that reflects the beliefs, values, and policies of the Uniting Church

• relate to employees in ways that value their person and their work

• support advocacy, based on the needs of both those who receive our services and the workers who provide them

• ensure that workers receive the fairest wages and conditions that are possible within the constraints of the sectors in which we operate

• encourage membership of appropriate union or professional association and to take a positive view of the role that unions can play in negotiating agreements, awards, and changes to work systems

• operate in accordance with the relevant human resources manual approved by the synods' employee relations service

• obey the law

The church expects unions to operate in an ethical and principled way and to take account of the needs of those to whom the church provides services, and the funding constraints under which those services operate.

In summary, as an employing body, we would prefer that the law set a high standard that is consistent with Australia's international obligations regarding human rights and labour standards. We believe that the *WorkChoices* legislation in its current form erodes legal requirements and standards and is quite unhelpful to our role as employer.

ii. Is the Uniting Church covered by the legislation?

As noted above, the Uniting Church is made up of a number of employer entities. Some are clearly covered by the legislation, since they are either separately incorporated or operate in one of the territories. However, the Uniting Church exists as an entity under the legislation of each of the states – it is not a commercial corporation and is not an incorporated body. We do not want the question of the applicable jurisdiction to be a contentious issue that may require expensive legal proceedings to test the law.

- We need the legislation to clarify whether it applies to the whole or to parts (in this case, which parts?) of the Uniting Church, so that our legal obligations as employer are clear and our workers (and their unions) know which legal system now applies.

- If the WorkChoices legislation applies to any part of the Uniting Church, then we would prefer that it applies to the whole Uniting Church.

As some not-for-profit community organisations are incorporated, they will be covered by the legislation. Others may not be. It would be better if the not-for-profit community sector was either entirely covered or entirely excluded from the legislation.

- We would prefer that the whole not-for-profit community services sector were either clearly covered by or excluded from the legislation, so that the same rules apply throughout the sector.

iii. The Need for Awards

The Uniting Church is a major employer in the community services sector. Many community services are provided by both commercial operators and not for profit organisations such as the Uniting Church. There is strong pressure to keep costs to a minimum to keep fees and charges low to make services accessible or to improve their profitability or financial viability. Awards are an important part of levelling the playing field.

We do not accept the assumption that AWAs are necessarily good for employers. The introduction of individual agreements will mean that there is potential for a different set of standards for each employee and the administration of such a system will require additional resources to ensure compliance. The alternative, of course, is to use a standard AWA, but that undermines the concepts of negotiation in good faith. Some of our employer bodies have from time to time had collective agreements, but have found that the award system is easier to administer. Awards provide ready reference points for small employers within the Uniting Church.

We note also the advice from Blake Dawson Waldron Lawyers whose recent summary of the WorkChoices bill for employer clients comments, “Awards will continue to operate under the newsystem subject to further simplification and rationalisation. But, in truth, their role is to be marginalised and they are on the way out.”

This appears to be a fair assessment of the system, since the Australian Fair Pay Commission will now set wages, agreements can override awards, and in many situations only the Australian Pay and Conditions Standard will apply. Our concerns about the AFPC are taken up in detail in Part 2 of this submission. It is unclear how awards can be upgraded given the changed powers of the Australian Industrial Relations Commission

- As an employer, we would prefer that the legislation provides a clear process by which award pay and conditions can be upgraded over time, so they continue as a useful standard. At the very least, the AFPC should be required to maintain the real value of wage rates in awards, and to take account of issues of equity.

It appears that the AFPC is not required to consult with employers, workers or unions, although it is allowed to do so if it choose. We consider that this lack of a requirement to consult is unhelpful to the maintenance of award wages at adequate levels. Also, research on which wage decisions depend needs to be rigorously evaluated to ensure its methodological soundness, relevance and credibility.

- The legislation should require the AFPC to have a public process of consultation with employers, unions and workers.

We recognise that some awards are complicated. We have no objection to the simplification of awards, provided that this is done by a transparent and consultative process, improves workability and does not erode workers' pay and conditions.

iv. Funding for the Community Services Sector

It is also unclear how the changes will affect the way government determines funding levels for community services and other services that are outsourced. Our fear is the government will on the one hand reduce awards to minimalist safety nets, and on the other hand base funding levels on those awards, (or benchmark funding to only the minimum conditions contained in the Fair Pay and Conditions Standard) rather than on what employers wish to negotiate with valued employees in a sector where pay to often does not reflect the value of work.

Our concerns are only enhanced by a letter from the Hon. Wilson Tuckey MP to the Moderator of the NSW Synod, in which he said

> "The new regime does not prevent your industry from applying the principles you espouse in your letter, however considering the extent to which you too operate in a competitive market place for taxpayers' money, I trust you do not believe those taxpayers should pay more for your services to the detriment of their family."

This appears to ignore the human right of workers in community and human services to receive "just and favourable" remuneration for their work. Workers in many community services already receive very low pay relative to their skills and the social and moral value of the work that they do. The relevant awards are not generous. Yet even these low standards can be eroded by AWAs and other agreements under WorkChoices, eg by abolishing penalty rates and meal breaks. Mr Tuckey's approach would require that in addition to offering their skilled caring, these valued workers must also accept poor pay and conditions. It requires employees, instead of taxpayers, to bear the financial cost of their caring work on behalf of the community. This is an unacceptable approach.

The proposals seem to put an increased emphasis on AWAs and some tender documents already require that organisations tendering for government contracts "must offer the option of an Australian Workplace Agreement to all staff in accordance with the *Workplace Relations Act 1996*. ". It is unclear how extensive such requirements will become in government contracts. We would prefer to be able to use awards or negotiate collective agreements.

- The Australian Government needs to clarify the basis on which it will determine what are reasonable wages costs for the purposes of commercial and not-for-profit providers tendering to provide services to or on behalf of government.

v. Termination Redress Reforms and Church Operations

The Uniting Church has some experience with the operation of unfair dismissal laws and does not believe that they are a major problem. A more detailed discussion of the impact of increased use of unlawful dismissal is set out in Part 2 to this document.

The Uniting Church opposes the changes to unfair dismissal in the WorkChoices legislation. Unfair dismissal legislation is important in protecting workers' rights to security of employment, and in ensuring that those responsible for termination are aware that this should only be done for appropriate reasons and in an appropriate manner. As the extent to which the legislation currently covers us is unclear, we are concerned that this exemption may apply to some of our smaller bodies.

- As an employer, we oppose section 113, which exempts employers with 100 employees or less from accessing unfair dismissal procedures.

We also have concerns about WorkChoices section 112, creating the new section 170CE 5D on dismissal for operational reasons, since this seems to allow far too much latitude, leaving employees without adequate rights to security of employment. It would appear that under these provisions, there are reduced responsibilities on employers for managing change properly and with regard to the welfare of their employees.

- As an employer, we oppose the changed definition of operational reasons in section 112.

- As an employer, we would prefer that the unfair dismissal provisions were tightened up to preclude vexatious and unsubstantiated claims within a framework that adheres to the principles of natural justice and to provide more certainty for employers when standard termination processes are followed or where workers clearly lack the competence for the position to which they have been appointed.

vi. Our Relationship with Trade Unions: Prohibited Content

The Uniting Church is committed to working cooperatively with unions, as laid out in further detail in Part 2 of this submission. We have a number of concerns about the way *WorkChoices* places limits on our ability to do this. We recognise that unions need to enter workplaces for a variety of purposes, including inspections, information provision and recruitment. We have no objection to them doing this within the current legal framework.

One of our employing bodies put it this way:

> We currently have no major issues with the two main unions represented in our workplace (NSWNA & HSU). The unions conduct a regular program of workplace visits and we work cooperatively with them to ensure that both the union and our organisation comply with current 'right of entry' conditions.

We see no need for the sections in the bill that further restrict the right of entry of unions to workplaces.

We also object to the inclusion of 101D and M in the legislation, regarding prohibited content in workplace agreements. In particular, we object to the Minister determining prohibited content through regulation.

- As an employer, we would prefer that the legislation not further restrict the right of entry of unions to workplaces.

- As an employer, we would prefer that the legislation not include sections about prohibited content of agreements.

PART 2:
CONCERNS FOR VULNERABLE MEMBERS OF SOCIETY

1. The Fair Pay and Conditions Standard

New part VA of the *Act* sets out the operation of the Australian Fair Pay and Conditions Standard ('the Standard'), which will replace the current Award system as the minimum conditions of employment for AWAs and collective agreement. The Standard is significantly less generous in its overall minimum monetary value than current Federal and State Awards. It consists only of:

- the minimum wage of $12.75 per hour or a grandfathered Award-based wage, if such a wage is higher;
- 38 ordinary hours of work averaged over a year-long period, plus 'reasonable additional hours';
- 10 days' paid personal leave;
- 4 weeks' paid annual leave without leave loading; and
- 52 weeks' unpaid parental leave, less any amount paid or unpaid leave taken by one's partner.

The Uniting Church is concerned that the operation of the Standard will impact negatively on low-paid and low-skilled employees, significantly reducing their remuneration compared to their entitlements under the current minimum award conditions.

1.1 The New Standard Will Reduce Minimum Conditions of Employment

By effectively replacing the Award system with the Standard, the Government is essentially downgrading employees' starting base for negotiations and enabling unscrupulous employers to undercut current award conditions. The Standard can effectively operate to cut the minimum conditions of employment for employees who take-up AWAs and collective agreements. This will occur either over a short-term or medium-term period, depending on the individual situation of the employee:

- If an employee is currently employed on an Award, and is offered a workplace agreement, they have the option to reject this workplace agreement; if the employee is terminated due to their rejection of this agreement, they will have the option of undertaking an expensive and lengthy Federal Court case to gain redress.
- If they choose to accept the agreement, the worker may have some success in negotiating their current Award conditions, such as penalty rates, into the agreement either in original form or in the form of additional monetary compensation. In any case, these conditions are grandfathered for the first generation of agreements, unless the document specifically states that these conditions will not apply.
- However, when the agreement is terminated, the worker's minimum conditions will fall back not on the Award minimums but onto the Standard, which guarantees only the 5 minimum conditions of employment. As such, the previous wages and conditions are not protected, and the employee's take-home earnings can be legally significantly reduced as a consequence.

- For low-skilled employees who are required to sign an AWA at the start of their employment, the ability to preserve these grandfathered conditions even into the first generation of their agreement will be reduced. It is our fear that the infamous situation of 'Billy', an unemployed job-seeker who is forced to sign away all non-Standard conditions in order to be given employment in a retail chain ,will become a normal experience for vulnerable workers.

The Standard does not take into account existing entitlements like penalties, overtime, allowances, other types of leave such as study leave and trade union training leave (which will also be stripped from Awards) or any other condition. As such, these conditions will effectively be lost from low-paid workers' entitlements within two generations of workplace agreements.

In addition, the Standard does not include accident pay to top up workers compensation. This provision is common in federal awards; under the new system, an employee will lose their right to the maintenance of their pay during accident recuperation or occupational illness. Removal of these very basic conditions from minimum entitlements means that workers without bargaining power will be substantially worse off.

1.2 The New Standard Allows Longer Working Hours for Less Money

As noted above, employees can be required to work a maximum of 38 ordinary hours weekly. However:

- Ordinary hours can be averaged over a 52 week period. While this is not a new circumstance for many workers, this provision may prove debilitating when combined with the fact that
- There will now be no requirement for employers to offer overtime or penalty rates, or compensation for the loss of these provisions, in either AWAs or collective agreements; and
- There is no real basic standard in the legislation concerning the maximum number of hours that an employee may work in a week; an employer may require employees to work 'reasonable additional hours'. While employers must take into account health and safety, as well as the employee's personal circumstances [S.91C(5)], the omission of set requirements means that there is no quantifiable legislative standard for correct employer behaviour in this area.

As a result, the concept of 'ordinary hours' of work becomes meaningless; there is no incentive for employers to act in ways that are traditionally viewed as acceptable work practice. Employers will quite legally be able to require employees to work hours as required for the needs of the business, while paying no penalty rates or overtime. It is unlikely that minimum wage, non-unionised employees will make a complaint except in the most extreme circumstances. As such, there is no real curb to a scenario where vulnerable employees would be systematically required to work longer hours for far less take-home pay than they would currently earn.

This is not an extreme assertion, nor will such a situation be rare. Currently, many employees are in similar circumstances, especially in industries where compensation for irregular and unusual hours of work is a significant labour cost. Recent ABS statistics indicate that non-managerial workers on AWAs earn lower pay hour for hour, and work longer hours, than non-managerial workers on certified agreements. The difference is

even more pronounced for women and part-time workers.[2] Under WorkChoices, many of the award conditions that current AWA workers are compensated for will be stripped away, meaning that under future agreements, these workers will face the same problems with less pay.

1.3 Outcomes from the Victorian System Provide a Glimpse of the Future

The industrial relations situation in Victoria provided a direct example of the consequences of bringing employees into the Federal system without an appropriate award safety net. In 1993, Premier Jeff Kennett abolished state awards in favour of a scheme very similar to that proposed by the Federal Government. Instead of being underwritten by the award safety net, wages and conditions for employees under the state system were set by reference to basic entitlements set out in state legislation – 8 days' paid combined sick and family leave, a maximum of 4 weeks' termination notice for employees under the age of 45, and a minimum wage[3]. In 1996, the Kennett Government ceded all state industrial relations powers to the Commonwealth, and these minimum conditions were incorporated into the Commonwealth Workplace Relations Act as Schedule 1A. This meant that all employees in Victoria were covered by the Federal system. According to an ACIRRT survey undertaken in 2000, one-third of all Victorian employees under the Federal system were employed under the conditions of Schedule 1A, rather than through the award safety net[4].

As such, was a two-tier system of Federally set wages in operation in Victoria. On the one hand, two thirds of employees had their wages and conditions ensured by an award safety net, with a full range of conditions in the current 20 'allowable matters' that are sanctioned to be included in awards, and the AIRC overseeing the processes around wage increases. On the other hand, one-third of employees had a few minimum conditions 'enshrined in legislation', and no legal entitlement to anything other than these and a few other legislated conditions such as superannuation. These employees had no automatic right to many conditions - notably including annual leave loading, penalty rates and overtime rates. This framework is remarkably close to the Government's intent for all employees under its new reforms, which as we have discussed above, aim to reduce the "allowable matters" in awards to cut out the automatic right for these particular conditions, and leave employees reliant on legislated minimums.

The same ACIRRT survey, conducted only seven years after the initial stripping of conditions, found that these "Schedule 1A" employees were far more likely to be on the minimum rate of pay, a staggering 42% compared to only 26% of federal award workplaces. It also found that twice as many "Schedule 1A" employees were classified as "low paid", or paid less than $10.50 per hour, and that these employees were profoundly concentrated in rural and regional areas. In addition, only around 40% of "Schedule 1A" employees on average had access to overtime rates, and less than one quarter were paid additional penalty rates for working on weekends. These conditions were standard conditions for the Federal award employees.

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[2] ABS Ca 6306.0 May 2004
[3] Schedule 1A of the *Workplace Relations Act 1996*
[4] Watson, I. (2001) 'Kennett's Industrial Relations Legacy: Impact of Deregulation on Minimum Pay Rates in Victoria', *Journal of Industrial Relations*, 43 (3): 294-307.

Comparing these figures, we can see that there is a very great danger that low-paid and vulnerable employees covered by the proposed national system of industrial relations will be disadvantaged compared to their rights in the current system. The plight of Victorian "Schedule 1A" employees (before the modest recent reforms to this section of the Workplace Relations Act) compared to those employees covered by the current, more comprehensive Federal award system, provides a direct example of the consequences of bringing employees into the Federal system without an appropriate award safety net. With a framework of stripped-down awards and legislative protections for only a small number of conditions, the Federal Government's proposals will reproduce the privations of those low-paid "Schedule 1A" employees on a national scale.

1.4 The Erosion of Minimum Guarantees Was Disastrous for New Zealand

In 1991, the newly elected 'conservative' government in New Zealand passed the *Employment Contracts Act* (ECA). The ECA was a radical piece of legislation that swiftly dismantled the traditional employment protections of New Zealand workers, in favour of a pure free-market environment. These reforms were more radical than those proposed by the Australian Federal Government, in that amongst other things they entirely abolished the privileged legal status of trade union bodies. While in New Zealand the emphasis was on total de-regulation of the labour market environment, the Australian schematic focuses on the promotion of 'the market', by extensive and inhibiting regulation of trade union activity and employment-based and other concessions in favour of business activity. However, this does not make a comparison with New Zealand's "reforms" devious; rather, many of the initiatives in NZ that had the greatest impact on working conditions and union activity are mirrored in the Howard Government's proposals.

Awards were removed and all agreements had to comply with 6 statutory minimum conditions (the statutory minimum wage, annual leave, sick, bereavement and carer's leave, and public holidays). Notably, overtime and penalty rates and concessional industry allowances (such as disability and harsh conditions allowances) were not protected, reflecting the proposed Australian reforms.

Data from a 1999 study shows that the most affected employees were those who worked evenings and weekends. In his study of low-income supermarket workers, Conroy concluded that these employees had their take-home pay cut by up to 44% - an even more significant figure considering that he was studying workplaces with a union presence[5]. Industries with high staff turnover found the implementation of lower wages relatively easy; new starters were given contracts to sign that undercut the conditions of staff that had been engaged before the changes. The new laws did not protect the accumulated old entitlements, and consequently they were lost.

[5] Conway, P 'An "Unlucky Generation"? The Wages of Supermarket Workers post-ECA', *Labour Market Bulletin*, New Zealand Department of Labour, 1999

1.5 Recommendations to Section One

The examples of New Zealand and Victoria highlight the Church's concerns for vulnerable workers. They provide ample evidence that the reduction in minimum entitlements will significantly disadvantage the unskilled and those with limited bargaining power. Therefore we recommend that:

- The Award System should remain the measure of minimum employment conditions, and the Standard be revised to this effect. This is imperative to ensure that real wages and conditions do not fall under the new system.
- Penalty and Overtime payments must be preserved for the future, and not simply for one generation of agreement making; employees must be adequately compensated for working anti-social hours.
- 'Reasonable hours' of overtime work must be defined in the Act [S91C] to give a clear indication of acceptable employer behaviour;

2. The Australian Fair Pay Commission

The Australian Fair Pay Commission will pay a crucial role in establishing the living standards of large numbers of Australian workers. The Uniting Church has concerns about the inadequacy of the bill in ensuring that the low paid receive an adequate income.

The way the bill sets up the Australian Fair Pay Commission is inadequate, especially in the area of setting the minimum wage. While the Government's claim is that the process will be superior, this is not evident in the bill. The AIRC is uniquely positioned by its processes and functions to mediate the needs of employees and employers, and to maintain an equitable minimum wage that takes into account the needs of the low paid. The new commission has inadequate parameters, processes, and requirements. There is no reference to the needs of the low paid, no requirement that reviews take place regularly, no right of access to the commission to argue a case or provide evidence. The AFPC "may" do certain things, but is not required to. The parameters in the bill focus on the economy, leaving low paid workers to support themselves and their dependents on wages that may not meet the most basic needs.

2.1 The Low Pay Commission Compared to the AFPC

The Government has made positive comparisons between the Australian Fair Pay Commission and the Low Pay Commission in the UK (which sets the UK national minimum wage). There are, however, significant differences between the two commissions. The current terms of reference of the Low Pay Commission require it to take into account wide social and economic implications of their decisions, and the Commissioners have specific and relevant expertise in either trade unions or employer organisations. The Commission must also "report on the effect that the minimum wage has had on the gender pay gap and the pay of ethnic minority and disabled workers since its introduction". [6] This concern is clearly lacking in the parameters and requirements of the Australian Fair Pay Commission. The Australian Fair Pay Commission should be required both to have regard to the needs of low pay workers themselves, and to take into account human rights and the social implications of their decisions. There should be a requirement that in setting minimum wages regard be had to the general level of wages in Australian society. Without this, the parameters become a recipe for inequity and social fragmentation.

While we recognise that the reference to experience in community organisations is a useful expansion of the expertise that may be useful to the commission, the bill does not require that the commission maintain a spread of expertise. It is imperative that this body be required by the legislation to maintain an equal spread of skills and expertise.

2.2 The Needs and Voice of Low-Paid Workers

The Minister for Employment and Workplace Relations, Kevin Andrews, has stated in a meeting with Uniting Church representatives that the Australian Fair Pay Commission will review wages regularly. However the legislation allows the Australian Fair Pay Commission to determine its frequency of reviews. Low-paid and vulnerable employees

[6] Low Pay Commission - What We Do http://www.lowpay.gov.uk/lowpay/whatwedo_pfv.html

will be dependent on the Australian Fair Pay Commission to determine the frequency of reviews, and will be unable to take any initiative in this regard. They need some certainly that the Australian Fair Pay Commission will consider their situation regularly. We suggest that legislation be amended to require a full wages review at intervals of no more than two years.

The legislation outlines the parameters of the Australian Fair Pay Commission to include such areas as determining the wage, but does not compel it to act. There are a number of things that it is allowed to do but there is no requirement that it do them. Some processes are left entirely to its discretion. For example, it may consult, but there is no requirement that its processes be consultative, or that it use quality research in determining its decisions. The AIRC, on the other hand, has clear processes which take into account the need for both parties to make submissions as to their different needs. The bill should include a requirement that the review process involve public consultation, including the receiving of submissions and public hearings.

2.3 The living-wage as part of the safety net for vulnerable individuals and families

Providing workers with a minimum wage that meets the basic needs of families is required by human rights (see Appendix 2), the basic benchmarks for public policy. When setting the minimum wage, the needs of families should be paramount:

> The right to establish and maintain a family is a fundamental human right. All institutions in society, businesses, government, community organisations, political parties and the church, have a responsibility to order their lives in ways which do not cause harm to families, and that, where possible, support and nurture families. Families cannot meet all the needs of their members on their own. Families require adequate income to provide for their needs … this implies particular duties for both employers and government[7].

The Uniting Church has argued over a number of years about the need for Australian public policy to be based on the concept of a decent life. For workers, this requires first and foremost "just and favourable remuneration". Tax transfers should be used to improve equity, especially for large families or families with special needs, but should not be a substitute for just pay and working conditions.

To allay any concerns about a future 'wage freeze', at the very least there should be a guarantee that minimum wages also take account of cost of living increases.

2.4 The Public Interest and the Common Good

This submission positively notes the commitment to the family in S 44 D of the legislation. However the ability of low paid employees to participate in the community, and the prevalence of relative disadvantage for the low paid in relation to those on middle and high

[7] A Framework for Family Ministry: Statement of Principles, Family friendly social policy and social institutions, Principle 14 Family ministry will advocate appropriate social policies, This statement was adopted by the Uniting Church in Australia 1997 Synod of NSW and the ACT in Resolution 282/97S as a basis for family ministry, http://unitingcarenswact.org.au/library/family/familyministry.PDF

incomes must be taken into account with a view to build up social capital and minimise social exclusion. The Commission should be required to set the minimum wages and conditions with an eye to social cohesion as well as to the needs of the economy.

As is stated at the beginning of this submission the Seventh Assembly of the Uniting Church in Australia clearly states that a sound economy needs to be driven by values and goals that serve the common good of society.

Section *3 Principal object* of the of the Workplace Relations Amendment (WorkChoices) Bill 2005 does not include a commitment to the public or common good. Similarly, *Subdivision A – General matters Commission to take into account (1) (b)* and *(2) (b)* sections of the Workplace Relations Amendment (WorkChoices) Bill 2005 narrowly defines 'the public interest' within economic parameters only. These sections, mentioned above, should be revised to include reference to social cohesion and a commitment to the common good of Australian society

2.6 The Makeup of the Australian Fair Pay Commission

In the interest of balance, the President of the Australian Fair Pay Commission should be able to be appointed on the basis of skills and experience in workplace relations, not simply in business or economics. It is appropriate that the President might be a qualified person with practical skills and experience of the conditions under which employees and businesses operate.

Further to this, the expertise balance on the Australian Fair Pay Commission should reflect the key stakeholders concerned and involved in the area of workplace relations. While the legislation currently allows Commissioners to have experience in a variety of areas - being business, economics, community organisations and workplace relations - there is no guarantee to maintain a balance of expertise. It is necessary that an appropriate balance of expertise is maintained in setting the minimum wage, and that this balance is enshrined in the legislation.

In addition, we are concerned about the impact of the finite tenure of membership and the Government's prerogative to replace them on the ability of members to act with independence and transparency. To ensure true independence, the Commissioners should be appointed under similar tenure conditions as Commissioners on the AIRC.

2.7 Recommendations to Section Two

- The bill should be amended to require a full wages review at intervals of no more than two years.
- The bill should include a requirement that the review process involve public consultation, including the receiving of submissions and public hearings.
- The bill must require that Commissioners are appointed with regard to maintaining an equal spread of skills and expertise representation on the Commission.
- To allay any concerns about a future 'wage freeze', at the very least there should be a guarantee that minimum wages also take account of cost of living increases.
- The Commission should be required to set the minimum wages and conditions with an eye to social cohesion as well as to the needs of the economy.

- Section *3 Principal object* and *Subdivision A – General matters Commission to take into account (1) (b)* and *(2) (b)* should be revised to include reference to social cohesion and a commitment to the common good of Australian society

3. Workplace Agreements Under the New System

3.1 Removal of the "No Disadvantage Test" (NDT) for AWAs

The NDT is the test currently employed to ensure that an employee undertaking an AWA will not suffer any overall material disadvantage to the minimum conditions they would have received under the Award. The NDT nominally takes into account all gains and losses made by signing the employment contract against the relevant Award and relevant legislation, and attempts to preserve conditions with at least a basic monetary trade-off. This includes an assessment of whether, in giving up the right to penalty rates or overtime rates for example, an employee is adequately compensated by a base-rate loading or a similar initiative; in other words, that the employees suffers no net disadvantage to the overall value of their employment.

The Government argues this process is unnecessarily complex and legalistic, and the new legislation replaces this global test with an adherence to the new Standard conditions. The Standard (as discussed in section 1) takes into account only five minimum conditions. Applying the Standard would appear to involve simple numeric calculations on separate conditions, rather than taking into account the global value of the employee's current conditions and what they may lose or gain overall by signing the individual contract. In making a workplace agreement, the employer will not now be required to compensate employees for the loss of Award conditions. These minimums would also now underpin the operation of collective agreements as well, making Awards redundant by the second generation of the agreement.

While this new test may be easier for the OEA to administer and employers to comply with, due to the fewer conditions that must be taken into account, the Church's concern is that it will facilitate the wholesale erosion of conditions for Award-dependent employees with little bargaining power

3.2 Administration and Compliance Concerns – The OEA and the OWS

The Office of the Employment Advocate (OEA) will administer the new system of lodgement for all agreements. Currently, the OEA administers compliance to the NDT in AWAs; however under the new system it is unclear what responsibilities the OEA will have for ensuring that agreements at least adhere to the Standard when they are lodged. The Office of Workplace Services (OWS) will now be responsible for compliance, which would appear to be based around the investigation of complaints rather than investigation of the AWA documents themselves.

It is particularly important under the new system, where minimum entitlements will be even fewer, that compliance to these minimums is rigorously enforced. Some light is given by the much overdue new provision that Workplace Inspectors will be allowed to bring cases on behalf of injured parties in AWAs, as a result of their investigations. However there is little indication that the new system will provide better facilities for the policing of employees entitlements.

Under the new system, all agreements will become binding documents on lodgement with the OEA; responsibility for compliance with minimum wages and conditions is effectively

devolved to the employer, who must sign statutory documents stating that the document passes the Standard, with penalties applying if a false declaration is uncovered. This is unacceptable; all agreements must be subject to a thorough examination to confirm that they adhere to the Standard before they become legal documents. The devolution of the responsibility for ensuring compliance, to the very employers who must adhere to the Standard, perpetuates an ethical conflict of interest.

The status of collective agreements will effectively move from that of publicly scrutinised documents, certified via the proceedings of an independent commission (the AIRC), to circumscribed documents administered by a Government department. It is unclear if they will remain able to be scrutinised by independent observers to the same level as is currently the case. AWAs will remain private and secret, a circumstance which is hardly conducive to transparent and independent review of the effects of the new system on minimum wage workers.

In addition, the OEA's and OWS's hefty new responsibilities are not supported by a corresponding increase in its budget. In addition to the anticipated increase in AWAs being taken up in businesses, the OEA will now also undertake the AIRC's responsibility for administering Federal collective agreements. Considering that the new system will include 85% of all employees in Australia, where currently it houses only around 49%, and the OEA is responsible for only around 5% of all employees currently, this is a huge increase in responsibility. However the Government has announced additional funding of only $61.5 million over 4 years for all bodies[8] - where the yearly expenditure in 2004-2005 for the OEA alone was $21.204 million.[9] This increase of funding is hardly correspondent to the vast increase in workload for both bodies.

These issues will now exist on top of current, unresolved concerns about the culture within the OEA, and about the potential conflict of interest in a body that must give advice to both employers and employees. There is currently significant apprehension about the evenness of application and the validity of the standards used by the OEA in applying the NDT - in one academic study, more than half of the sample of AWAs examined showed a suspect or marginal adherence to a global test of disadvantage compared to the award, yet all had been approved.[10] The new legislation does nothing to assuage these concerns for the future implementation of compliance to the Standard, in spite of its more rudimentary nature.

It is important that these issues are resolved, and the new system seeks to resolve this conflict in part by separating the information and administration capacities of the OEA from the compliance capacities of the OWS. However these problems will remain, so long as the system is limited to a complaints-driven compliance procedure, rather than a new and better system which ensures compliance at the outset of agreement making.

[8] Minister for Employment and Workplace Relations (2005) "WorkChoices Funding: Agreement Making" Media Release, Office of the Minister, 2 November.
[9] Office of the Employment Advocate (2005) *Annual Report 2004-2005*
[10] Mitchell, R, et.al. (2003) "Protecting the worker's interest in Enterprise Bargaining: The 'No Disadvantage' test in the Australian Federal Industrial Jurisdiction" report to the Workplace Innovation Unit, Industrial Relations Victoria, Melbourne: University of Melbourne

3.3 Prohibited Clauses in Agreements

We note that Section 101D of the legislation allows the regulations to set out what might be 'prohibited content' in an agreement. The WorkChoices document has foreshadowed that these prohibited clauses will be largely geared towards suppressing traditional union activities. Considering that agreements can of course override the act to the extent that they are more generous in their minimum provisions, we are disappointed that the Government would seek to proscribe these particular choices. Many workplaces, including the Uniting Church, have an ethical or practical commitment to enhancing trade union membership amongst their workers[11]. Curtailing the inclusion of traditional union clauses is a significant attack on trade union rights.

3.4 Negotiation and Bargaining

There is evidence that many workers currently do not exercise free and informed choice, or any ability to bargain or influence content, in signing on to an AWA. This is particularly true of workers with lower levels of education, and those whose bargaining power is limited by lack of skills or skills mobility. The new legislation does nothing to promote free choice or negotiation among these workers; there is still no requirement that employers negotiate in good faith with employees about AWAs. Moreover, the notion that low-skilled employees will be able to negotiate an equitable agreement, even with the use of a bargaining agent is irresponsible; the use of a lawful employer lockout as a bargaining tactic, or the withdrawal of a job offer, will effectively coerce the employee into accepting inferior wages and conditions in many situations.

In addition, the inclusion of new section 98A in the legislation is of concern. Under this section, employees would be able to waive their rights to ready access to the pending agreement in the period of 7 days before it is lodged. This is the time period in which employees are able to review their agreement; it is unclear as to why the employee would wish to waive ready access to the terms of their agreement during the period where they would normally be considering whether the agreement was in their best interests. This clause facilitates the summary offering of AWAs at the beginning of employment, where presumably an employee would also sign away their right to access to the agreement for consideration. The Government's own WorkChoices policy document (p15) specifically outlines a situation in which an unemployed jobseeker, "Billy", is placed in a position where employment with a retailer is dependent on his accepting an AWA. The AWA specifically removes Billy's basic award entitlements to "public holidays, rest breaks, bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings"; in other words, it undercuts the total value of award-based employment substantially.

This practice in our view amounts to duress to sign the agreement (although it is clear that the Federal Court will not find this to be the case). As such, it is very important that employees are given access to the agreement within an appropriate timeframe to consider whether they wish to sign. This period should not be negotiable. In addition, workers should be given information about the relevant industry Award before they agree to sign an agreement, so as to ensure an informed choice in the forgoing of conditions.

[11] please see section 8 of part 2 of this document, which discusses the Church's position on trade unionism.

3.5 Inadequate Systems of Redress for Duress

The legislation also fails to address the issue of access to redress if the worker has been effectively robbed of the choice of whether to sign an AWA. A person who believes they have been subject to duress in signing an AWA must still take an expensive case through the Federal Court system, an inaccessible system which provides no relief for the employee during its course.

However, the most important omission from the legislation is a definition of 'duress'. This omission means that the Court has chosen to define duress partially according to commercial principles, rather than taking into account common-sense understandings of the term or factors like the employee's inability to reject the AWA offer due to the rate of unemployment in their region or personal financial situation.

The court-based approach to enforcing proper behaviour is inappropriate and inaccessible. The legislation must instead give the AIRC the power to determine whether duress or coercion was applied to a worker, in order to allow low-paid workers the ability to access their rights to choice. At the very least, a commonsense definition of 'duress' must be written in to legislation, to simplify workers' ability to claim that they have been subject to duress during the process of implementing an AWA.

3.6 Recommendations to Section Three

- Agreements should not be operative on lodgement. Rather, they must undergo tests to ensure comparative fairness prior to becoming operative.
- The NDT or a similar global test of disadvantage should determine whether new agreements are compliant with minimum conditions; and this minimum should stem from the Award, not the Standard, which is insufficient to ensure that traditional conditions are maintained in any form.
- Plain language information about the Award must be provided to all workers prior to signing an AWA, to ensure an informed choice. Workers must be given the choice between the Award and an AWA – this will in practice mean that minimum Award conditions are preserved or compensated for.
- A commonsense definition of 'duress' must be written in to legislation, to simplify workers' ability to claim that they have been coerced into signing an AWA.
- The current court-based system, with its common-law definition of 'duress', is not accessible enough. The application of duress should be determined by the AIRC.
- New Section 98A should be struck from the legislation – workers should not be able to sign away access to their agreement during the 7 days prior to lodgement. This time is needed for a thorough consideration of the agreement.
- Prohibited matters in agreements should not be proscribed by regulation. If they must exist, they should be laid out in the body of the agreement.

4. Access to Redress on Termination of Employment

We note that the reform of the unfair dismissals procedure has specifically been excluded from the terms of this Senate Inquiry on the grounds that it has been previously examined by the Committee. As such, we would like to examine the effect of expanding the Unlawful Dismissals procedure on equity of access for low-paid workers. The Uniting Church has grave concerns as to the suitability and accessibility of the Unlawful Dismissals and common-law modes of redress against termination of employment. In addition, we would like to examine the status of casuals under the new unfair dismissals reforms, which has not been explored by the committee in its current proposed form.

4.1 The Suitability of the Unlawful Dismissal Procedure

As ACCER has noted, there is a case for some reform to the unfair dismissals process to ensure both speed and procedural justice, and to inhibit the small number of vacuous claims presented to the Commission[12]. However, despite its faults, the current unfair dismissals procedure in the AIRC is quick, inexpensive and easy to access. Workers who feel that they have been unfairly dismissed are able to represent themselves in the Commission without detriment to their case, cutting down on prohibitive legal bills; and if they have been dismissed unfairly, the Commission is able to reinstate their employment depending on the appropriateness of the circumstances. This speed and ease of access is instrumental in promoting an appropriate employer culture around termination of employment.

An application for Unlawful Dismissal is far more difficult to access. It involves a strict interpretation of legislative requirements. It is intended to provide a remedy to cases where the employer has acted in a discriminatory manner in terminating employment. Unlawful Dismissal is arduous to prove, and is heard through the court system following the initial conciliation, rather than resolved through the AIRC. The Federal Court, through which most unlawful dismissal cases are heard, has lengthy waiting periods, meaning that often a case will not be heard for 18 months. Over the year 2003-2004, 7044 cases of Unfair Dismissal were lodged in the Commission, compared with only 147 unlawful termination applications over the entire 8 year period since the introduction of the *Workplace Relations Act* in 1996[13].

This tiny number of Unlawful Dismissals cases is anecdotally attributed at least partially to a general use of the unfair dismissals procedure for cases that could be construed as unlawful, as a strategy to avoid the unmanageable costs of drawn-out litigation. Running an unlawful dismissal can be financially crippling for both the worker and the employer defending the case, requiring the engagement of solicitors and barristers and lost time and earnings, and as a result many cases do not go ahead through this system. The other avenue available to a worker who has been dismissed unlawfully, a civil case of breach of employment contract, has similar disadvantages.

[12] Australian Catholic Commission for Employment Relations (2005) *Briefing Paper no 1 on the Commonwealth Government's Proposals to Reform Workplace Relations in Australia* September, pp46-50

[13] "Annual Report of the President of the Australian Industrial Relations Commission and Annual Report of the Australian Industrial Registry, 1 July 2003 to 30 June 2004", AIRC website www.airc.gov.au

A system where low-waged and possibly unemployed applicants must undertake drawn-out, expensive legal proceedings to enforce their rights is simply not suitable. It will produce neither justice for unlawfully terminated employees, who cannot afford to undertake such a process, or a culture of compliance amongst employers of the low-waged, who will only very rarely be taken to task for their behaviour. In addition, it has the potential to clog the court system with cases that might previously have been resolved in a streamlined manner through the unfair dismissals procedure.

4.2 Subsidising Unlawful Dismissals

In the face of public criticism about the expensive and inaccessible nature of Unlawful Dismissals procedures, the Government has announced a means-tested subsidy of up to $4000 legal advice from preferred legal providers, for employees who present viable cases of unlawful dismissal. It is as yet unclear as to who will be considered eligible for the means-tested payment.

This is an inappropriate arrangement, especially as regards cases that would otherwise be dealt with under the far simpler and more equitable unfair dismissals procedure. Rather than partially funding the individual in the pursuit of expensive private litigation, the Office of Workplace Services' inspectors should be empowered and funded to represent workers in these cases, in the interests of equality of access for workers with few financial resources. This power must be included in the legislation.

4.3 Casual Employment and Dismissal

Casual workers are already subject to far less secure employment than permanent workers. Up until now, this insecurity, detrimental though it is to the individual worker, has not impacted on the legal rights of other employees at the workplace. However with the new proposals to reform unfair dismissal procedures this is set to change.

The reforms to unfair dismissal provide a positive incentive to employers to employ large numbers of casual workers with insecure employment in low-skilled industries, rather than investing in best-practice and long-term, permanent staff. The exclusion of short-term casual and seasonal employees from the headcount of 100 employees is of deep concern. It means that employers with a large pool of casual workers and fewer than 100 employees will be exempt from unfair dismissals.

It also further positions casual employees as having a lesser legal status than other employees. If the Government wishes to promote casual employment as a family-friendly flexibility option, we would expect rather to see an enhancement of the legal status of Casual employment, especially as casual employees are disproportionately women in low-paid service jobs.

4.4 Recommendations to Section Four

- Expensive Federal Court litigation should not be the only avenue of redress in cases of termination. An appropriate quick and inexpensive procedure must be maintained, to enable low-paid employees adequate and accessible avenues of redress against unfair and unlawful termination.
- It is inappropriate for the Government to subsidise private litigation for Unlawful Dismissal. Rather, the case should be taken up by the Office of Workplace Services, who should be empowered by the legislation to do so.

5. The Status of Women Under WorkChoices

WorkChoices overwhelmingly fails to address specific issues relating to the status of women in the labour market; indeed, this is an area of policy that has dropped out of the national gaze over the past decade in favour of debate around family-oriented leave provisions. In the meanwhile, women are heavily penalised for their labour market behaviours. The concentration of women in casual part-time work, combined with the historically low wages in feminised sectors of employment, mean that women are over-represented in areas where the introduction of the less generous minimum conditions contained in the Standard will almost certainly impact on the take-home pay received by many women.

5.1 Feminisation and Casualisation

Casual work is overwhelmingly an issue for women. While promoting it as a 'family friendly' practice, which "allow[s] employees to balance paid work with unpaid activities such as caring for others, study or voluntary work", WorkChoices does nothing to protect women from the manifest disadvantages of long-term casual work without paid leave or real job stability. Instead, it entrenches the current conditions of casualisation as a norm.

- While women make up only 45% of the labour force in Australia,[14] around 57% of casual employees are women on the latest data. The vast majority of female casual workers – almost 85% - worked part-time in their main job, or fewer than 35 hours per week.
- One third of all female employees are casuals. This means that one third of all women workers have no access to paid leave, including sick leave, family and carer's leave, bereavement leave and annual holiday leave.
- According to the ABS data, many casually employed women are engaged in long-term employment at their place of work - 78% of female casual employees expected to be working for their employer in 12 months' time. 55% of female casual employees had been with their employer for more than one year[15].

5.2 AWAs in the Hospitality Industry

Workers in low-skilled, highly casualised and feminised service industries such as hospitality and retail, where the effects of minimalist AWAs are already felt, will be worse off under the WorkChoices proposals. These workers are overwhelmingly women, and often casual. While the Government claims that key hours flexibilities will be introduced by the legislation as a measure to improve output-based productivity, this certainly will not apply to service industries which have no measurable output per hour worked. Rather, in these cases, the legislation seeks to allow employers to reduce labour costs and correspondingly increase profit.

Kristen Van Barneveld's recent hospitality industry case study supports this analysis, concluding that the current AWAs were "generally minimalist documents… weighted towards extracting flexibility in hours of work without providing corresponding benefits to

[14] "Labour Force Australia" ABS Cat 6202 July 2005
[15] ABS Cat 6359, op.cit.

employees"[16]. Hospitality AWAs were characterised by lack of detail. They tended to strip workers of leave, penalties and overtime payments without providing 'significantly higher' hourly rates of pay or employee-oriented flexibilities. Workplace case studies showed that workers were not generally consulted about the uptake of AWAs. In several cases, Van Barneveld found that there was a lack of understanding among some workers of the meaning of various clauses in the AWA, including the notion of a loaded rate of pay. While there was evidence that negotiation of the actual terms of the AWA had taken place in some cases, many workers had no input into their conditions. Workplaces in the study were characterised by:

- Low wages
- Low skill levels
- A lack of formal training at the workforce and limited evidence of career paths
- No union presence
- A high presence of women in low-paid and low-status jobs, while managerial positions were generally occupied by men.

Under the new legislation, these employers will be legally able to offer agreements with even less favourable terms than those exhibited by the agreements offered to the workers in Van Barneveld's study – as we have noted throughout this submission. Considering that this study showed that organisations had implemented AWAs to increase hours flexibilities and squeeze wages costs to a bare minimum, there is little chance that the new system will lead to any other outcome for these employees. The businesses survive by reducing labour costs to boost profits, hiring and firing employees at will to reflect the changing profit margins and fluctuations in season.

5.3 Recommendations to Section Five

- The Senate must specifically consider the legislation's detrimental effect on the status of women in the labour force.

- Greater effort and funding must be given to monitor and enhance the status of women in the workforce. The Office for Women or another Government body should conduct integrated research into strategies for enhancing all women's financial, skills and labour market status, and into the effects that casualisation and labour market deregulation on vulnerable and low-paid women. This research and modelling must be taken into account when promulgating workplace relations policy and legislation.

[16] Van Barneveld, K (2004) *Equity and efficiency: the case of Australian workplace agreements* PhD thesis, University of Newcastle, August

6. Connecting WorkChoices with Welfare Reform

6.1 The Church's Experience

The Church's understanding of the nexus between welfare reform and industrial relations regulation is informed by the experiences of its UnitingCare network. UnitingCare Australia is the National Body for Community Services in the Uniting Church supporting service delivery and advocacy for children, young people, families, people with disabilities and older people. As such, the Church is well placed to comment on the relationship between these areas of policy and their combined impact on vulnerable Australians.

In spite of the economic stability of the country, more and more Australians are struggling to live with dignity and hope as the environment is becoming increasingly constrained by the changes that are taking place within the labour and welfare systems. The proposed industrial relations change is expected to reinforce existing trends towards increased part time and casual employment, and a widening of wage and salary differentials. This may help create more low skill (low pay) jobs, but risks exacerbating the problems associated with the creation of cohort of working poor households with insecure and fragmented employment. These problems will be exacerbated by the structure of income support and compliance arrangements, such as the loss of benefits and waiting periods.

Neither the Welfare Reform package presently under discussion nor the Industrial Relations legislation can be viewed in isolation. The links between the two are strong and together they are likely to have a negative impact on the most disadvantaged groups in Australian society: people living on low wages; single parents; and people with disabilities. These impacts are likely to be even more deleterious for people living in rural and remote areas where employment opportunities, educational and training facilities and support services are limited.

6.2 Welfare to Work

Some recent changes to the Welfare Package have been announced. While these are welcomed, they will not completely address the difficulties experienced by vulnerable groups. Vulnerable people will be impacted severely by the combination of the new lower minimum conditions of employment in the Standard, and the requirement that they accept whichever job they are offered. These groups include:

- the almost 2 million people earning less than $400 a week;
- the now more than 2.2 million casual workers with no job security, who receive the lowest rates of pay, and who are not entitled to paid annual leave, family leave or maternity leave;
- the 60% of single parents and people with disabilities with only a Year 10 education.

As a result of the Welfare-to-Work Package:

- More single parents and people with disabilities will be required to look for work and accept jobs but at the same time will have little experience and ability to negotiate with employers. This will mean that many are forced to accept lesser conditions than the current Award minimums, as the Standard impacts on the low end of the job market.

- New compliance measures (eg for income support, for training, for employment) that have different criteria and that require the participant to undertake multiple parallel processes are beyond the capacity of many of those with multiple vulnerabilities.

- Change, whether in the social security system or in the workplace itself, creates fear in those who are already vulnerable: fear of losing income; fear that signing on for new incentive programs may jeopardise the small securities they already have; lack of trust that the new incentives will remain in place long enough to work in their favour.

It is important to ensure that the participation of sole parents in the workforce does not occur at the expense of the wellbeing of future Australians. Single mothers who are compelled to work often find it impossible to balance their work and family responsibilities in a way that meets the demands of both their employers and their families/children. Furthermore there is invariably a very small net financial gain from returning to work, gains that can often become net losses once the cost of transport, childcare, clothes and other work requirements is factored in. For people with low financial reserves this results in poverty traps that prevent or severely discourage participation in paid work.

6.3 Recommendations to Part Six

- It is important that Australians on low incomes do not find themselves caught in a deregulated environment in which wages plummet, activity requirements increase, income support payments cut, and unfair dismissal regulations are largely inaccessible. Minimum labour conditions must be maintained to ensure equitable treatment of people who may lose their welfare should they refuse to sign a substandard agreement.

- With the increase in casualisation, and contracting out of jobs, many people need the supply of payments to keep going between jobs. This is an issue that must be addressed with a workforce-wide strategy.

7. A Family Affair: Outworkers in the Clothing Industry

The Uniting Church remains particularly concerned that the special needs of outworkers in the clothing industry be met under the new industrial relations framework. Despite positive statements to the contrary, under the new *WorkChoices* legislation, the integrated industry-wide strategy that has lately been gaining results for these workers could be eroded.

The Church recognises positive commitments made by the Government for outworkers. We note that current award protections for outworkers not relating to pay such as the registration of employers, monitoring of contract arrangements and records inspection will continue to be in place. However, we remain concerned that some parts of the reform package would most likely undermine these commitments.

We wish to ensure that the clothing industry will still be able to be investigated for exploitative practice under the new WorkChoices framework. Exploitation in the industry is unfortunately still very widespread. With this in mind the Uniting Church would like to provide Senators with initial comments about what it perceives to be some possible implications of the WorkChoices package for outworkers.

7.1 The Situation of Outworking Families

Outwork takes place at the base of a pyramid of employers and contractors, in a highly competitive industry. In practice hours are not set by the normal patterns and mechanisms of the employment relationship, and pay and conditions are often governed by competition and demand rather than the award system. Outworkers are subject to higher rates of occupational injury and are mostly engaged with little formal documentation, on a 'casual' basis. Their hours of work are irregular and in many cases the number of hours worked bears little relation to the way that income is set; the NSW Government Office of Industrial Relations notes that these people often earn "as little as $3 per hour"[17]

Most primary outworkers (up to 95%[18]) are women from non-English speaking backgrounds, often recent migrants whose employment options are limited by language and skills-recognition barriers, and unfamiliarity with Australian labour conditions. However, it is difficult to know how many outworkers work in Australia. While in 1997 the Industry Commission concluded that there were 26 700 outworkers in Australia,[19] FairWear and the Textiles, Clothing and Footwear Union (TCFUA) put the total closer to 330 000. This figure

> represented individuals whose main income is derived from assembling clothes, as well as others who take in work on an irregular basis and family members and friends assisting outworkers to meet tight deadlines.[20]

[17] Office of Industrial Relations, "Information for the Clothing Industry", http://www.industrialrelations.nsw.gov.au/behindthelabel/
[18] Industry Commission, *The Textiles, Clothing and Footwear Industries: Vol 1 Report* Canberra, Report No. 59, September 1997.
[19] Industry Commission, op.cit.
[20] Grieg, Allistair "The struggle for outwork reform in the Australian clothing industry" *Journal of Australian Political Economy* 49:2002 p9

This estimate makes it clear that outwork is an area where the employment relationship is blurred; outwork is often a family affair – in one study, 70% of respondents claimed that their family regularly helped them complete quotas[21].

7.2 The Impact of the New Legislation on Outworkers

Comprehensive regulation of outwork in the clothing industry is a relatively new initiative, driven by the efforts of Australian governments, unions, and community organisations. Currently, through a combination of Federal Award provisions and state legislation, outworkers have access to some kind of industry-wide strategy for redress if their conditions of work are substandard. The current framework of regulation at the state level seeks to ensure that manufacturers and retailers take responsibility for the chain of production and comply with minimum standards of industrial law. Because outworkers often exist at the end of a long chain of contractors and subcontractors, retailers have in the past used the excuse that they simply had no knowledge of the employment or contracting processes undertaken to produce their garments[22]. In ensuring that retailers open up their supply lines for inspection, initiatives like the NSW government's "Ethical Clothing Trades Extended Responsibility Scheme" aim to investigate compliance and hold retailers accountable in the public sphere for their labour practices by which clothing bearing their label is produced.

It is essential that outworkers be deemed employees, rather than being considered 'independent contractors'. The Church notes the positive commitment to Victorian outworkers contained in Government announcements[23]. The Church hopes that there will be parity of conditions for all outworkers in Australia. The protective provisions in existent State and Territory legislation relating to outworkers must be protected or equalled at the Federal level.

Our chief concern is that the positive commitment the Government has made with regard to outworkers could be undermined by other parts of the WorkChoices package (and potentially future independent contracting legislation). Under the new framework, when employees on current and future collective (or individual) agreements come off these agreements the award will no longer form the preserved conditions of employment. Instead, the Fair Pay and Conditions Standard (FPCS) will, which means that unless the award provisions for outworkers are preserved or properly linked to the FPCS (outworker pay is clearly included in the FPCS), outworkers will potentially not have these protections as their minimum 'non conditions provisions' (mentioned as being preserved in page 32 WorkChoices booklet). We are concerned that there will be extremely limited obligations to register and keep records, which allows the checking for exploitation throughout the supply chain in clothing workplaces, where all employees have signed on to individual Australian Workplace Agreements (or collective agreements) and work has been contracted to another manufacturer (not directly to an individual outworker).

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[21] Cregan, Christina "Home Sweat Home: Preliminary findings of the first stage of a two-part study of outworkers in the textile industry in Melbourne" Victoria November 2001 http://www.nosweatshoplabel.com/Downloads/HomeSweatHome.pdf

[22] Greig, op.cit.

[23] The Hon Kevin Andrews MP, Minister for Employment and Workplace Relations (2005), "Protections for Vulnerable Workers" MEDIA RELEASE Sunday, 9 October

Despite the safeguards in the WorkChoices package with regard to coercion and AWA's, the Governments commitment to preserve award conditions for outworkers could be undermined. The Church is concerned, based on a long history of observing illegal treatment of outworkers, that employers of outworkers will illegally coerce outworkers onto short-term certified agreements under threat of losing ongoing work. At the termination of the agreements, award conditions (outside of the minimum standards in the FPCS) would no longer apply (particularly with regard to the obligations to register and keep records mentioned above).

To sum up, the framework of regulation to protect outworkers could be overridden by the Federal changes. The current award and state protections for outworkers, which include deeming provisions, monitoring the supply chain, the capacity for outworkers to claim unpaid monies owed to them and obligations for retailers (with regard to the supply chain) will most likely be done away within over a couple of generations (for some outworkers the impact could be felt straight away).

7.3 Recommendations to Section 7

The Uniting Church in Australia generally supports FairWear's suggestions for the inclusion of separate regulation within the legislation of a separate section dealing specifically with outworkers' unusual working conditions. Our suggestions, based on those formulated by FairWear, are as follows:

- A separate Part should be included in the Bill to deal with the regulation of outwork in the clothing industry. This part should override any conflicting provisions in the remainder of the Bill. If a new Part is not included then the following principles should still be used to amend the Bill.

- The objects of the new part should include:

    1. The elimination of exploitation of outworkers in the clothing industry;
    2. To provide protection for what has universally been recognized as a class of extremely vulnerable workers;
    3. To provide for uniform rights for outworkers as employees and obligations upon those who engage outworkers, irrespective of the "label" given to the particular contractual arrangement of an outworker;
    4. To provide for the continuation of regulation, inspection and enforcement of the provisions through right of entry powers and prosecution rights for the TCFUA; and
    5. To prevent the avoidance of obligations through sham contractual arrangements by making provision for outworkers to recover unpaid monies from parties further up the contractual chain;

The new Outwork section of the Bill should provide the following:

- A definition of outworker involving the performance of clothing work in a private residence or other non-commercial premises, and which does not contain a requirement that an outworker be an employee, and which does not require that a

person perform work for someone else's business as part of the definition. For example:

"Outworker" means a person engaged, in or about a private residence or other premises that are not necessarily business or commercial premises, to perform clothing work

- Definitions will also be required for "clothing work", "employer" and other terms.

- Deem all outworkers to be employees for the purpose of the Bill and other Federal and State laws.

- Incorporate the existing Federal Award provisions and ensure that they apply to all persons in the clothing industry who directly or indirectly engage people to perform clothing work. The Part should provide that there is no capacity for a person to contract out of these provisions, and no other industrial instrument, either during its life or upon its expiry or termination, can diminish these provisions.

- The new Part should enshrine existing union rights of entry and inspection in relation to outworkers under existing federal and state laws and awards. This would expand on the framework explained in the *Workplace Relations Amendment (Right of Entry) Bill 2004 (Supplementary Explanatory Memorandum) (Circulated by authority of the Minister for Employment and Workplace Relations, the Honourable Kevin Andrews MP)*, which provides for the continued operation of the right of entry provisions in the *Outworkers (Improved Protection) Act 2003 (Vic)*. In addition to covering outworkers in Victoria, this right of entry should be extended to all outworker workplaces in Australia.

- Provide that outworkers' terms and conditions of employment are no less favourable than those currently contained in the Federal Clothing Trades Award, including any improvements in wages and conditions granted through the Australian Fair Pay and Condition Standard.

- There should be a guaranteed transparent process to scutinise all outworker workplace agreements.

- Include provisions like those in Victoria, NSW, Queensland and South Australia providing for recovery of unpaid monies up the contracting chain, and providing for the monitoring of the industry by an Ethical Clothing Council (Councils consisting of industry and union representatives currently exist in NSW and Victoria), and providing for the development and implementation of a mandatory industry code of practice.

- The new part should explicitly preserve or equal state laws relating to outworkers and provide that the federal laws are complimentary and extend across all Australian jurisdictions.

8. The Uniting Church's Position on Trade Unionism

At this time we cannot comment in depth on the proposed legislation's curtailing and restricting the legitimate functions of trade unions, and legitimate union activities. However, we would like to express our support for the exercise of traditional union activities by and for low-paid workers as outlined under ILO conventions, and note our apprehension that the new legislation, in restricting these activities, will contribute to the economic and social burden experienced by vulnerable workers under the new industrial relations climate.

The Uniting Church in Australia historically recognises and supports the legitimate role of trade union activity in creating and promoting better working conditions and standards of living for Australian people. In 1991, the Sixth Assembly encouraged its members and workers to become active trade unionists. It affirmed:

> *(a) the role trade unions and professional associations play in protecting those who are weaker in society, and the need for people to stand together in solidarity against injustice…*
> *(b) the need for Christians to express their discipleship in trade unions and professional associations as one way in which church and work life connect and influence each other*

Similarly, the Seventh Assembly's *Call for Justice Concerning Employment* in 1994 noted the responsibilities of unions in increasing working conditions and living standards for all workers, and their legitimate function as a national-level voice for workers:

> *Unions have a responsibility towards the unemployed, as well as towards their own members. They have a responsibility to ensure that changes in the economy are widely shared, and do not only benefit a small elite of workers They also have a responsibility to work with Government and business in planning for the future in a way which promotes full employment, at adequate wages and conditions, in an ecologically sustainable economy.*

Appendix 1 - Uniting Church Policy Statements

Commitment to justice and human rights

The Inaugural Assembly of the Uniting Church in Australia (1977) set an ongoing agenda in social justice advocacy and practice, in its Statement to the Nation. This was expanded in the 1988 Assembly Statement to the Nation, which included the following paragraphs:

> In co-operation with all fellow Australians of goodwill, we are committed to work for justice and peace, calling for honesty and integrity, encouraging tolerance and compassion, challenging acquisitiveness and greed, opposing discrimination and prejudice, condemning violence and oppression and creating a loving and caring community.
>
> We are conscious of conflicts and tensions within the nation and the world. We deplore the divisions of humanity along racial, cultural, political, economic, sexual and religious lines. In obedience to God, we struggle against all systems and attitudes which set person against person, group against group, or nation against nation
>
> We recognise a widening gap between the rich and the poor, not only within Australia, but within the whole human community. We will strive to uphold the rightful claims of the poor on the resources of this nation and the world. We will seek to identify and challenge all social and political structures and all human attitudes which perpetuate and compound poverty.

The Sixth Assembly of the Uniting Church (July 1991) passed the following resolution of significance to industrial relations:

> That, recognising the importance of trade unions, professional associations, and employer organisations in the overall democratic process in society, and acknowledging that in the present political, economic and industrial climate, trade unions are under serious threat:
>
> 1.the role trade unions and professional associations play in protecting those who are weaker in society, and the need for people to stand together in solidarity against injustice be affirmed;
>
> 2.the need for Christians to express their discipleship in trade unions and professional associations as one way in which church and work life connect and influence each other be affirmed;
>
> 3.members of the Uniting Church be encouraged to join and be active in the trade union and/or professional association appropriate to their employment;
>
> 4.synods, Assembly agencies, and other Church bodies be requested to encourage employees to join and be active in an appropriate trade union and/or professional association. [Minute 91.14.18]

The Seventh Assembly (1994) adopted the *Call for Justice Concerning Employment* which included a number of clauses relevant to issues of employment and workers' rights. The first summary principle is:

> 13.1 Australia should adopt the goal of paid employment for all who seek it, providing adequate income and safe working conditions, in the context of a socially

just and ecologically sustainable economy, and adopt appropriate measures to ensure that this goal is met, through the cooperation of government, business and unions.

There should be an active employment policy, with the public sector acting (in addition to its other roles) as employer of last resort, ie providing jobs to those who have been unemployed for a certain time. High levels of unemployment should not be accepted as long as there is useful work which goes undone, and there are people who are overworked. There needs to be commitment to job creation in the business, public and community sectors, in a way consistent with concern for human rights of workers. As work is restructured it should take account of the needs of workers and their families.

13.14 Unions have a responsibility towards the unemployed, as well as towards their own members. They have a responsibility to ensure that changes in the economy are widely shared, and do not only benefit a small elite of workers. They also have a responsibility to work with government and business in planning for the future in a way which promotes full employment, at adequate wages and conditions, in an ecologically sustainable economy.

13.15 Moves towards more flexible employment such as work-sharing, part-time and casual work need to be made in a framework which ensures workers have adequate income and working conditions.

The Victoria Synod has on record several resolutions that relate to a workplace that is free from discrimination and one that fulfils the objectives of Equal Opportunity. For example:

93.5.1.1-3 The Synod resolved:

(a) To affirm that persons should not be discriminated against on the basis of their gender, marital status, disability, race or age in matters of employment, education, church membership or access to accommodation and other services provided by the Uniting Church in Australia.

(b) That all presbyteries, parishes and agencies be advised of the above resolution.

(c) (i) To support the maintenance of Clause 38 of the Equal Opportunity Act 1984, in order to protect the freedom of religious groups to practise their beliefs.
(ii) That the Victorian Government be informed of resolution (i) hereof.

The NSW Synod has similar principles in its 1992 resolution on unemployment.

The NSW Synod family ministry policy includes principles on “family friendly social policy and social institutions”:

Principle 14 - Family ministry will advocate appropriate social policies

The right to establish and maintain a family is a fundamental human right. All institutions in society, businesses, government, community organisations, political parties and the church, have a responsibility to order their lives in ways which do not cause harm to families, and that, where possible, support and nurture families.

Families cannot meet all the needs of their members on their own. Families require adequate income to provide for their needs, and access to the services which their

family members need, such as education, health, housing, income support and services in times of difficulty. This implies particular duties for both employers and government…

The 1988 meeting of the NSW Synod also adopted social justice principles (as incorporated into Uniting Care Childrens' Services Forum Manual)

1. That all members of the community should have an equitable opportunity to participate in the economic, social, cultural and political life of the nation.

2. That all members of the community should have equitable access to, and an equitable share of, the resources which Governments manage on behalf of the community.

3. *That all members of the community should have the right, within the law, to enjoy their own language, and should respect the rights of others to their own culture, religion and language.*

4. Social Justice moves beyond pre-occupation with narrow economic considerations to a recognition of the fundamental importance of compassion and equity for the well being of the society.

5. Social Justice gives priority in the allocation of Government resources to those groups who are currently most disadvantaged as measured by those principles.

6. Social Justice focuses on structural change to remove the causes of disadvantage.

7. Social Justice ensures that Government programs and policy, and private enterprise development, do not further disadvantage already disadvantaged groups.

In 2000 the Synod of Victoria and Tasmania passed a resolution to support the FairWear campaign. The church called for all apparel and footwear manufacturers to comply with a code of practice, require all their contractors and subcontractors pay their employees a living wage, and respect the right of all employees to join a trade union.

To express its support for the FairWear campaign to eliminate exploitation of home-based workers in the apparel and footwear manufacturing industry in Australia.

(a) To call on all apparel and footwear manufacturers and retailers in Australia:

(i) to sign and comply with the Homeworkers Code of Practice, endorsed by the Textile, Clothing and Footwear Union of Australia, including accreditation and display of *No Sweat* labels, to ensure that their products are not made through exploitation;

(ii) to require that all their global contractors and subcontractors pay their employees a 'living wage';

(iii) to respect the right of all employees to form and join trade unions, in compliance with international human rights standards, and to allow these right to be guaranteed by independent and transparent monitoring.

(b) To encourage Synod of Victoria agencies, congregations, members and schools to consider, wherever possible, not purchasing apparel and footwear from manufacturers and retailers that are known to be in violation of this resolution.

Appendix 2 – International Human Rights Instruments

Universal Declaration of Human Rights

The sections of the Universal Declaration of Human Rights that are relevant to employment issues are:

> Article 20
>
> Everyone has the right to freedom of peaceful assembly and association.
>
> No one may be compelled to belong to an association.
>
> Article 23
>
> Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> Everyone, without any discrimination, has the right to equal pay for equal work.
>
> Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
>
> Everyone has the right to form and to join trade unions for the protection of his interests.
>
> Article 24
>
> Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

The International Covenant on Civil and Political Rights

> Article 22
>
> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
>
> 3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The International Covenant on Economic, Social and Cultural Rights

> Article 6

1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

International Labour Organisation (ILO) Convention 87 (adopted 1948)

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace; Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress"; adopts … the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I. FREEDOM OF ASSOCIATION

Article 1
Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2
Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11
Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

ILO Convention 98 (adopted 1949)

Article 1
1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to
(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 3
Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4
Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of *collective agreements*.

International Labour Organisation - C177 Home Work Convention, 1996,Convention concerning Home Work [Not ratified by the Commonwealth of Australia]

Article 4

1. The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.
2. Equality of treatment shall be promoted, in particular, in relation to:
   a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
   b) protection against discrimination in employment and occupation;
   c) protection in the field of occupational safety and health;
   d) remuneration;
   e) statutory social security protection;
   f) access to training;
   g) minimum age for admission to employment or work; and
   h) maternity protection.

Article 7

National laws and regulations on safety and health at work shall apply to home work, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for reasons of safety and health.

Article 10

This Convention does not affect more favourable provisions applicable to homeworkers under other international labour Conventions.