

## **Submission to the Senate Committee Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008**

**Dave Robinson, Secretary, Unions WA.**

**28 February 2008**

### **Introduction**

UnionsWA thanks the Senate Committee for the opportunity to put a submission to the “Senate Committee Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008”.

Unions WA welcomes the above mentioned Bill as a first step to restoring a fair and balanced Workplace Relations system for the working people of Western Australian and indeed Australia.

This Transition Bill will go along way to dismantling the Howard Government’s extreme WorkChoices laws.

UnionsWA especially welcomes the banning and abolition of Australian Workplace Agreements (AWAs), which were the centrepiece of the Liberal Party’s WorkChoices laws.

A number of studies (and the government’s own figures) have looked at the effects of AWAs and WorkChoices and the overwhelming findings have been that employees lost protected award conditions and were generally worse off than they would have been if they were employed on a collective agreement.

Studies also found that these AWAs impacted most significantly on the working people who could least afford it. Much of this brief submission will focus on this aspect.

The Howard Government initially released statistics which outlined what people on AWAs had lost. Unsurprisingly, following negative media coverage the Government then stopped the flow of information relating to AWAs.

The new Deputy Prime Minister, Julia Gillard, has released statistics from a sample of 1,748 AWAs which were lodged with the Workplace Authority between April and October 2006. The statistics showed that:

- 89 per cent excluded one or more so-called protected award conditions
- 83 per cent excluded two or more so-called protected award conditions

- 78 per cent excluded three or more so-called protected award conditions
- 71 per cent excluded four or more so-called protected award conditions
- 61 per cent excluded five or more so-called protected award conditions
- 52 per cent excluded six or more so-called protected award conditions
- 40 per cent excluded seven or more so-called protected award conditions
- 30 per cent excluded eight or more so-called protected award conditions
- 16 per cent excluded nine or more so-called protected award conditions
- 8 per cent excluded ten or more so-called protected award conditions
- 2 per cent excluded all eleven so-called protected award conditions

The statistics release showed that these workers lost conditions such as:

- 70 per cent removed shift work loadings
- 68 per cent removed annual leave loadings
- 65 per cent removed penalty rates
- 63 per cent removed incentive based payments and bonuses
- 61 per cent removed days to be substituted for public holidays
- 56 per cent removed monetary allowances
- 50 per cent removed public holidays payment
- 49 per cent removed overtime loadings
- 31 per cent removed rest breaks
- 25 per cent removed declared public holidays

In 75 per cent of the cases, the AWA didn't specify a wage increase. (*Media Release, Julia Gillard, AWA data the Liberals claim never existed, 20 Feb 2008*)

Due to the overwhelmingly negative impact AWAs have had on working people it is extremely unfortunate that AWAs will not be abolished immediately.

Indeed, UnionsWA is aware that some companies have successfully moved to have their workforce sign new AWAs (around November/December 2007) despite the employees' existing AWA still being current at the time. Needless to say, these AWAs are for a term of 5 years and we believe this is a clear case of attempting (successfully) to circumvent the provisions of the "Transition" Bill in providing fair wages and conditions for their employees.

### **The extent of AWAs in WA**

This always seems to be of much interest particularly to some of WA's media outlets, peak employer bodies and the then Howard Government. Statistics are often poorly analysed or even distorted. It is apparent, however, that WA has had a significant take up of AWAs.

UnionsWA draws on the research conducted by the WA Fair Employment Advocate, Ms Helen Creed, to illustrate our view on this.

In her paper “AWA’s – Discussion Paper 2 of October 2007” (attached), Ms Creed notes (at pages 13 - 16) that

*“Researchers have been limited by the lack of data available on AWA coverage by State or industry”.*

and,

*“More AWAs are being registered in Western Australia than in any other State or Territory. Figures obtained from the Workplace Authority indicate that **208,564** AWAs were registered in WA in the three years to 31 March 2007 – accounting for 27.7 per cent of AWAs registered nationally.*

*The Australian Bureau of Statistics (ABS) estimates that in May 2006 approximately **5.8 per cent** of WA employees were employed on AWAs. AWA coverage is unlikely to be anywhere near the 25 per cent as indicated in recent media reports. Such estimations assume that all AWAs registered in the past three years are currently ‘live’ - whereas many employees will have changed jobs and/or signed multiple AWAs during that time.*

*The industries most reliant on AWAs in Western Australia include:*

- *Retail Trade;*
- *Mining;*
- *Accommodation, Cafes and Restaurants;*
- *Property and Business Services (including cleaning and security services);*
- *Manufacturing; and*
- *Construction.*

*According to the Workplace Authority, the following industries contain the largest proportion of employees working on AWAs:*

- *Cafes and Restaurants (68.6 per cent);*
- *Mining (57.5 per cent); and*
- *Communication Services (50.1 per cent).*

*Again, these figures are likely to significantly overstate the true level of AWA penetration in each industry. For instance, in highly casualised and high turnover industries such as retail and hospitality, an individual employee may have held several positions on a number of AWAs across the three year period”.*

Support for AWAs in WA is often exemplified by the “so-called” take up or popularity of AWAs in the Resource sector. UnionsWA disputes this vehemently. In most, if not all, cases, employees were required to sign AWAs as a condition of their employment with a company. With the vast growth in this sector and there being no “choice” other than to sign if you wanted a job, it is not surprising that numbers on AWAs increased.

It is also true to a certain extent that the Resources Sector has been prepared to pay high wages in their AWAs (which is obviously popular with many workers). However, the payment of high wage levels is not a factor of generous AWAs and generous employers but more a direct result of skills and labour demands and the increasing overseas demand for WA's resources.

### **How have AWAs impacted on the workforce?**

Business, their peak bodies and the former Howard Government regularly claimed that workers were better off "financially" under a system of AWAs. UnionsWA disagrees with this contention. This is supported by Ms Creed who outlines her view, based on research findings, at page 17 and onwards of her report:

*"Emerging evidence no longer supports this proposition. Industrial Relations Victoria (IRV) released a report in March 2007 comparing wage outcomes for collective and individual agreements. It found:*

- *employees on AWAs receive 16.3 per cent less pay (in median terms) than those covered by CAs;*
- *employees on AWAs receive 7.3 per cent less per hour (in average terms) than those covered by CAs; and*
- *where employers are focused on cost minimisation, AWAs can be used to reduce average pay and conditions (through cutting penalty rates, overtime pay and other protected award conditions).*

*The IRV report concluded that "the overall AWA (median) shortfall of 16.3 per cent suggests that cost-minimisation is an important element in AWA strategising".*

We have outlined in our Introduction the impact of AWAs on conditions and Award entitlements. It is clear from the Workplace Authority's own statistics just how pervasive and deleterious these instruments have been in eroding basic rights for working people.

What is perhaps not so easily grasped is the impact that AWAs have on the safety regime in a workplace.

AWAs are promoted as the "opportunity" for one on one bargaining between employer and employee. Apart from the errant nonsense that is espoused in this concept, the drive to "individualise" bargaining and thus workers themselves has led to serious consequences at some worksites. This has particularly impacted on health and safety with employees now having to raise safety concerns individually rather than as a group and fearing for their jobs if they do. This might sound extreme but has certainly been the experience of a number of workers in WA.

To illustrate this point, UnionsWA hopes to have a worker from the North West of WA available to speak to his experience at the public hearing in Perth on Tuesday 4<sup>th</sup> March 2008.

Ms Creed's paper deals more fully with the impact of AWAs on vulnerable groups in our society and we would urge the Committee to fully consider her research if it hasn't done so already.

### **Cases in Western Australia**

Unions WA came across a number of cases of workers who were negatively affected by AWAs under WorkChoices. We would like to cite some of these.

#### **John Stewart**

John Stewart has been employed under both AWAs and collective agreements as a mature apprentice. On his last AWA he received \$12.75 an hour and no penalty rates. He is now covered by a collective agreement which pays \$24 an hour with penalty rates and allowances.

#### **15 year old Kurt Pollie - an unfair AWA with no penalty rates**

"They gave me the AWA that offered me \$6.12 p/h and said I had to be on call 24 hours a day, 7 days a week. I took it home to dad who said it was unfair and I shouldn't sign it. We rang to complain and the manager said sign the AWA or I wouldn't get the job."  
(Kurt Pollie).

#### **Fletcher International WA**

This company operates a large abattoir outside of Albany, WA. Out of a workforce of some 450 persons approximately 200 are s457 visa workers. I am advised that these workers have been brought into WA under the category of skilled Butchers however the full time work they perform is that of boners, trimmers, packers etc work that is not classified as a Butcher's main work. The workers were required to sign an AWA governing their terms and conditions of employment (copy attached).

#### **Clause 9 - Hours of Work**

Hours of work are 45 hours per week being 38 ordinary hours and an additional 7 "*reasonable hours*"... "*To achieve the productivity levels necessary to meet business requirements the employee will be required to be (sic) work additional hours*".

The 3<sup>rd</sup> paragraph lends itself to a great deal of confusion as it states that "*All employee entitlements will accrue on the nominal basis of 40 hours per week*" (although 38 hrs are the ordinary hours).

## Payments

A shift loading of 15% applies to an afternoon shift. However, below this provision the AWA states that “*The employee and company intend that these provisions exclude the operation of protected conditions dealing with penalty rates, shift allowances, and overtime*”.

This exclusion appears in a number of places in the AWA including under the Public Holiday’s provision. The question remains as to whether or not employees have been adequately compensated for the loss of these “protected conditions”.

Clause 4 - Classification and Rates of Pay, details how pay is to be calculated. The first point to note is that the AWA does not specify anywhere (including the signature pages which we have sighted) the classification of this (or any other) employee.

When evaluating the rate of pay, a number of concerns arise. Attached is a summary of current pay rates provided by the employer to its employees on afternoon/night shifts. Called “*Explaining the Night Hourly Rate*” this document attempts to provide a summary of what is payable.

I am advised that most employees fall into the classification of Cert II/Cert III Trainee (even though most, if not all workers have been brought in to WA as Butchers). The total rate of pay is \$17.67 per hour. However, this includes \$0.65 cents per hour for payment, by the employee of their sick leave. This is noted in clause 4 as the “*Personal/Carer’s Leave Pre-payment*”. Therefore the ordinary hourly rate for this skilled position would appear to be \$17.02. It is not, however, as the hourly rate includes a 15% shift loading. This effectively means that this skilled worker is paid at a real hourly rate of \$14.47. This is 0.57 cents per hour above the WA minimum wage!

It should be noted that the employer suggests that a \$60 per week bonus payment is also payable. In examining the AWA it is clear (at clause 12) that this payment is entirely discretionary and in any case is compensation for working the extra or ninth hour per shift (12 b). Criteria for not paying this “bonus” are outlined at clause 12 (c).

I am aware that Industry standards for this work are paid at around \$21.17 per hour for a 38 hr week. Both smaller and similar size operations pay at this rate. Additionally, the industry will pay overtime payments and shift loadings **additional to the hourly rate.**

## Leave

The disadvantage for these workers is further apparent throughout the AWA. Clause 14 – Public Holidays indicates that workers maybe directed to work on certain public holidays (14 c). However, the recompense for this is a normal day’s pay and one day of time-in-lieu, to be taken only when the company has a nominated shut down period. Furthermore, time in lieu is only accrued for 8 hours even though the original shift will have been 9 hours in duration.

Clause 20 – Long Service leave appears to be somewhat confusing, particularly for an overseas worker. They may well wonder from this clause whether or not they might be entitled to LSL.

### **Other matters**

There is much more to highlight in this AWA, however, the Committee might be interested to look at clauses 24 (employee to pay for lost or damaged equipment) and 29 (b) summary dismissal (smoking in the car park is grounds for summary dismissal).

### **Conclusion**

This is a classic example of an AWA that is used to employ large numbers of vulnerable employees (foreign workers) in skilled positions but remunerates at almost the most minimum level and fails completely in terms of industry standards.

This AWA was signed in August 2007 for a % year period and the workers subject to it have no choice but to remain where they are on those terms and conditions. It highlights precisely the concerns of UnionsWA that a continuation of 5 year AWAs will be detrimental to large numbers of employees.

It should also be noted that this is an example of an AWA that was successfully registered **after** the introduction of the “Fairness Test”.

We doubt that these workers would consider themselves fairly treated.

**End of Submission**