

Submission

to

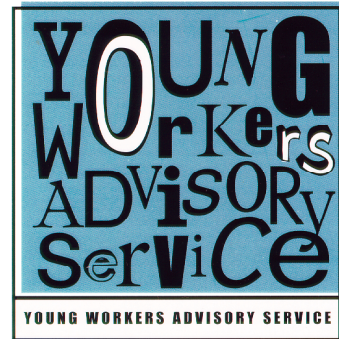
Senate Employment, Workplace Relations and Education References
Committee

Inquiry into Workplace Relations Amendment 'Work Choices' Bill 2005

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Committee Secretary
Senate Employment, Workplace
Relations and Education Committee
Department of the Senate
Parliament House
Canberra, ACT
2600



Dear Secretary

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

The Young Workers Advisory Service (YWAS) is pleased to have the opportunity to provide a submission to the Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill.

The following submission is provided from the prospective of a community-based organisation that primarily provides information, representation, advocacy and advice to young people in Queensland (under 25) on State and Federal Industrial Relations matters. It is acknowledged that YWAS deals with issues that have usually built up over a period of time, prior to contacting the service. YWAS commenced operations in April 2002 and is funded by the Queensland Department of Industrial Relations. Since the commencement of the organisation, YWAS has provided the following services:

Specialised assistance	Over 4,700 young people
Information Sessions – Secondary and community organisations	Nearly 300 separate sessions reaching approximately 10,000 students
Casework representation at the Anti-Discrimination Commission Queensland, Human Rights and Equal Opportunities Commission, Federal and	Approximately 600 young workers

State Industrial Relation Commission.	
General Enquiries – including referrals	Over 1,300 callers

YWAS is a State Government initiative established in the face of growing concerns that young people were being exploited in the workplace. YWAS attempts to provide information to young people on their employment rights and obligations in the hope of addressing workplace issues through educational workshops and presentations. YWAS has developed first hand knowledge of the concerns of young people in the workforce. YWAS' involvement in community networks, research projects and promotional activities places YWAS at the forefront of youth employment issues in Queensland.

A. OBJECTIONS TO THE NATURE AND TIMING OF THE CURRENT INQUIRY.

It appears that there are a number of inconsistencies between advertisements on and commentary about the proposed 'Work Choices' changes to the Workplace Relations Act and what is actually contained in the Bill. As an example, the Federal Government has not appeared to make any representations regarding the removal of the right of workers to only be required to present a medical certificate after more than 2 days leave. This detail only emerged in a thorough reading of the bill. Furthermore, the Federal Government's undertaking that casual employees would be included in the calculations of employee numbers for the small business exemption for unfair dismissal did not tell the full story; the proposed changes exclude *short-term* casuals from the calculations. [s170CE(6)]. The Work Choices Amendments should be considered as a whole and not as different components as it impacts on workers.

A concern shared by many is the difficulty in presenting and writing a submission in such a short period of time. The bill was released on 2 November 2005 and submissions were required by 9 November 2005. This timetable allowed insufficient time for organisations, and particularly community organisations, to read and interpret a 700-page document (without appropriate indexation) and to thoroughly understand the repercussions and interpretation of those provisions. The speed in which the Federal

Government is presenting this Bill that will effect such a large number of Australians should be of concern to all citizens. The importance of such impacts should be carefully considered, not rushed.

B. THE POSITION OF YOUNG WORKERS IN THE LABOUR FORCE

YWAS suggest that there are a number of reasons why young workers in particular are in a disadvantaged position in the workplace. These reasons include:

1. Relative age and inexperience with the ‘world of work’.

Young workers are already at a distinct disadvantage when it comes to bargaining with their employers. They have less experience in the workforce and hence less developed bargaining skills in general. The confidence and knowledge necessary to bargain on an equal footing with employers is understandably lower in the younger members of the workforce. The proposed changes appear to presume that all employees are equally skilled advocates, equally knowledgeable about the mechanics of industrial issues and equally familiar with the true worth and nature of certain rights and employment-related protections. It also assumes that employers and employees are in an equal bargaining position. Apart from the fact that young workers generally have less experience with the ‘world of work’ than their employers, they also tend to have less knowledge about access to professional advice of a legal or industrial nature. YWAS believes that these issues, coupled with some of the specific provisions in the bill restricting youth wages may lead to a steady reduction in the wages, terms and conditions of young workers.

Young workers do not readily have resources available to them at the commencement of their employment. There may be a number of expectations on a young person during their employment that are not discussed and are left silent. Compared to a collective agreement or readily available awards, individual agreements seek to silence or restrict the ability of a worker to seek entitlements as they relate to the agreements of their co-

workers (given the confidentiality of a document such as an AWA). Over time, new generations of workers will not be aware, able to bargain or value entitlements that extend beyond the five minimum employment conditions for awards. A youth-focused information and advice service with focus on education and correct knowledge, is paramount in ensuring that young workers are aware of their rights and are not further exploited.

YWAS has already commented on the issues relating to negotiating employment conditions in their submission to the Senate Employment, Workplace Relations and Education References Committee – Workplace Agreements in September 2005.

2. Young workers' understanding of the meanings of certain industrial and workplace relations issues.

Young workers may be at a significant disadvantage when it comes to negotiating acceptable terms and conditions of employment purely because of a lack of knowledge about the very meaning of some central tenets of the world of work. Anecdotal evidence from callers to YWAS shows that a young worker starting his or her first job may not appreciate the meaning of 'redundancy pay', may not comprehend the details of the differences between an award and an AWA and may not know the difference between a casual and a permanent employee. Since it began operations in 2002, a significant number of specialised assistance callers to YWAS reported that they were unsure which classification they fell into. This (quite natural) situation means that young workers are already at a disadvantage when it comes to being a skilled advocate for workplace terms and conditions above the bare minimum. By way of example, a young worker may not be aware that he or she can legally refuse to sign an AWA that increase his or her take-home pay in exchange for working longer hours and having fewer annual leave days.

3. Young workers' knowledge of specific (legal and other) workplace rights, obligations and entitlements.

Young workers, often merely because of the lack of time spent in the labour force, tend to have a lower level of knowledge about their current workplace rights, obligations and entitlements. This includes knowledge about what industrial instrument they are employed under, what their rights are regarding leave entitlements, meal breaks and unfair dismissal, and what authorities they may have recourse to in making enquiries or complaints. Anecdotal evidence from callers to YWAS also demonstrates that young workers tend to be less sure of how to raise complaints within the workplace. This places young workers at an early disadvantage in terms of workplace bargaining power.

4. Understanding the *value* of some 'traditional' employment rights and entitlements such as paid annual leave, paid sick leave and procedural fairness in dismissal

Young workers generally have a lower level of exposure to what older employees may understand to be more fundamental rights in the workplace. These may include the right to and worth of a 'fair hearing' and procedural fairness before dismissal, the right to and worth of a reasonable amount of paid annual leave, the right to and worth of redundancy entitlements and meal and rest breaks. YWAS is concerned that this general lack of exposure to the practical worth of such protections will be exploited by employers in pressurising young workers to 'cash in' certain entitlements (as permitted by the proposed changes). Young workers new to the world of work may also feel the need to 'impress' a new employer with his or her willingness to work as demanded. This may manifest itself in the employee being forced to accept such terms and conditions as a workplace agreement contains.

As many young workers only have experience of casual work, it is also arguable that, when they move into permanent employment, they may be more easily convinced by their employers to trade some fundamental rights away.

C. YWAS STATISTICAL AND ANECDOTAL EVIDENCE CONCERNING TYPES OF EMPLOYMENT AND MOST COMMON CALLER ISSUES

Since its inception, YWAS has provided specialised assistance advice for over 4600 young people concerning workplace issues. The following are percentages of specialised assistance where the young person has contacted YWAS in relation to the issue. These percentages are not mutually exclusive as a young person may call about more than one issue:

- Employment conditions (including meal breaks, hours of work and Overtime issues)(1409 of 4630 = 30.43%)
- Wages (1343 of 4630 = 29%)
- Workplace Bullying (1017 of 4630 = 21.9%)
- Dismissal/Redundancy (1860 of 4630 = 40.17%)

Of YWAS callers requesting specialised assistance, 33.9%% were casual employees. 1715 (37%) were full time permanent employees, 304 (6.5%) were part time employees, 489 (10.5%) were on traineeships or apprenticeships. 2033 (43.9%) of callers were employed in the hospitality or retail sectors – sectors that often embrace and maintain significant power imbalances between employees and employers. Employment in these industries or unskilled professions is often appealing to young people. (There are a significant number of academic papers on the casualisation of young people in employment.¹) Young people are more likely to be in employment for shorter periods of time. This means that other employees working in large companies that employ a large number of short-term casuals will be excluded from making a complaint of unfair

¹ For example: Campbell, I. (2000) ‘The Spreading Net: Age and Gender in the Process of Casualisation in Australia’, *Journal of Australian Political Economy* no. 45, 68-98; Ian Watson, John Buchanan, Iain Campbell and Chris Briggs. (2003). ‘Fragmented Futures, New Challenges’ in *Working Life*, 2003. (<http://www.federationpress.com.au/Books/WatsonBuchanan.htm>), Job Watch Submission (www.job-watch.org.au/jwissues/sub2sarc0407.pdf)

dismissal. Following on from this there will be no incentive for organisations to train or invest in their staff long-term.

The fact that YWAS has received many calls on wage-related matters may mean that young employees are finding that their employers are not complying with legislation or industrial instruments concerning the payment of wages. Currently, such non-compliance is relatively simple to determine, enforce or seek compensation for. It may also mean that young people are unsure as to what their correct pay rate is and how it is determined. Anecdotal evidence from industrial officers at YWAS shows that most callers are covered by an award or enterprise bargaining agreement, to which they can be quite simply directed in determining their proper wage rate. Under the proposed laws, there is a concern that young workers, cajoled, coerced or forced onto individual contracts, may be left to their own devices in negotiating and attempting to enforce payment of their agreed wage rates.

D. SUBMISIONS REGARDING SPECIFIC PROPOSALS IN THE ‘WORK CHOICES’ BILL

YWAS believe that details in the Work Choices Bill concerning individual agreements, wage-setting guidelines, default wage and conditions levels that are below current standards, and ‘rights’ to waive *other* rights long held to be central to a healthy working relationship, make the above concerns for young working Australians even more pressing.

This submission focuses on several elements of the Work Choices Bill that YWAS believes may have adverse consequences for young working Australians. They are:

- 1. The proposed *functions, objectives* and parameters of the Australian Fair Pay Commission in its wage-setting capacity: the impact on youth and training wages;**
- 2. The proposed method of determining pay rates and casual loadings;**
- 3. The proposed management of ‘ordinary hours of work’ and reasonable additional overtime;**
- 4. The ‘right’ of employees to waive certain fundamental information and access rights regarding workplace agreement details;**
- 5. Young Workers and Unlawful Dismissal – is it enough? Short-term casuals ARE excluded from certain unlawful dismissal provisions such as being forced to sign an AWA. Many of these are young workers.**

1. The proposed *functions, objectives* and parameters of the Australian Fair Pay Commission in its wage-setting capacity: the impact on youth and training wages;

YWAS believes proposed changes regarding the way wages rates, including casual loadings and junior rates of pay are determined may leave young workers in particular at an economic disadvantage. The four issues spelt out in the proposed s7J of the Bill, that the AFPC is to have regard to in its wage-setting functions, suggest the promotion of a competitive spirit amongst the least skilled and experienced employees. The proposed s7J (d) urges the AFPC to establish minimum wages for junior employees and those on training agreements (the vast majority of which are young workers) that ensure these employees remain competitive in the labour market. The proposed section 115 of the bill (in Part VI, concerning awards) also directs the AIRC to ensure that awards protect the competitive position of youth and youth wages, promote youth employment and youth skills, and assists in reducing youth unemployment. This over-riding philosophy behind the AFPC's powers appears to negate the other issue to which the AFPC is to have regard in determining wages: the maintenance of a safety net for the low paid.

2. The proposed method of determining wages, particularly casual loading rates and junior and training wages.

The Work Choices Bill proposes to change the way in which wages, including minimum wages and casual loadings, are set. It also outlines specific guidelines regarding the setting of junior and trainee wages, including minimum wages. YWAS believes these guidelines have the ability to restrict the wages of young workers to an extent that is below minimum community standards. Combined with the push towards individual bargaining, where young, sometimes unskilled and inexperienced workers may be left to negotiate in an unequal bargaining environment, the proposals may also have the effect of depressing the working conditions of young employees as they feel the need to 'cash out' entitlements for a higher rate of pay.

The bill proposes the creation of a ‘special’ federal minimum wage (FMV) for young workers (under the age of 21) and trainees. Unlike the guarantee pertaining to the general adult FMW (under s 90O), however, the bill contains no guarantee of a pre-reform minimum wage rate under which a *special* FMW cannot fall. This, along with the ideological thrusts guiding the AFPC in setting youth wages means that there is no assurance that youth and training wages will not drop below the level necessary to ensure an acceptable standard of living. Furthermore, in contradiction to the rhetoric of simplicity and streamlining, the bill (under the proposed s 90T (1) (2) and (3)) allows the AFPC to decide that the special FMW may only apply to certain pay and classification standards, for certain employees. There is a concern that this may lead to the creation of more than one special federal minimum wage, making a mockery of the notion of simplification and streamlining and creating difficulty for young people seeking clarification of their minimum entitlements.

The final point in relation to the effect of reforms on the economic circumstances of young workers is that the ‘cashing out’ of rights may become a proxy for the development of fair wages rates. The lack of a guarantee against the lowering of special (training or junior) minimum wages may mean that young workers will seek to increase their take-home wage in any way they can. Under the proposed reforms, one method of doing this is to cash out two weeks of annual leave entitlements. YWAS is concerned that this element of the proposed reforms may undermine the fundamental premise behind annual leave – the right to rest and recuperation. From a social perspective, there is also the concern that the younger generation of Australian workers will develop a cynical approach to such fundamental human right as rest, time with friends and family. (In a similar vein, YWAS also holds concerns that changes to unfair dismissal laws may result in the next generation of workers developing cynical views of the fundamental rights to justice and procedural fairness in dismissal.)

YWAS has provided approximately 300 information sessions to schools and community groups where the issues of balancing school and working hours are a major concern. In a collection of data from 557 students, 194 of the students were working of which 55 reported that they were working hours in excess of 15 hours per week with full time

study. In an attempt to make more money with less contact hours for work a young person on junior wages will be more likely to trade in their annual leave and other entitlements without realising the intrinsic value of such entitlements.

Given the fact that many young employees are employed on a casual basis, the proposed changes to the way casual loadings are determined is also likely to disproportionately effect young workers. Under the proposed s 90I of the bill, a new ‘default casual loading percentage’ will be created. It is understood that, unless an employee is covered by an APCS alone, he or she will only need receive a default casual loading of 20% of the basic periodic rate of pay (s 90H (3)). Those employees who are employed either on an AWA or other workplace or collective agreement, or who are solely subject to the (special or standard) FMW are not entitled to receive more than 20% loading. The current casual loading percentages for most employees are around the 23% mark. Since the Queensland Industrial Relations Commission’s 2001 Casual Loadings Case² all Queensland awards have a minimum 23% casual loading. Given the no disadvantage test as we know it, this standard flows on to most employees. Reducing the default casual loading to 20% will be clearly detrimental to all casual employees and young workers in particular who may not have the bargaining power to seek an increase to this loading.

The rhetoric in discussing the right to fair pay, breaks, casual loading, general employment conditions available under various industrial instruments as ‘rights’ is that without enforcement capabilities these ‘rights’ are toothless. In other words, while a person has the right to the minimum wage under the amendments, a person working in a constitutional corporation with less than 100 employees, under proposed amendments, can be terminated for making a complaint about their wages/employment conditions without an ability to lodge an unfair dismissal.

² 166 QGIG 389

YWAS Case Study

Damien's daughter (under 15) has been working at a convenience store as a casual for the last 4 months. Recently some problems have been occurring in the workplace, which gave rise to Damien trying to find out more about his daughter's employment. After contacting Wageline to find out what the Award wage is for his daughter, he discovered that his daughter was being paid \$2.50 an hour less than the award rate. Currently, Damien's daughter is able to make a complaint about underpayment of wages but she can be terminated given the casual nature of her employment – not an invalid reason.

3. The proposed management of 'ordinary hours of work' and reasonable additional hours, additional requirements for carer's leave - the specific effects on young workers

The Federal government's media campaign surrounding the release of Work Choices has informed Australians that one of the 5 minimum entitlements 'protected by law' will be the right to a maximum 38 ordinary hours of work per week. What has not been made clear to many, but has emerged with the release of the Work Choices bill, is that these 38 ordinary working hours may be averaged over 12 months (ss 91C (2) and (3)). YWAS is concerned that this may lead to employers manipulating the hours of work so that what would previously have been considered overtime could be considered part of ordinary working hours, as long as the yearly average was 38 hours. Young workers may be particularly vulnerable to such manipulation of the ordinary working hours. Many young, casual workers already find themselves in situations where hours of work change from week to week. YWAS submits that formalising this arrangement through a basic minimum entitlement scheme for all employees would encourage the manipulation or 'averaging' of working hours to the detriment of employees. This has the possibility of adversely impacting on young workers' family, study and other commitments. Current Queensland legislation offers clearer protections regarding the make up of ordinary hours of work.³

Given the differences in the bargaining power of young employees and their employers (discussed above), there is concern that young worker will not have the means to negotiate a more balanced working hour regime. With such limited protections on working hours provided by Work Choices, young workers will also have a reduced ability to make complaints about being over-worked (or, in other work-weeks, under-worked). Furthermore, given the proposed restrictions on access to unfair dismissal protection, a young worker who seeks to better balance his or her working time through making a complaint to their employer, may be legally dismissed without recourse.⁴

The issue of being asked to work ‘reasonable additional hours’ (presumably meaning overtime), as allowed by s 91C(1)(b) also raises concerns for young workers in particular. Employees who are covered by workplace agreements, (which need only include the 5 minimum entitlements referred to in the bill), may have no access to penalty rates for such ‘reasonable additional hours’ required by their employer. The Work Choices bill notes that, in deciding what are ‘reasonable additional hours’, account must be taken of workplace health and safety issues, the personal circumstances of the worker, and any notice the employer gives of the requirement to work such hours (s91C (5)). However, YWAS is concerned that young workers, desirous of increasing depressed rates of pay, in an unequal bargaining position and aware that voicing concerns may lead to dismissal, may be dissuaded from making a complaint about unreasonable additional hours.

YWAS case study

Paul (20) works as a supervisor at a large, Australia-wide retail store. He regularly works 12 hours a day with minimal breaks. He is employed on an individual contract, with an annual salary of around \$30,000. He does not receive any overtime pay. Under the current system, his individual contract would be compared with the Retail Industry (State) Award (Queensland), under the ‘no-disadvantage test’. Paul would currently have the right to make a complaint that his individual contract, with its overtime requirements

³ Section 9, Industrial Relations Act 1999 Qld

⁴ This issue, of course, applies not only to making a complaint about hours or work, but also about wages, meal and rest breaks, workplace bullying.

and lack of overtime pay, places him at a disadvantage compared to the relevant award. Under the Work Choices system, he would have no right to make a complaint as long as his hourly rate did not fall below the Federal Minimum Wage.

YWAS Case Study

Simon, an apprentice has been put on a salary agreement where there was no consultation. A clause in the contract states that there is to be no overtime paid but that there is an expectation that he complete the required work; he feels that his boss works him as much as he can (around 54 hours a week). Simon believes that this is unreasonable overtime – and these hours don't include travel time that he is required to do as part of his work. He is feeling burned out - he needed annual leave and it was refused; he asked his employer if he could only work 40hrs a week – as a consequence he was bullied at work; promised to sign off his apprenticeship by Christmas; his employer told that he is not too sure if Simon can be signed off if he doesn't work 50+ hrs a week.

The industrial relations reforms in regards to accessing paid sick leave entitlements also have the ability to disadvantage young people. Under the proposed amendments, a person will need to produce a medical certificate if they wish to access their paid sick leave entitlements. This puts a considerable burden on young people, as it means they need to seek medical advice at their own cost. Given the junior wage of young workers they are often on lower wages than their co-workers. The cost of seeing a medical specialist or practitioner could outweigh the cost of accessing the paid sick leave. As a result a young person on trainee or apprentice wages, or other forms of lower wages, could be worse off from seeking to gain access to their entitlements. Adding this extra cost to them at a time when they are ill seems to be considerably harsh.

There are other issues in relation to those who work rurally. Often medical appointments are difficult to schedule, particularly when trying to arrange an appointment on the same day. For young people working in rural locations, or in areas where they have difficulty seeking medical attention, the provisions of the industrial relations reform in regards to

obtaining a medical certificate makes it particularly difficult. It may mean that a young person is unable to seek medical advice for some days after the sick leave, at which time they may not show any symptoms of being ill. As a result a medical practitioner may be less likely to issue a medical certificate despite the young person being genuinely ill.

Young Workers Advisory Service has encountered several young people who have been disadvantaged as a result of accessing their sick leave entitlements. One case involved a young woman who had taken sick leave. She provided a medical certificate for the time that she was unable to attend work. Despite this she was targeted and bullied and her employer made allegations that she was unreliable as a result of her illness.

To place further burdens on young people in regards to accessing leave entitlements owed to them by their employers continues to take rights away from young people. This can only be detrimental. The reform in relation to accessing paid sick leave entitlements adds extra pressure on young people at a time when they are most vulnerable. This seems to be unfair and harsh.

YWAS Case Study

June called YWAS with regards to unfavourable treatment she had received after returning from sick leave. The client had worked for over two years as a receptionist, and was sick for one week. She produced a medical certificate for her leave. When she returned to work she was advised that her position had been made redundant, as the employer's partner had now taken over the duties that she had previously performed. A week after the termination the position was seen advertised in the local newspaper. YWAS assisted the client in making an applicant for an unlawful termination.

4. **The ‘right’ of employees to waive or ‘sell’ certain fundamental rights such as annual leave and information and access rights regarding workplace agreement details.**

Section 98 of the Bill concerns the employer’s obligations to its employees in providing information about and access to a workplace agreement prior to it being approved:

(1) *If an employer intends to have a workplace agreement (other than a greenfields agreement) approved under section 98C, the employer must take reasonable steps to ensure that all eligible employees in relation to the agreement either have, or have ready access to, the agreement in writing during the period:*

(a) beginning 7 days before the agreement is approved; and

(b) ending when the agreement is approved.

(2) *The employer must take reasonable steps to ensure that all eligible employees in relation to the agreement are given an information statement at least 7 days before the agreement is approved.*

This section goes on to list what information must be included in an information statement about the agreement, including information about the right to a bargaining agent and information about how and when the agreement will be approved. However, in s 98A, an employee has the right to waive ready access to the agreement before it is filed. This waiver must be in writing and signed by all parties. The existence of this right to waive access to documentation detailing the terms and conditions of employment is of great concern, particularly for young workers. It would appear that there is very little to stop an employer merely developing a *pro-forma* waiver of access rights, perhaps wording it so as to appear to be a condition of employment, and insisting a young, inexperienced job applicant to sign it. While we recognise that the Bill contains provisions against coercion in regard to individual and other agreements, YWAS suggests that young workers may be both less informed about the nature of an individual

agreement and less confident in challenging an potential (or, indeed, existing) employer's direction. This would all but negate the purpose of the coercion protections. YWAS believes that the right to access documentation concerning the specific terms and conditions of one's employment is central to the employment relationship. The inclusion of waiver 'rights' in s 98A appears to be based on the assumption that all employees possess an equal level of confidence, knowledge and skill. This is clearly not the case, particularly with regards to young workers.

5. Unlawful Dismissal and Young People - is this enough protection? Short-term casuals ARE excluded from certain unlawful dismissal provisions such as being forced to sign an AWA. Many of these are young workers.

A common theme in this submission is the issue of 'rights' without protection. While most casework client issues focus on the right to make an application for an unfair termination with respect to their employment at both the Queensland and Federal Industrial Relations Commissions, there has been a high volume of applications in relation to unlawful termination. In August 2004, YWAS provided a submission to the Queensland Commission for Children and Young People and Child Guardian where the general findings were that young people are more likely to be in positions where they are vulnerable to exploitation and harassment. The submission provided by YWAS is attached as appendix 1.

YWAS' contention is when it comes to young workers, the Industrial Relations Systems in both the state or federal jurisdictions must have age specific protections to protect those most vulnerable in employment. The relative understanding, knowledge, experience, ability to negotiate of young workers is inferior to other workers making this age group more susceptible to mistreatment. While the concept of protection from unlawful termination under the proposed amendments is generally supported, there are aspects of unlawful termination that must be considered when looking at a system that balances the needs of employers and employees. There is significant difficulty in accessing the law for many vulnerable members of the community such as women, young

people, Aboriginal and Torres Strait Islander People, Culturally and Linguistically Diverse Background workers.

When considering unlawful termination, notions of termination for work performance, capacity or conduct are not considered. Underpinning all laws in Australia is the notion of natural justice and substantive/fair procedure, a person should be told what they have done wrong before they are terminated from their position. Young workers will resist informing their employer that they have personal issues (such as illness, injury, and information relating to their personal life (i.e. religion, sexuality, cultural activities, and union activities)) for fear of being terminated. Where the employer can remotely prove that there are additional 'work performance issues' in relation to that worker, this will be relied upon in terminating the employee. The standard of proof in proving that an employee was terminated for an invalid reason is quite high, in fact in most jurisdictions it is beyond reasonable doubt. YWAS' concern is that there have been situations where the young person has been verbally told that the reason for their termination was an invalid or unlawful reason but have had difficulties in proving that this was the reason for the termination. The following case is an example:

YWAS Case Study

'James' (22) contacted YWAS for casework assistance. James believed that he was terminated from his position for not signing an AWA. James attempted unsuccessfully to negotiate the terms of the AWA. The company provided James with a pro forma offer for continued employment only under an AWA. There were a number of clauses that James did not agree with; as such he attempted to negotiate a change of these clauses with the company. James informed his employer that he did not wish to sign the agreement as is. Subsequently, James was verbally informed, that despite regular and systematic work as a casual for the past 2.5 years that unless he was an AWA employee there were no shifts available for him. Although James was able to lodge an application for reinstatement, there was great difficulty given the standard of proof for invalid reasons to present his case at the Commission.

YWAS has addressed in their report to the Children's Commission (Appendix 1) that young people tend to be hesitant in making complaints of harassment or bullying where there is no protection from the employer's adverse reaction to the complaint. The 'protected by law' rubber stamp advertising of the unlawful provisions of the proposed bill fail to recognise that a significant number of young people are in casual and precarious employment (in particular short-term casual) who do not have access to the unlawful provisions.

According to the Annual Report for YWAS 2004/05, 64% of young people contacted the YWAS in relation to their employment and pay conditions (breaks, overtime, underpayment of wages, unpaid trials, rostering issues, denial leave requests etc) and 20% in relation to workplace bullying. With regards to these complaints a young worker terminated for making a complaint to their employer about these issues would not have the right to lodge an application claiming unlawful termination from employment. This means that an employee working in an organisation with fewer than 100 employees (long term casual employees or permanent employees) who has informed their employer of a problem in the workplace will not be entitled to make an application. Given the number of young people affected by basic breaches of employment, the traditional low-skill requirements of positions held by young people, young people are systematically disadvantaged by legislation without such protections.

YWAS Case Study

Sally (aged 15-18) had been working in the hospitality industry as a casual for 11 months. She started to have problems with another employee so that she went to talk her supervisor about the issues. After having these discussions with her employer, she returned to her workplace the next day and she was noticed that was not put on the roster and was effectively dismissed.

E. Conclusions and Recommendations

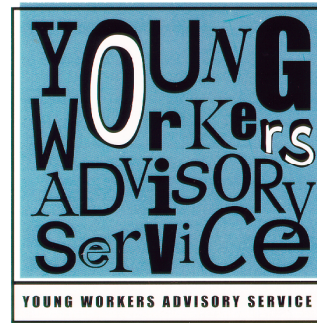
The Young Workers Advisory Service submits that many of the changes proposed by the Workplace Relations Amendment (Work Choices) Bill will be detrimental to young workers. Under current legislative provisions, young workers already face disadvantages when it comes to knowledge about their workplace rights, understanding the very meaning of certain industrial relations concepts and bargaining and negotiation skills. Young, often-casual workers in precarious employment are at greater risk of exploitation by unscrupulous employers than many other sub-groups of workers. YWAS believes that the Work Choices proposals will create a working environment that fosters a sense of insecurity and cynicism about access to fundamental rights. The proposals seek to strip away many of the rights of access to information which young people are most in need of. YWAS believes that any changes to industrial relations laws should be seeking to enhance the protections afforded to the more vulnerable members of society, not to leave them to negotiate the often unfamiliar and complex world of work by themselves.

In 2005, the Young Workers Advisory Service was involved in a research project with the Queensland University of Technology entitled ‘*Who is upholding the rights of young workers?*’⁵. This report investigates the problems faced by many young people at work (including bullying, underpayment of wages, health and safety) and profiles the organizations, agencies and processes that attempt to protect their rights. The research found that the lack of national restrictions on minimum working ages, lack of specific guidelines within statutory authorities (such as the Industrial Relations Commissions) that relate to the age of employees, and the lack of regulatory frameworks that allow young people to address entitlement or grievance procedures currently restrict the ability of young workers to resist exploitation in the workplace. The reforms proposed by Work Choices will only exacerbate this situation by encouraging a move to strict individualism in the workplace.

⁵ McDonald, P and Dear, K. ‘Who is upholding the rights of young workers?’. *Youth Studies Australia*. v24 (3) 2005. 10-16

In conclusion, the Young Workers Advisory Service recommends that the proposed Work Choices reforms, particularly reforms concerning the way minimum wages and casual loadings are to be determined, concerning the 'right' to sell off certain fundamental rights such as annual leave, concerning on the 'right' to waive information and access rights over workplace agreement content, and those concerning ordinary and reasonable additional hours of work, should be withdrawn. YWAS further submits that a much greater level of community consultation should take place before any reforms to the current system are made. We also submit that such consultation must consider the experiences of those in disadvantaged bargaining positions such as youth. Finally, we recommend the federal government undertake substantial social research into the impact of removing fundamental social and employment rights on attitudes to justice and fairness held by the emerging generation of workers.

Young Worker's Advisory Service Submission



Children's Commission Discussion Paper:

“Queensland Review of Child Labour:
discussion paper”

8 October 2004

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Consultation Question 1 – Child employment

What do you know about the extent and type of paid and unpaid work children and young people under 18 in Queensland are engaged in, including:

The age of children working and balancing work and study

The trend to increasing participation of Queensland children and young people aged 15-19, who are in both employment and full-time education, is highlighted by Australian Bureau of Statistics data, on page 10 of the Discussion Paper.

Contact by the Young Workers Advisory Service (YWAS), with young people who are participating in work, indicates that balancing work and study is now a normative experience for 15-18 year olds. This is reflected by a general community acceptance that work experience is a necessary transition to adult status, citizenship and independence. Current Queensland government policy strategies in education and training reflect a focus on the preparation of young people for this transition, including the ETRF legislation passed in 2003.

As far as YWAS is aware, and as the Discussion Paper reveals, no extensive, age-specific data has been collected on the participation rates of young people in the workplace.

Data collected by YWAS reflects the number of young people under 18 who have contacted the Service for assistance with a work-related issue, between April 2002 and Oct 2004:

Total contacts by young people under 18: **636**

Total contacts by young people under 25: **3958**

Regional contacts from young people under 18 since April 2002: **306**

Information collected during seminars to Years 10, 11 and 12 students (or College equivalents) reveals:

Approximate number of young people attending sessions: **4,500**

Young people under 18 performing paid/unpaid work: **65% - 95%**

The hours worked, type and appropriateness of work and conditions

Working hours

The increased tendency of young people under 18 to participate in work, in addition to full time education, can be partly attributed to the deregulation of the labour market and the growth of employment relationships that now deviate from full-time positions, with a more variable and flexible scheduling of work. This is reflected in the proliferation of low skilled, casual and part-time work in the retail and services sectors, where the determination of the spread of work hours for individual workers is largely at the discretion of the employer. Combined with youth wage rates, it is attractive to employ young people outside compulsory school hours to cover the span of trading hours. The majority of YWAS clients and students contacted through school visits work in these sectors and are employed on a casual basis.

YWAS has not collected client data on hours worked by our young clients. However, in seminars with Years 10, 11 and 12 school students, over 50% indicated that they participated in paid work in excess of 10 hours per week. Approximately 40 students (1%) said they performed paid work in excess of 30 hours per week.

Individual case studies, below, provide examples of excessive hours worked by full time school students:

Female aged 16, in Year 11 in Brisbane, working 36 hours per week at a supermarket, with set hours around schooling and on weekends, attending school full-time to attain Year 12, then intends career with the supermarket.

Two young females, attending Year 11 on Gold Coast, both living away from their families of origin, with their boyfriends. Both girls working at a supermarket 30 hours per week work to contribute to rent and living costs. Assuming bulk of domestic responsibilities.

Young male in Year 10 in Rockhampton, working 30 hours or more at hardware shop over weekends and after school. Intending to undertake traineeship following year at hardware shop.

Young male in Year 12 in Caboolture, working at local club, averaging 25 hours per week, concerned about demands for extended hours on Sundays, commencing as early as 7.00am.

Two females, aged 13 and 14, working at fast food outlet in Brisbane, parents concerned about excessive hours (more than 20 hours per week). 14 year old decided to leave school to work full-time, but after incident at work returned to school.

Female, 15, was directed to open her bakery workplace at 4.30am before school. She feels tired and sick during school hours. She is worried about her safety as it is still dark.

Young female in year 11 was told that because her brother was sick, she had to do his shift, too. She worked a total of 12 hours per day at the weekend. She was also refused overtime for the hours she worked.

Excessive hours but not at school: female casual employee, 16 years old, has been working 7 days a week, 10-12 hour days for a 'salary' of \$300. She was doing extra hours because the employer promised to sign her up as an apprentice.

Uncertain hours

In addition to arrangements agreed at the time of employment, or that are compatible with longer term employment goals, young workers 'on call' have reported that unpredictable and unwanted extra hours are demanded of them. Young people have reported, being required to attend work straight after school or at short notice on weekends. These demands have contributed to the overloading of hours of young people who report difficulties in balancing the demands of their schooling. Many instances of young people being terminated, punished, or threatened with termination for not accepting extra shifts, or for requesting time off, are documented in YWAS case studies, below. In contrast, young people have also reported to YWAS that shifts are cancelled without notice, even after they have arrived at work.

Young woman, 17, had worked on call for retail chain, for an average of 15–20 casual hours per week. She was threatened with termination for requesting time off to attend schoolies celebrations

Young man, aged 15, was required by fast food employer to bring mobile phone and work clothes to school, to be on call for shifts immediately after school.

Young woman, aged 16, working at fashion outlet, arrived at work for regular casual shift to find out her hours were cut, and she was not rostered for that week. Management indicated they wanted 'new faces' on the sales floor.

A young male, aged 15, working in the hospitality industry, arrived to start work at the rostered time of 9.00am. The employer told him to sit down and wait for an hour because it was not busy enough for him to start.

YWAS regularly receives phone calls from young people who indicate they are often asked to arrive early at work, or finish later, and are directed by their employer to write down only their rostered hours. Young workers also contact YWAS about incidents

where the employer requires staff to write on their time sheets that they have had a meal break, but they have been required to eat at their work stations or 'on the run'.

Data collected by YWAS, from young people contacting the Service for assistance relating to work between April 2002 and October 2004, reveals:

Total contacts from young people under 18: **636**

OCCUPATION	Sales/personal services	51.42%
	Labourers	14.56%
	Clerical	8.23%
	Trade	7.28%
	Para professional	1.74%
INDUSTRY	Wholesale/retail	32.75%
	Hospitality	24.21%
	Manufacturing	5.54%
	Personal services	4.59%
	Property/business services	3.80%
	Health/community services	2.53%
STATUS	Employed casually	49.84%
	Employed Permanent Part time	4.59%
	Employed full time	14.56%
	Employed as Trainee/ Apprentice	12.66%

Further comments

The majority of young people contacting the Service for assistance are covered by industry specific Awards or Agreements. However, there have been numerous contacts from young people illegally employed without a tax file number or appropriate rates of pay.

From client contacts, case work and anecdotal information from school students collated by YWAS, there are indications that young people's participation rates in the hospitality (i.e. fast food) industries is highest between the ages of 15 and 17, when wage rates are at their lowest. For example, in fast foods, young school aged workers often comprise the vast majority of the workforce and are paid at minimum wage rates. The tenure of young people is usually less than one year, and employers are able to pay minimum wages and retain the youngest employees, due to an excess of supply over demand.

It appears that hours of work may be arranged so that employers can minimise their obligations under industrial laws. Some instances reported are: scheduling breaks at the

beginning of the shift to minimise interruptions, broken shifts of 2 hours during busy times, and changing employees when overtime would otherwise apply.

YWAS has listened to concerns from parents and teachers of young people under 18 that attempts to make transitions to work may be thwarted through the high level of participation in work by young people, coinciding with senior schooling opportunities. YWAS also has documented concerns from young people in relation to the decrease in their hours of employment, when they become more expensive to employ, as they become older.

Case studies:

Young man who just turned 18 had worked at fast food outlet for 2 years. His employer told him that some of his shifts would be given to the younger staff, as they cost less to employ. He was told he was not dismissed, but was given less than 50% of his original hours, over a couple of weeks of reduction.

A 19 year old woman had worked for a retail shop on a casual basis since she was 16. There was a transfer of business, and the new employer informed the staff that he would be employing only people under 18, as he could not afford to keep the older staff on.

At YWAS school seminars, as mentioned previously, most working students identify that they are casual employees. Many students have said that they had gone to work when they were ill, as they would not otherwise have been paid, or because they feared punitive action. Further, most of the students who were casual workers wanted more permanency in their employment, guaranteed hours each week, and access to paid annual and sick leave.

The reasons children and young people are working/

The benefits for children and young people of working

Young people attending school seminars with YWAS are asked why they participate in work. These young people have largely indicated that it is to obtain money for lifestyle purchases (clothes, music, entertainment etc.) or savings for future purchases (such as buying a car). On occasions, young people have cited self and family support as reasons for working.

It is important to acknowledge that outside labour market processes, there seem to be a variety of subjective factors (such as attitudes and values, especially those that may be peer related) which can themselves mediate reasons, benefits and patterns of young people's participation in work.

Young people have identified that they benefit from the social inclusion that takes place with high level of social interaction in the workplace with other young people and or with customers. Additionally, young people have identified benefits from networking opportunities with volunteer/paid work also fulfilling social justice aspirations. The practical application of skills learnt in the classroom in a workplace context is another benefit of working identified by students.

Young people benefit from apprenticeships and traineeships in developing essential skills toward a career. Young workers have commented to YWAS that they feel their traineeships are tokenistic, as they believe they already have the necessary skills for the job. There are further difficulties when a former employer cancels an apprenticeship. Young people comment that it is difficult to find a new employer who will recognise prior learning. Young workers say that they are unaware of their rights and obligations in relation to their apprenticeship or traineeship. Often young workers are unaware that there are significant differences between an employment situation and a training contract. Examples include times when an apprentice or trainee raises concerns about workplace harassment, or resigns from their position, but doesn't realise the host employer is not their legal employer.

Any factors relating to cultural or gender differences which affect participation in particular types of work.

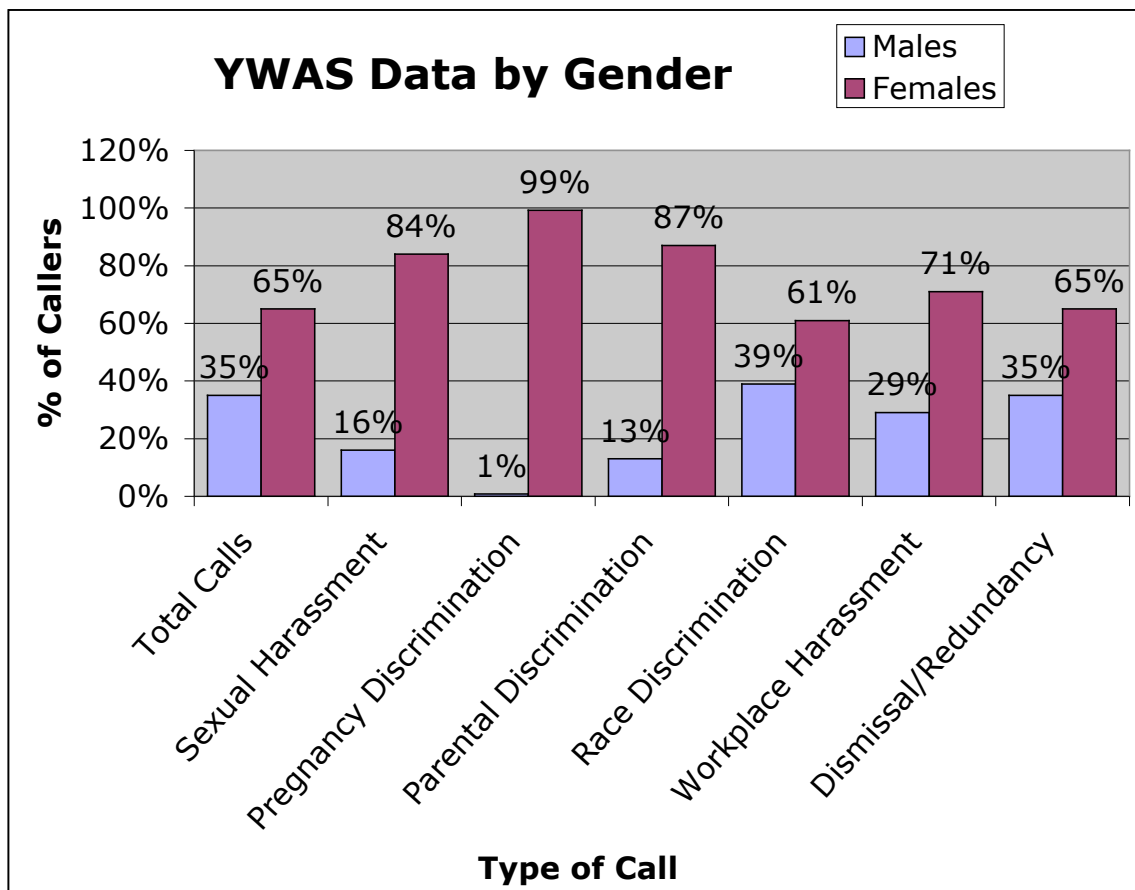
Reports to YWAS, of workplace harassment and violence, are not necessarily of cultural or gendered origin, nor are they limited to young people. However the negative developmental, social and psychological effects, and the impact on successful transition into adult life related to successful ongoing participation in work, must be identified and prevented.

Gender Differences

Existing policy statements and legislation in Queensland promote equal opportunities to provide young women with the same opportunities as young men, and espouse the elimination of sex discrimination as well as outlawing discrimination on the basis of ethnic origin, religion, sexual orientation and other attributes. Data collected by the Queensland Working Women's Service (QWWS) over 10 years identifies that the most significant concerns for women are job security (threat of dismissal or redundancy), workplace bullying, employment conditions, pregnancy discrimination and sexual harassment.

These concerns have been reflected in the YWAS data and are broken in to gender groups below for comparison.

Of all calls to the Young Workers Advisory Service since April 2002:



YWAS has documented several reported cases of sexual assault, stalking and rape of young women. Many of the reports of sexual harassment from young women indicate that they have experienced sexualised conduct, gestures and propositions for long periods before reporting them. Young women aged between 13 and 17 years have reported sexual harassment. YWAS has also developed concerns, from contact with young female workers, that sexual violence and harassment are often unreported or under-reported.

YWAS has also documented numerous instances of workplace harassment, extending to physical violence, toward young males undertaking apprenticeships.

Many YWAS casework or specialised assistance clients have reported that they have been prescribed anti-depressants or medication for anxiety arising out of workplace situations.

Cultural Differences

Young people are not a homogenous group but are extremely diverse in the manifestation of their needs, vulnerabilities and resiliencies. Ethnicity, class, disability, sexuality, pregnancy/parental status may all impact on the successful participation and incorporation of young people in employment. It is difficult to identify from YWAS data if those from less advantaged social backgrounds are accorded the same opportunities for education and employment or have a greater incidence of negative experiences at work than their more advantaged peers. However, it is necessary to ensure that transitions for all young people are adequately supported with appropriate information and guidance to navigate workplace situations.

Reported YWAS client contacts for young people under 18 of Aboriginal or Torres Strait Islander background or non-English speaking background (April 2002 to October 2004):

ATSI contacts:	.47%
NESB contacts:	2.85%

Reported YWAS client contacts for young people under 18 with a disability (April 2002 to October 2004):

Disability:	2.7%
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Consultation Question 2 – child labour

Do you know about any child labour issues existing in Queensland, and what the priorities are for protecting young workers?

YWAS has collected data on issues effecting young people in the workplace since April 2002. A summary of the concerns raised by young people (under 25) is as follows. The categories are not mutually exclusive.

Category of Assistance	Proportion
Problems with pay or conditions	48.5%
Concerns with dismissal and redundancy	35.2%
Concerns regarding workplace bullying	21.0%
Workplace health and safety matters	3.0%
Pregnancy discrimination	3.4%
Age discrimination	2.1%
Sexual harassment	6.8%

This data indicates a number of concerning trends in relation to the conditions under which some young people work. These concerns have been reflected in a recent and comprehensive report which investigated the working conditions for young people in the fast food industry in Victoria. The report found that nearly half of the 600 respondents had suffered an injury or illness in the workplace, 10% were not being paid the legal minimum, and 35% experienced some form of workplace violence or bullying (Smiljanic, 2004).

The following case studies are examples of some of the issues and concerns faced by young people in the workplace.

Employees or Contractors?

YWAS assisted 3 young men in the construction industry, one under 18, All were long-term casuals. They had become aware that the award stated casual employees should be made permanent after 6 weeks. When they raised this with the company, they were informed that they were terminated from their positions, and if they wanted to continue working, they had to apply for an ABN and they would be sub-contractors.

A young man commenced employment with a landscaping company when he was 16. His work included using a chainsaw, operating heavy machinery, lopping trees and other

labour intensive work. He had been an employee for approximately 2.5 years, when the employer informed staff that they had to acquire an ABN, were responsible for their own tax, equipment, Workcover payments and superannuation.

Sexual Harassment

An 18 year old woman of non-English speaking background, who had arranged a work visa through an employment agency, was sexually assaulted by her employer in a live-in situation. When she made a complaint to the agency, the young woman claims they did nothing about it, and had called her a liar. The agency threatened to take her off the books and not place her in another job, and they told her not to make any trouble.

A young woman, 15, was working in a residential-based business. The employer told the young woman to get changed out of her school uniform in the granny flat bathroom. She later discovered she had been filmed by a hidden camera in the bathroom, linked to a television.

A young man, 17, was working for a large car yard. The manager of the car yard would regularly expose himself and made crude comments directed to him. When the young man complained, the manager responded by threatening him further, with assault.

Workplace Harassment

A young female trainee, aged 17, was punished for mistakes by being told to stand in the corner. When she complained, the employer attempted to punish her with cancellation of her training contract.

A 14 year old worker at a fast food outlet was constantly yelled at and threatened by his manager for not accepting extra shifts, and because he had occasionally arrived a couple of minutes late due to transport issues.

Dismissal

A girl aged 17 was dismissed from a sales outlet when it was discovered by a new manager that she had a learning disability.

There are numerous references to unfair dismissal for casual employees, invalid reason and harsh unjust and unreasonable throughout this report.

Casual /precarious

A young male casual employee (labour hire) with less than 12 months of service arrived for work. When he arrived, a co-worker tried to run him over with a forklift. When he complained, he was told he was 'dead meat' and ordered not to return to the workplace.

YWAS receives numerous telephone calls from young short-term casual employees who claim they have been terminated after they raising issues with their employers about rates of pay, not being paid, not having breaks, having to work overtime, etc. YWAS also receives calls from young workers who are given ultimatums if they don't accept shifts that are not on the roster. Young workers report being threatened with termination or loss of hours even when they have informed the employer, ahead of time, of their inability to do a shift due to social, family, study or sporting commitments.

While approximately 13% of all 15-24 year olds are union members (ACTU Congress, 2003), young people under 18 who contact YWAS are more likely to be employed in industries and occupations that have low rates of unionisation. Of YWAS clients under 18, only 1.27% identified that they were members of a Union. It is also rare for young people in school groups to identify that they are union members, although when they do so, curiosity from their peers is high. Young people contacting YWAS for advice are generally provided with information about unions, and can be provided with a referral to the QCU or the ACTU Worker2worker program, which provides a website displaying up-to-date news about young workers' issues and a 'hotline' offering advice about correct rates of pay, suggestions for resolving workplace disputes and other problems, and referrals to relevant unions. The Worker2worker campaign was developed to address the poorer employment conditions experienced by younger workers, their lack of knowledge of employment rights, and their lower unionisation rates.

Many of the young people under 18 who contact YWAS acknowledge that their jobs are a temporary means of earning income to enhance lifestyle. Dissatisfaction with their employment appears more likely to lead to job abandonment or change, rather than in attempts to improve conditions through industrial action.

The magnitude of these concerns is reflected in YWAS case studies, and in the number of anecdotal reports relayed by young people during school seminars. This suggests that regulating and upholding the employment rights of young people, and particularly of children, should be a major priority for governments and the community alike.

Consultation Question 3 – current protections

What are your thoughts on the existing protections in place in Queensland for children and young people at work? In particular, you may wish to comment on the following areas:

Comprehensive industrial relations protections for all employees regardless of age

The regulations and enforcement measures provided for in the Queensland Industrial Relations system, together with the other regulations outlined in the discussion paper, are a clear guide to the parameters of protection offered in Queensland to all workers.

The information collected by YWAS over the past two years provides preliminary data on some of the internal labour market concerns and issues for young people under 18. This data reveals numerous cases where young workers have been exploited, underpaid, harassed or discriminated against. Many of these young people have been denied access to effective redress because of their casual status and because of lack of enforcement or deterrents for breaches.

The risks of exploitation of young people in the workplace are related to their high representation in casual and precarious employment. The growth in the demand for unskilled casual labour in the growing service industries, coupled with the impact of youth wage rates on patterns of employment, has meant the employment of young people is concentrated in these sectors. Trends in the youth labour market most likely reflect changes in the adult labour market, although these trends could be exaggerated in the employment situation of young people. The Australian Bureau of Statistics data for June 2000 showed that 23% of all casual workers were aged 15-19 years. In the same period only 3.7% of permanent positions were held by workers in this age demographic.

In addition, the existing protective measures fail to address the well documented problems associated with casual work, including lack of security, lack of the right to redress for harsh, unjust or unreasonable dismissal, limited access to training, and lack of leave or other entitlements. High expectations of flexibility are entrenched into casual status, predominantly to the unilateral advantage of the employer. In themselves, none of the existing measures are able to regulate or prevent the high incidence of casualisation, with its inherent problems for young workers.

Further, low wages and minimal conditions in the industries that employ young people such as retail and fast food reflect the low unionisation and poor bargaining position of young people. The same occupational segregation is reflected in bargaining outcomes for industries that predominantly employ women and also have the same levels of high casualisation and subsequent disadvantage.

Data collected by YWAS for all client contact from young people under 25 reveals that 8.4% complaints/queries from casual workers resulted in redress through casework/representation, whereas 20% of complaints/queries from permanent workers resulted in redress through casework/representation. While there are many extraneous factors that determine if a client is eligible for casework assistance, these figures provide an indication of access to industrial relations protections for casual versus permanent young people seeking assistance from YWAS. Reporting of workplace breaches could be further impeded by low unionism, lack of ongoing job commitment amongst young people, and lack of knowledge of their rights.

Young people who undertake apprentice/ traineeships have more clearly designated rights to certainty of employment, linked to their participation in training or work experience programs. Many of these young people have reported to YWAS that they are largely unaware of their rights or of the mechanisms for upholding entitlements. They also experience difficulty in contesting unilateral employer-initiated terminations of training agreements. Conversely, they have also raised concerns about the compulsion of completion of the training contract when they seek to cancel for various reasons, including working conditions, workplace bullying or lack of interest.

Some of the concerns raised by young people under 18 about their employment are from those who work outside regulated industries. These young people have no formal contract of employment or fall outside the scope of industrial protections because they are working illegally. YWAS has received several reports from foreign students, without work permits, who were being paid as little as \$5 per hour, and, in one instance, \$10 per day.

YWAS has also collected data from young people who are participating a range of occupations that can involve work within the scope of industrial relations regulation, but due to circumstances, no enforcement of award or minimum wage conditions prevails. These occupations include domestic help, cleaning, gardening, labouring, and, in particular, work in industries like horse racing and stables, rural industries, and in cultural or ethnic enclaves operating small businesses.

Within the comprehensive industrial relations protections that exist in Queensland, one of the major mechanisms for the resolutions of disputes and claims is conciliation prior to formal proceedings. In these conciliation conferences, unrepresented parties are generally provided with an explanation of the process and an assessment of the weight of their claim to help them decide whether to proceed to arbitration. However, there are no specific guidelines for conciliation that relate to the age of employee applicants, and the developmental limitations of a young person to self advocate may go unrecognised. Also, the process of making a claim is complicated, strict time frames apply, and the process can be difficult for young people to navigate. Queensland Industrial Relations Commission have no data on the ages of employees accessing the Commission's processes.

In 2003 the Queensland Anti- discrimination Commission set up a special Youth Advisory Committee to facilitate the access of young people to the Commission's processes, with a recognition that there is a reluctance by young people to make complaints about discrimination.

YWAS is considered, in the Discussion Paper, part of the comprehensive industrial relations protections for all employees, regardless of age. However it is specifically funded by the State government on the basis of the recognised disadvantage of young people under 25 in relation to issues at work. YWAS has undertaken casework or representation for approximately 500 young people, and has negotiated over \$614,000 in settlements.

Several young women, aged 15-18, were referred to YWAS. They worked as casuals, at a retail outlet, for over a year. After conflicts with the store manager over a short period of time, their rosters were systematically cut to nothing. A conciliation conference was staged after applications for reinstatement were lodged at the Queensland Industrial Relations commission, and negotiated outcomes providing redress were obtained.

YWAS has represented a number of clients at the Queensland and Australian Industrial Relations conciliation conferences. YWAS have also assisted many clients post-conference and have represented clients at hearings. In particular, Woodward v JD Smith & Associated Pty Ltd [2004] QIRComm 126 (30 July 2004); 176 QGIG 671, the commission was satisfied that Ms Woodward had been unfairly terminated by her former employer. YWAS argued on behalf of Ms Woodward that she had been terminated because of her relations with a co-worker. The Commission ordered compensation.

A young male endured harassment of a sexual and bullying nature for several months in a workshop environment, YWAS assisted him to make a complaint to the Anti Discrimination Commission, which resulted in a confidential settlement.

A young woman, 16, had been sexually harassed and assaulted in the workplace. The young woman had been invited to Karma Sutra/sex Parties, told that the employer has sex with all female staff, the employer's friend exposed himself to her, she was duct taped by the employer and he continued to open her underwear and squirt whipped cream down her pants. The young girl was estranged from her parents and living with her boyfriend's parents, she was extremely vulnerable and had no other support. No agreement at Human Rights and Equal Opportunity Commission.

A young woman, 17, advised her employer she was pregnant, and the supervisor told her to resign (no complaint made).

A young man, 17, was dismissed from a fast food outlet for under-ordering some supplies. He had been in a supervisory role for 10 months (no complaint lodged).

A young man, 16, was dismissed after 6 months as a full-time casual at a service station, because the till was short (no complaint lodged).

A young woman, 17, working at a fast food outlet, had her shifts reduced from five per week to one per week, after she complained about workplace bullying (no complaint lodged).

A young woman, 16, worked as a casual at a take-away shop. She was often left in charge alone at night. She was dismissed after 5 months when the till was short (no complaint lodged).

A young woman, 18, worked at a child care centre for 3 months, during which time she endured workplace bullying by other workers. She was told by the director that the best thing to do was resign (no complaint lodged).

Body piercing in the workplace is another contentious issue for young people. Young people mention that body piercing (such as a lip stud, eyebrow piercing, nose piercing) is an expression of who they are. Although young people have commented that they have attempted to negotiate with the employer, in workplaces where others are not generally offended by the piercing but are still faced with threats of termination.

A balance between work and study

YWAS has received numerous reports from young workers, parents and school teachers who are concerned that participation in work is out of balance with study and education obligations.

For many years there has been a debate over the impact of youth wage rates on patterns of employment. A comparison of rates between workers under 21 years and over 21 years (with adult rates usually in place by age 21) reveals that it can be up to 50% cheaper to employ a 15 year old than an adult. With this wage structure, young people who are (predominantly) in education provide prospective employers with the cheapest sources of labour. This is an issue that YWAS considers needs rigorous debate and careful consideration, when developing policy on the regulation of employment of young people. Unregulated or unlimited employment of under 18 year olds, at an age that coincides (or clashes) with their compulsory schooling or schooling opportunities, could be an impediment to effective formal education. Many of the employment opportunities for young people are in low skilled workplaces with high concentrations of employees in the under 18 age group.

Young people are not typically competing for the same jobs as adults. However the employment of younger children under 18 is economically more attractive, and could potentially disadvantage those in the older groups (18 –21) who are outside the schooling system, available for full time work, but unable to attain the means of self support or sustain the transition to financial independence.

YWAS contacts with young people have created the impression that many of the young workers in the service industries think of their jobs as temporary, and to provide spending money for non essentials. However, it is important to note that there are instances where young people have indicated they are using their job to support educational participation, to contribute to their families, or to live independently.

Further the Education and Training Reforms for the Future (ETRF) program, now being trialled, provides an exemption for training/education if a young person under 17 is working 25 hours per week or more. It does not provide for regulation, monitoring or registration of this employment. This could create scope for young people to forfeit educational opportunities and remain in casual or part-time, low skilled occupations to avoid compulsory training, and may not lead to positive outcomes, particularly as opportunities for ongoing employment dwindle after they reach 17 or 18. A minimum level of 25 hours per week will be difficult for many employers to commit to, and for many young people to sustain, particularly when positions are casual. The balance between work and study in these instances is difficult to comment on, and subject to individual circumstances, but potential exists for the under-employment and financial hardship of young people attempting to live without family support.

Commonly YWAS receives phone calls from young people about being terminated after providing the employer with their availability. Students have complained that they have been given ultimatums, either turn up to work or they will be terminated after they advise the employer that they need to study or need time off for exams. Students have mentioned that they have been required to work on the night before major exams despite requesting time off.

Criminal protections

YWAS does not provide young people with legal advice on criminal matters. If we suspect a violation has occurred, we can refer clients to a number of agencies including Legal Aid Queensland, Logan Youth Legal Aid, community legal centres, the Department of Communities, and the police.

YWAS has not collected specific data on criminal matters involving young people and work, but is aware that unsubstantiated allegations of theft, drug use or criminal activities have been used by employers against young people, to justify termination of their employment.

In particular a young woman was working as a live in carer for an elderly woman. The patient's nephew came over to visit. The nephew raped the young woman (18); the young woman had already contacted the police before contacting YWAS. She had contacted the agency that placed her with the patient and discovered that this was not the first time an assault had occurred.

Young people have contacted YWAS with concerns about disclosing criminal record to potential employers and the repercussions of disclosing such information. Large retail organisations are still requesting information on criminal matters despite the

relevance of such criminal matters. Young workers are often remorseful for what they have done in the past but feel that the burden by feeling pressured into admitting to having a criminal record or “lying” on the application form.

Sexual and physical assault have been previously discussed.

Education about the rights of children at work

Compounding the above outlined concerns for young workers under 18, the experience of YWAS, both through school seminars and client contact, is that young workers are often unaware of their legal rights – or, where knowledge exists, it is scant, with limited ideas of how to uphold rights. In some instances, YWAS has found the same can be said for employers who plead ignorance when confronted with industrial relations breaches.

As the discussion paper outlines, the regulation of young workers varies widely across the States within Australia and often involves non-integrated, even confusing relationships between government departments and other organisations. Some States do not specify a minimum age at which a person can be employed, while others restrict only certain industries and times of work for children under 15 years. The lack of a national standard is confusing when what is upheld in one State is irrelevant in others.

YWAS, together with the Industrial Relations Education Committee (IREC) offer school seminars to Years 10, 11 and 12 students throughout Queensland. These seminars are delivered at an estimated 10% of schools, but tend to reach specialised curriculum groups within schools, and are not part of general education. IREC relies heavily on the contribution of YWAS, unions, employer groups, Department of Industrial Relations, Department of Education and Training, and Education Queensland, to deliver the seminars, in addition to their regular services.

IREC, together with YWAS, is supporting the development of a standard kit, to be made available to all schools, to assist with education in work-related issues relevant to young people. An initial grant of \$15,000 was secured by a not-for-profit organization, Smart Casual, to develop the kit. However, additional resources will be required for its publication, dissemination and regular updating. The final lesson plan in particular requires a presentation from one of the identified bodies to give a practical perspective to the contents of the kit.

Child specific policies and laws

A clear policy statement backed by legislation that comprehensively addresses the issues surrounding the employment of children is absent in Queensland. Such regulation would provide a clear statement on the rights and obligations of employers, child employees, parents and educators, would be useful in guiding actions and decisions that need to be taken by these groups in relation to the issues.

Specific protections for different age groups, or industries

A number of young people have contacted YWAS regarding workplace injuries and physical exhaustion with labour intensive employment.

A young man (18-21) injured himself in the workplace; he alleges that there was insufficient training and no supervision. Company he is working for had threatened the labour hire company with pulling out of a contract with them if the young workers stays on workers compensation and that they have an unblemished safety record till now. The labour hire company is pressuring the young man to return to work with an injury.

YWAS identifies that there are significant industries where young people in particular, need additional protection in particular industries such as mining, construction, and door-to-door sales.

Consultative Question 4 – alternative options

What is the best way to protect young workers?

Recommendations

YWAS contends that young people under 18 should be specifically targeted (in relation to work) through the review or introduction of relevant legislation to ensure that:

- young people under 18 are not exploited or over-represented in workplaces because of the attractiveness of the youth wage or other considerations relevant to their age and status
- young people do not forfeit valuable educational opportunities because of extensive or conflicting participation in work that does not recognise or provide opportunities for their skills development and effective transitions to independence
- there is adequate recognition of the low bargaining power of young people in determining conditions of employment, of their limited capacity for self advocacy, and of other developmental vulnerabilities associated with child development and growth.

A regulatory framework should include:

A minimum age for entry into employment that determines acceptable minimum ages for general participation, and provides general restrictions on child participation in industries that are identified to be of a high risk to children.

Prohibition of children of specified ages in certain industries where they may be unsupervised, vulnerable, or at risk of injury. The *Victorian Child Employment Act* prohibits door-to-door selling, employment on a building or construction site, and employment on a fishing boat.

Compulsory registration (with a certificate displayed in the workplace) of employers of young people under 18, and the requirement that employers provide employees under 18 with a written contract of employment, outlining conditions and entitlements, signed by the young person and their parent/guardian.

Working hours for children limited to twelve hours per week during school terms, and 35 hours per week during holiday periods, or other suitable breakdown of hours that recognises study commitments and other potential conflicts of longer working hours, and which would be an acceptable community standard.

The ETRF Legislation reviewed, and adequate resources dedicated to identification, support and monitoring of the employment of young people, 17 and under, who come within the scope of the ETRF regulations, and who seek exemptions from education or training because they participate in employment for 25 hours a week or more.

Adequate resources dedicated to extend a comprehensive education program, through IREC, to all school-aged young people about work, the role of unions, and their individual rights and entitlements.

Adequate resources dedicated, through sustainable funding, to ensure the continuing ability of YWAS, in partnership with unions, to outreach and assist young people with workplace issues, to generate awareness, and to provide young people with a supported response to problems at work.
