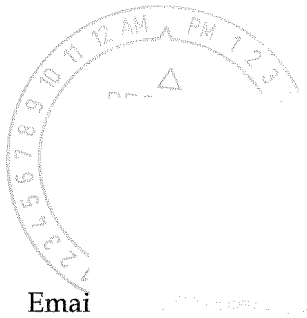

Emai

9 November 2005

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

BY EMAIL: eet.sen@aph.gov.au

Dear Sir / Madam,

SUBMISSION TO THE SENATE INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

I write to urge members of the Committee to recommend against the proposed changes to workplace relations legislation.

As a 23 year old full-time university student, and previously as a secondary school student, I have worked in the retail industry to support my studies for the past 7 years. During this time I have held three casual jobs with three different employers.

As a young worker I have encountered a broad range of employment arrangements including the illegal application of Victorian working standards in a New South Wales regional supermarket, a Union negotiated Section 170LJ Agreement in a substantial national department store and coverage by a Federal Award in a small butcher's shop. My employment experiences have been as follows:

Foodworks Barham 1998 - 1999

I worked as a casual shop assistant at this independent supermarket retailer for approximately 1 year. During my employment I became aware that the employer was illegally applying inferior Victorian conditions of employment compared to the minimum legally enforceable terms and conditions specified by the NSW *Shop Employees' (State) Award*. To the best of my knowledge the employer was at the time a trading or financial company that employed less than 100 employees.

With the support of my father, I raised concerns regarding underpayment of wages and the failure to apply NSW minimum conditions of employment with my employer. Shortly after raising my concerns I was sacked on fabricated grounds.

This experience is instructive on two levels.

Firstly, the capacity of a young worker in the retail industry to receive fair and reasonable wages and conditions ultimately depends upon the retention and maintenance of a strong, effective and comprehensive safety net. The proposed legislation inherently presumes that young and vulnerable workers in less skilled industries have some genuine bargaining power. This confidence is either misplaced or entirely ignorant of the facts. My experience was that the employer terminated my employment because I chose to query the terms and conditions of employment that it sought to impose. The terms and conditions applied by my employer are not so far removed from what is proposed in this legislation under the bare minimum Fair Pay and Conditions Standard.

Secondly, the proposed maintenance of unlawful dismissal provisions is insufficient to provide any effective protection for other employees exposed to the same type of inexcusable behaviour.

Following consultation with my family, I ultimately elected not to pursue unfair dismissal remedies available under Section 84 of the *Industrial Relations Act* 1996 (NSW) against my employer despite the unambiguously unjust treatment I had suffered. Nevertheless, I am profoundly concerned that any other young and / or unskilled worker would be expressly precluded from doing so under the proposed legislation.

I refer to the recent decision of the Full Federal Court, Spender, Kenny and Lander JJ, in Melbourne on 3 June 2005, in *Zhang v The Royal Australian Chemical Institute Inc* [2005] FCAFC 99. The decision by the Full Court, affirmed that a complaint for the purposes of Section 170CK(2)(e) of the *Workplace Relations Act* 1996 must be to an external body to "constitute a proscribed reason" such as to render the termination unlawful.

Section 170CK(2)(e) of the Act provides as follows:

> ***[Grounds on which employment must not be terminated]***
>
> *Except as provided by subsection (3) or (4), an employer must not terminate an employee's employment for any one or more of the following reasons, or for reasons including any one or more of the following reasons:*
>
> ...
>
> *(e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;*
>
> ...

Ms Zhang alleged that her termination was unlawful pursuant to Section 170CK(2)(e) of the Act. She alleged that her dismissal was due to the fact that she had filed a compliant against her employer involving alleged violation of laws or regulations. Ms Zhang asserted that she had made a number of complaints to her employer about the conduct of its officers. Ms Zhang did not refer her complaint to an outside authority.

The Court held that for the purposes of Section 170CK(2)(e) of the Act it was not sufficient to merely raise the matter with the employer; the Section's use of the terms "filing" a complaint "against" implied that the complaint must be to a person or body other than the employer. The claim was subsequently dismissed.

The proposed amendments to the Act will not provide new unlawful dismissal remedies for an employee terminated because they raise a concern about incorrect wages and conditions with their employer (the Bill appears to retain the condition that the complaint must be made against the employer to an outside authority). It will, however, scrub out the only alternative existing remedy available for a young worker seeking protection against arbitrary dismissal in such circumstances.

I implore the members of the Committee to carefully consider whether young and vulnerable workers should lose all protection against arbitrary dismissal. The retention of unlawful dismissal provisions is not an effective substitute for the amputation of unfair dismissal provisions.

Myer / Grace Bros Macquarie 2000 - 2004

For approximately 4 years I worked as a casual service assistant at Myer Macquarie (formerly known as Grace bros) in North Ryde, Sydney. During this time I enjoyed the benefits of Union negotiated terms and conditions of employment.

During the final 2 years of my employment at Myer Macquarie I became a Union Delegate for the Shop, Distributive and Allied Employees' Association, NSW Branch (SDA). It was in this role that I more fully appreciated the positive contribution that can be made when employers and Unions work cooperatively for the common good. The Union worked on behalf of its members as a partner with Myer.

Until I became a Delegate I was generally unaware of my rights and responsibilities as an employee. Paid training provided by the SDA enabled me to both become a more effective workplace representative in representing workers' interests and also to ensure that a played a positive role in the workplace in advising and supporting work colleagues on their rights and obligations.

During my employment at Myer, Union collective Agreements under Section 170LJ of the *Workplace Relations Act* 1996 were negotiated balancing the interests of all parties. Moderate changes were made where required to enable the more efficient and flexible operation of the business and, in return, improvements were made to wages, leave entitlements, rostering conditions and junior rates of pay (these are just a few examples).

The workforce was predominantly young and/or female, with university students and working mothers comprising the bulk of employees.

At my workplace, the SDA and Myer have a cooperative relationship that enables:

- well trained and knowledgeable Delegates who work together with members and management to resolve issues;

- the resolution of the vast majority of grievances and disputes at a site level;
- the maintenance and observance of wages and conditions of employment;
- the encouragement and active participation of Union members and Delegates in the negotiation and approval of terms and conditions of employment; and
- a generally harmonious, cooperative and productive workforce.

Through this experience, I can imagine no greater contrast to the Government's practical characterisation of Unions in this proposed legislation as a hindrance, interference or third party.

Prior to leaving Myer in 2004, I participated in the consultation process and roll out of a new Enterprise Agreement, negotiated between the Union and Myer and, subsequently, certified by the Australian Industrial Relations Commission - *Myer Stores Agreement 2004*.

As a Delegate, I believe that I played a valuable role for both work colleagues and my employer during the course of the negotiations. Together with other SDA Delegates, this role included:

- Consulting and surveying work colleagues regarding claims and issues to be raised during the course of negotiations;
- Meeting with other Myer Delegates across NSW and the ACT to discuss, debate and approve claims to be made by the Union in the course of the negotiations;
- Providing ongoing feedback upon request to the Union negotiation team in relation to matters raised during the course of negotiations;
- Meeting with NSW and ACT Delegates once more to review, vote upon and approve the proposed Agreement, settled in principle in the negotiations;
- Convening paid workplace meetings to explain the proposal to work colleagues for their consideration;
- Conducted a ballot to approve the proposal.

This process is beneficial to both Myer and its employees. It is a mechanism that ensures the negotiation proceeds on a reasonably equal bargaining basis, it ensures that employees have a real collective voice in the process and it accepts the reality that young and vulnerable workers in less skilled industries such as retail cannot realistically expect to bring the same skills, knowledge and experience to the bargaining table as a Union.

Notwithstanding the flaws within the existing workplace relations legislation, namely the incapacity to require an employer to negotiate "in good faith" and the failure to guarantee every employee's right to a collective agreement / instrument should they so desire, it more or less facilitates a productive and harmonious working relationship between the Company, Union and employees.

The proposed legislation is the very antithesis of this harmonious relationship. It threatens to undermine the goodwill and cooperation of parties by introducing radical changes that, inter alia:

- Enable competitors to drive down wages and conditions below current Award standards through the imposition of the proposed Fair Pay and Conditions Standard, thus creating competitive pressures on good employers to follow suit;
- Provide the capacity for employers to require new employees to sign Australian Workplace Agreements, which undermine collective conditions at the workplace, during the term of an Agreement;
- Provide employers with the capacity to terminate Agreements with 90 days notice upon their nominal expiry and place unfair pressure on employees to accept lesser standards of employment in subsequent negotiations;
- Abolish facilitative provisions in Agreement such as Trade Union Training Leave, which currently operate to assist in the education of employees as to their rights and obligations, and to encourage the workplace resolution of disputes and grievances, and deeming such provisions as "prohibited content";
- Introduce standard Dispute Settlement Procedures, which operate in the absence of any agreement, that do not resolve matters but merely provide for the discussion and conciliation / mediation / directed negotiation of disputes and grievances.

The proposed changes threaten to undermine the stability and certainty that a collective Agreement made under the existing legislation provides to employees on an ongoing basis.

The proposed changes also fail to ensure that workplace matters are resolved satisfactorily. Disputes and grievances will be left to fester in the absence of guaranteed mechanisms available to both employers and employees to have matters finally determined by an independent umpire.

The proposed legislation will also undermine the choice exercised by parties in workplaces to enter into collective agreement for a fixed period of time. Of great concern, the proposed legislation will operate to impinge upon and interfere with those matters that the parties genuinely reach agreement upon, for example:

> ***Section 101D Prohibited Content***
>
> *The regulations may specify matters that are* ***prohibited content*** *for the purposes of this Act.*

Indeed, the capacity of the Minister to exercise powers as he / she sees fit by way of regulation under proposed Section 101D to deem Agreement content to be prohibited content demonstrates that the only interfering third party involved in Agreement making at the workplace will be the Government.

The SDA has negotiated, with the strong support of employees (recent EBA ballot in excess of 90% support) fair and reasonable conditions of employment underpinned by a strong safety net of Award conditions. These conditions of employment not only ensure the civil and decent conduct of the parties at work (breaks, rosters, hours of work etc.) but also facilitate the broader participation of employees as citizens and family members, for example:

- jury service make up pay;
- paid blood donor leave;
- public holidays;
- pre-natal leave;
- bone marrow donor leave;
- defence force services leave;
- emergency services leave; and
- natural disaster leave.

I am concerned that the proposed legislation will operate in a manner likely to encourage generally good employers, like Myer, to reduce Union negotiated wages, penalties, loadings and allowances and to remove leave entitlements that are both beneficial to the employee's wellbeing and to the community as a whole. Good employers are likely to come under competitive pressure to match the "dog end of the market" which will, as I have previously experienced, seek to impose the barest of minimum conditions (even illegally) and sack employees who query their entitlements.

Changes to legislation should actively encourage and facilitate collective negotiated Agreements, such as those negotiated by the SDA and major retailers, based upon a full unfettered range of employment matters agreed between the parties and underpinned by a strong and complete safety net based on full Award conditions.

Joe's Meats Macquarie 2004 - 2005

Having worked for the past year on a casual basis as a butcher's shop assistant in North Ryde, Sydney, I can also speak of being paid minimum Award wages and conditions. The *Federal Meat Industry (Retail and Wholesale) Award 2000* governs my terms and conditions of employment. Whilst these wages and conditions are not as generous as those negotiated by the SDA at my former workplace, they do provide a measure of certainty and fairness.

I am concerned that the proposed changes will significantly undermine the capacity of young workers on current Award conditions, in particular, to get "a fair go" when entering the workplace for the first time. If my experience is any guide, I have no confidence that the majority of young workers will be realistically able to negotiate with their employer on anything close to an equal footing. Young workers need a guaranteed minimum safety net of Award conditions, as opposed to the emaciated Fair Pay and Conditions Standard, to provide them decent wages at the workplace.

It is fanciful to argue that young workers would be able to extract anything close to Award wages and conditions on their own.

I am concerned that the right to a fair minimum wage will be threatened by the proposed legislation.

These radical changes fail to maintain the existing obligations exercised by the Australian Industrial Relations Commission under the Act that guarantee, beyond broader economic objectives, that awards act as "a safety net of fair minimum wages and conditions of

employment" in accordance with Section 88B(b) of the current Act. I note that the proposed Section 7J of the Act, which provides the "wage-setting parameters" of the proposed Australian Fair Pay Commission, operates to replace the existing obligations exercised by the AIRC at Section 88B of the current Act in relation to the establishment of a safety net and expressly removes the reference to "fair wages and conditions of employment".

I submit that this intentional omission bolsters the concerns expressed by Unions, churches and community groups that these changes are tailored to reduce the wage outcomes delivered by the Australian Industrial Relations Commission over the last decade.

The minimum ordinary hourly rate of pay in the Award would be $15.06 per hour if the Australian Industrial Relations Commission had accepted the submissions of the current Government over the last decade. Instead, the minimum ordinary hourly rate under the Award, not including penalty rates, is $16.64 per hour. The Government has sought over the course of the last decade for casual butcher's shop assistants to be paid $1.58 per hour less than they currently are.

The new Australian Fair Pay Commission appears to have been concocted for no other reason than to facilitate this desire. The Government's track record is clear - it believes casual butchers shop assistants are currently paid at least $1.58 per hour too much. A strong and genuinely independent minimum wage setting authority is necessary to ensure that young workers on minimum Award conditions continue to be paid what is not an exorbitant wage but a fair wage nonetheless.

I am also deeply concerned that new young workers, who often commence at the age of 15 or 16 years, will be offered new employment contingent on signing Australian Workplace Agreements based on the barest minimum Fair Pay and Conditions Standard. Parental consent is likely to be granted. It is difficult to envisage any parent who would deny their child a job because it does not guarantee Award conditions. What sort of choice does a parent really have?

Not only will these young workers be in no other position except to agree to the terms dictated, but these lesser employment conditions will effectively undermine existing casual workers, who are likely to lose hours of work to younger, cheaper employees not subject to fair and reasonable penalty rates applicable to existing Award employees.

These new employees will be worse off and existing employees are likely to come under increasing pressure to sign the inferior AWAs to retrieve their diminishing casual hours of work. This may not satisfy the Government's definition of duress under the proposed Act, but it is just as effective as saying to an existing employee, "Sign the AWA or get another job!"

It is disingenuous for the Government to argue that this is merely the current position under the law pursuant to the decision of the Full Federal Court, Wilcox, Kiefel & Merkel *JJ in Melbourne on 6 December 2000, in Burnie Port Corporation Pty Ltd v Maritime Union of Australia* [2000] FCA 1768.

Australian Workplace Agreements, under the existing legislation, are nominally measured and tested against Award conditions. A like for like comparison should have each employee on broadly comparable terms and conditions measured as a package, as provided by Section 170XA of the current Act.

This proposed legislation is particularly pernicious in that pulls the Award conditions away as part of that test and provides the bare minimum under the proposed Fair Pay and Conditions Standard. These extreme reforms seriously and wilfully undermine existing minimum community standards to expose all new workers immediately and to effectively coerce all casual, itinerant, fixed term, apprentices and trainees, young and less skilled workers in the short to medium term, as they come under ruthless pressures within the workplace to compete for available work and are directly exposed each time they seek new work.

It is offensive to young and vulnerable workers that the Government describes any safeguards within the proposed legislation as "protection". All indications are that the Government has engineered the proposed legislation to ensure that Award protection will progressively removed from 85% of the workforce in the coming years.

Conclusion

I, like all other members of the community, am not an economic unit to be measured and valued by my contribution to the economy as a mere number on a profit and loss spreadsheet. This proposed legislation treats young and unskilled workers, in particular, as numbers and not as people.

In that respect, both the rhetoric of the Government and its proposed legislation fail a fundamental standard that people are worthy of respect and dignity; the value of the work they perform and their economic contribution is not more important than the person and their full participation in and contribution to society.

If that, however, is the manner in which the Government intends to measure and treat Australian workers in the future, please see the enclosed wages comparison which demonstrates how much worse off my wages would be if I were obliged either directly or indirectly to accept the bare minimum Fair Pay and Conditions Standard. This underlines the falsehood of ongoing Government claims that the proposed legislation, and AWAs in particular, are all about "higher wages".

The proposed legislation is allegedly premised on choice and fairness. The proposed legislation appears to be engineered deliberately to deprive workers of both. I, therefore, call upon the Committee to strongly recommend against the adoption of any of the proposed changes.

Yours faithfully,

Jessica Dolan

Hours of Work (typical / average roster)			Myer (current)		AFPC Standard (proposed)	
Day	**Shift**		**Hourly Rate**	**Wages**	**Hourly Rate**	**Wages**
Weekday (varied)	4	hour shift	$18.16	$72.64	$17.62	$70.48
Friday	8	hour shift	$18.16	$145.28	$17.62	$140.96
Saturday	7.5	hour shift	$18.16	$136.20	$17.62	$132.15
Sunday	5.25	hour shift	$24.21	$127.10	$17.62	$92.51
Wages				$481.22		$436.10
Superannuation				$43.31		$39.25
Total				**$524.53**		**$475.34**
Difference						**$49.19 per week worse off**

Hours of Work (typical / average roster)			Joe's Meats (current)		AFPC Standard (proposed)	
Day	**Shift**		**Hourly Rate**	**Wages**	**Hourly Rate**	**Wages**
Saturday	8	hour shift	$20.11	$160.88	$16.64	$133.12
Sunday	7.5	hour shift	$23.57	$176.78	$16.64	$124.80
Wages				$337.66		$257.92
Superannuation				$30.39		$23.21
Total				**$368.04**		**$281.13**
Difference						**$86.91 per week worse off**