



9 November 2005

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

Dear Sir / Madam,

**SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE**

**INQUIRY INTO THE PROPOSED WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005**

Together with my daughter, Isobella, who is 15 years old, I wish to express my deep concerns regarding the proposed changes to Australian workplace laws.

I believe that these concerns are well founded from recent experience.

I have lately sought the assistance of a Union to investigate the termination of my daughter's employment from an ice cream parlour in Manly, Sydney. Isobella was terminated after she refused to sign a new contract that would have undercut both her hourly rate of pay and her existing entitlement to penalty rates for working on Sundays.

I respectfully suggest to the honourable members of the Committee that the proposed amendments to the *Workplace Relations Act* 1996, will not only encourage but will further facilitate this type of treatment.

Isobella commenced employment at "Gelatissimo" in February 2005 at the age of 14 years. To the best of my knowledge she was paid wages and conditions in accordance with the *Shop Employees' (State) Award*, although she did not always receive her entitlement to rest and meal breaks in accordance with the Award. She was employed on a casual basis and worked exclusively on Saturdays and Sundays.

In July 2005, there was a change of ownership. Retail Excellence Pty Ltd, the new owner, bought the franchise and the new Manager, Pierre, met with all existing staff including my daughter. Isobella understood that she would continue to be employed; and I am unaware of any arrangements that were made contrary to my daughter's understanding that she would be employed on the basis of Award conditions and with continuity of employment. She was not offered, nor was she required, to sign a new terms and conditions of employment at this time. It appeared to be a seamless transition.

However, in the following weeks not only did my daughter's hours of work change but her rate of pay was reduced. My daughter was paid \$6.76 per hour for each hour worked instead of \$7.12 per hour on Saturdays plus a fixed Saturday loading of \$3.90 and \$10.405 per hour on Sundays. The employer sought to address this matter by back pay in early August.

In early August, after the employees had continued their employment with the new owner, he approached each young worker individually and presented a new contract. He said words to the effect of, "You need to sign this to confirm that you are working for me." He then proceeded to flick through the document over approximately 10 minutes and acknowledged that the document contained no penalty rates and no loadings.

The employer did not offer to Isobella for her to take a copy home to consider. She was asked to sign the document there and then.

My daughter wouldn't sign the document. That night she raised the matter with me and we discussed the contract. Isobella decided not to sign the new contract.

When she went to work the following day, Pierre inquired as to whether Isobella had yet signed the contract. When he became aware that she hadn't he said, "So you've decided that you're no longer working for us."

Isobella has not worked for Retail Excellence Pty Ltd since and has not been rostered for work. The employer now claims that there have been no operational requirements for Isobella to perform further shifts until now. This offer of work has been forthcoming in response to a claim for victimisation made under Section 213 of the *Industrial Relations Act 1996*, made by the Union, the Shop, Distributive and Allied Employees' Association, New South Wales.

The Union has suggested, in preparation for the proceedings, that the contract offered is likely to be an Australian Workplace Agreement which sought to convert Isobella from casual employment to nominally part-time employment (although retaining all the flexibilities and lack of guaranteed hours of casual employment) and rolled up all her penalties and loadings into a flat hourly rate.

Members of the Committee should note:

- (a) The employer did not "offer" the contract and did not seek to negotiate the contract;
- (b) The employer presented the contract on a take-it-or-leave-it basis;
- (c) The employer terminated my daughter's employment when she did not accept the conditions offered;
- (d) Australian Workplace Agreements made under the proposed legislation may be inferior to what was offered to my daughter, that is:
  - Future Australian Workplace Agreements do not have to meet Award standards;

- Future Australian Workplace Agreements do not have to meet monetary guarantees under the current no disadvantage test to ensure that employees are no worse off due to the loss of penalty rates and other loadings; and
  - Future Australian Workplace Agreements will only have to meet the proposed Fair Pay and Conditions Standard, which undermines the wages and conditions of existing Award employees.
- (e) The new so-called “protection” in the Bill for young workers, which requires parental consent for any AWA entered into with employees under the age of 18, will leave all parents in an invidious position. Either I sign the AWA to enable my child to get the job working on less than Award conditions or I refuse to sign the AWA and my child is not offered the job. This is not choice.
- (f) The Bill encourages the degradation of wages and conditions for vulnerable workers like my daughter in particular.
- (g) The Bill provides no assistance and no right to the young entering the workplace for the first time to be guaranteed a fair safety net of wages and conditions.
- (h) The Bill does not obligate the employer to negotiate terms and conditions of employment in good faith.

My daughter’s minimum Award wage compared to the proposed minimum Fair Pay and Conditions Standard is:

Hours of Work		Shop Employees’ (State) Award		Fair Pay and Conditions Standard	
Days	Hours	Rate	Wage	Rate	Wage
Saturday	3	\$7.12	\$21.36	\$6.86	\$20.58
Sunday	10	\$10.405	\$104.05	\$6.86	\$68.60
		Saturday Loading	\$3.90	Saturday Loading	-
Total			\$129.31		\$89.18
<b>Difference*</b>					<b>\$40.13 less</b>

\* N.B. Does not include superannuation – due to limitations under SGC for under 18 years.

**Employees engaged on an AWA, which meets the proposed minimum Fair Pay and Conditions Standard, will in the same circumstances as my daughter above be paid 31% less than the current relevant Award.**

My daughter’s experience, which has somewhat soured my confidence in a fair and just society, appears to reflect exactly the type of employment arrangements that the Government is now encouraging under this proposed legislation.

I urge members of the Committee to carefully consider what sort of society you are seeking to build for the future. This proposed legislation may or may not facilitate economic growth. If it does, it will do so at the expense of young workers in less skilled industries, who will be forced to work on individual contracts put on take it or leave it basis.

I appeal to the Committee to recommend against the Bill.

Yours sincerely,  
Ms Kate Lester and Ms Isobella Buda  
9 November 2005