

Inquiry into the
Workplace Relations Amendment
(Transition to Forward with Fairness)
Bill 2008



John Spriggs
Senior Industrial Officer
Independent Education Union of Australia
Queensland and Northern Territory Branch
346 Turbot St
Brisbane 4001

jspriggs@qieu.asn.au
Support for ACTU

The Independent Education Union, Queensland and Northern Territory Branch, fully supports the submissions which have been made to this Inquiry by the Australian Council of Trade Unions.

Example

We believe that the Committee's considerations may be assisted by the provision of information relating to the treatment of one of our members who is employed as a teacher. Her employer refused to negotiate collectively (notwithstanding a previous Certified Agreement in the QIRC) but offered AWAs as the only mechanism to obtain a wage increase. Consequently, the majority of employees at the school have not received a wage increase for approximately two years. Based on financial concerns our member signed an AWA because this was the only mechanism available to receive a wage increase. The School involved is Shalom Christian College in Townsville. This background is no doubt common with the experience of numerous other employees.

However, the purpose of this submission is not to reiterate the well known tactics of unconscionable employers.

We want to highlight the farcical response the employee received from the Workplace Authority, who is required to apply the existing "Fairness Test" to her AWA. This response identifies a problem in the existing system.

According to s346E of the Workplace Relations Act 1996 the Workplace Authority is required to apply the "Fairness Test" to certain Agreements. Paragraph 346(1)(c)(i) provides that for an AWA to be subject to the "test" the annual rate of salary payable to the full time employee must be less than \$75,000. If the annual salary is greater than \$75,000 then the "Fairness Test" is not applied.

The teacher in question receives an annual salary which is less than \$67,000.

The teacher's employment would, in the absence of an Agreement, be covered by the Teachers' Award – Non-Governmental Schools 2003 (an Award of the Queensland Industrial Relations Commission).

Teachers' Award – Non-Governmental Schools 2003 provides that the maximum number of ordinary hours of directed duty for a teacher in a secondary school is thirty (30). (See clause 6.1 of that Award.)

Notwithstanding that the employee is employed as a full time teacher, the Workplace Authority seems to have assumed that because her hours of work are less than 38 she must be a part time employee.

The Workplace Authority has then (it seems) performed a mathematical calculation to arrive at what it believes is the 38 hour rate based on the rate our member is paid for 30 hours per week. On the basis of this calculation, the Workplace Authority has determined that this employee's AWA will not be subject to the "Fairness Test" because they say she earns more than \$75,000 per annum.

This is yet another example of the absurd outcomes resulting from the existing Workplace Relations Act 1996.

Tangential Issue

Whilst investigating which employees are (and which are not) covered by various provision of the existing Workplace Relations Act 1996 a further absurd circumstance was identified. This further circumstance relates to exclusions to the unfair dismissal regime.

Sub-section 638 (1) of the Act provides that certain kinds of employee are excluded from the operation of Subdivisions B, D and E and sections 660 and 661. Paragraph 638 (1) (f) (i) excludes an employee who is not employed under “award-derived conditions” where that employee receives a wage rate in excess of the prescribed cap.

Sub-section 642 (6) provides that an employee is taken to be employed under “award-derived conditions” if the employee would, in the absence of the proposed AWA, be bound by, *inter alia*, “an award or a workplace agreement”.

The Act contains the following definitions:

award means:

- (a) an award made by the Commission under section 539; or
- (b) a pre-reform award.

pre-reform award means an instrument that has effect after the reform commencement under item 4 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

workplace agreement means:

- (a) an AWA; or
- (b) a collective agreement.

Australian workplace agreement or **AWA** has the meaning given by section 326.

(326 Australian workplace agreements (AWAs))

- (1) An employer may make an agreement (an **Australian workplace agreement** or **AWA**) in writing with a person whose employment will be subject to the agreement.
- (2) An AWA may be made before commencement of the employment.)

collective agreement means:

- (a) an employee collective agreement; or
- (b) a union collective agreement; or
- (c) an employer greenfields agreement; or
- (d) a union greenfields agreement; or
- (e) a multiple-business agreement.

The purpose of setting out the above definitions (in full) is to demonstrate that the term “award-derived conditions” only applies to instruments made under the federal industrial system.

Importantly, employees who have been covered by State Awards (now NAPSAs) and State Agreements (now PSAs) do not benefit from the provisions which apply to employees covered by Federal Awards or Agreements.

If the detrimental treatment of “State” employees under the Workplace Relations Act 1996 is deliberate, then this is a reprehensible situation. If such treatment is accidental, then it is any example of the incompetence of the authors of that legislation. Either way, the situation must be rectified.