Submission to the Senate Standing Committee of Education, Employment and Workplace Relations

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

The Qld Council of Unions (QCU) is the peak union council in Qld. We represent over 40 affiliated unions and over 350 000 union members. The QCU has offices in Brisbane and regional centres throughout the state.

Comment: The QCU indicates support for the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*. Having considered the content of the Bill it is clear that, if passed, the Bill will immediately redress some of the worst aspects of Workchoices. As such the abolition of AWAs must be lauded.

The research around the impact of AWAs has been well documented. It is worthwhile highlighting some of that data: data which shows that AWAs are highly disadvantageous to many, if not most, employees. At the same time, there is no evidence that they have had any positive impact on employment, inflation, productivity or levels of industrial disputation across the economy.

The QCU regrets the fact that the Bill does not wholly abolish statutory individual agreements, but allows some such agreements to continue to be made, for a limited period of time, in the guise of Individual Transitional Employment Agreements (ITEAs). The position of the QCU and the ACTU is that that common law agreements are sufficient for employers who wish to make individual employment arrangements with their employees.

AWA data: Research has shown in relation to AWAs is that AWAs cover about 4-5% of the employed workforce. The majority of AWAs are found in low-paid sectors of the economy; the retail, hospitality and personal services sectors account for 55% of all AWAs lodged to date. The greatest *density* of AWAs occurs in the mining and communications industries, even though the absolute number of employees covered by AWAs in those industries is relatively small.[1]

Most AWAs have reduced or abolished important award-based conditions, including penalty rates (reduced or removed in 66% of AWAs), annual leave loading (62%), shift loadings (64%), public holidays off work (41%), public holiday penalties (40%), rest breaks (30%), allowances (57%) and bonuses (70%).[2] And up to 28% of AWAs undercut legally protected minimum conditions of employment. About 6% of AWAs pay less than the legal minimum wage.[3]

Most AWAs increase hours of work. The average AWA employee works an extra 4.1 hours per week compared to their peers employed under collective arrangements.

---

[1] Comparing numbers of AWAs made (OEA figures) with the numbers of employees in each industry (ABS cat 6291.0).

[2] These are averages of the OEA official figures and the data that was highlighted by the Fairfax newspapers.

[3] OEA.

In the low-paid industries where cost-cutting is generally the employer's motive for introducing AWAs, the agreements tend to result in lower wages. We agree with the ACTU's comment that *the low pay set by AWAs has exacerbated the problems of poverty in Australia. For example, award wages in the hospitality sector are already below the recognised poverty line for a family, yet the average AWA undercuts even this low rate by an average of 5%. The use of AWAs in already low-paid sectors of the economy has undoubtedly led to a worsening of the situation of the working poor.*

The existence of AWAs appears to have worsened the gender pay gap. Across the economy, women's wages have fallen from 94% of men's wages in 1994 to around 90% in 2006. This is explained by two factors. First, industries employing large numbers of women (such as retail and hospitality) have, partially due to AWAs, suffered stagnant real wages growth or even real wage declines, while those sectors employing large numbers of men (such as mining) have enjoyed better wages growth. Secondly, within industries, women have fallen behind their male counterparts, again partially due to AWAs. For example, consider the communication industry, which has a relatively high AWA density. In 1994, women earned 93% as much as men in the sector. But by 2006, female earnings had dropped to 84% of male earnings.[4] *It is open to infer that direct or indirect wage discrimination contained in the AWAs used by employers in the industry is the cause of this drop.*

AWAs have also tended to undermine work and family balance. This is because, first, they tend to encourage or require longer working hours, which takes away from family time. Secondly, they also tend to remove award-based restrictions over the employer's power to dictate the pattern of working time, and the probable result is that there is less 'flexibility' over working time for AWA workers. Finally, they generally do not contain express 'family friendly provisions' (such as the right to request additional parental leave) which have become a feature of awards and collective agreements in recent years.

Note should be made that substantial academic work has been undertaken around the issue of the impact of AWAs on workers. References to such work are provided in the ACTU submission.

The Bill Content: The QCU gives a "tick" to the abolition of the unfair 'fairness test', and its replacement with a proper no-disadvantage test, which better ensures that employees are not left worse off as a result of agreement-making; and in particular, the new rules that require the workplace agreement to be compared against relevant collective agreements, as well as awards.

However the QCU is concerned about the drafting style employed in these provisions (and elsewhere in the Bill) and note that is extremely detailed and is, at places, confusing. Clear drafting of industrial regulation, so that all players in the system can clearly know their rights and obligations, is an important corner-stone. This comment should be borne in mind in regard to the drafting of any later legislation.

---

[4] ABS 4102.0, 6306.0. Full-time adult non-managerial average hourly ordinary-time earnings.

The QCU welcomes the emphasis on a collaborative process for making modern awards, and like the ACTU, the QCU intends to participate in this process in that manner.

However, the drafting of the Bill leaves a number of areas of uncertainty. The QCU welcomes clarification of these matters. Note that thee may be mattes canvassed in the ACTU submission that are not replicated in this submission. In those instances the ACTU submission is adopted by the QCU.

The Minister's draft award modernisation request states that a modern award 'cannot exclude a term of the proposed NES [National Employment Standards] or operate inconsistently with a term of the proposed NES' (item 28). It is not clear whether an award which provides more favourable conditions for employees than the NES is 'inconsistent' with the NES, merely because it regulates the same subject-matter. This point should be clarified. As a matter of principle, the QCU believes that awards should be able to improve upon the standards contained in the NES.

The Explanatory Memorandum suggests that the Minister will direct the Commission to exclude 'high-income earners' from the operation of modern awards. It suggests (at page 8) that the relevant threshold will be an income of $100 000 per annum. An income of $100 000 per annum is no longer unusual in certain occupations and industries; indeed, it is the *average* wage in the mining industry.[5] Yet many employees earning these wages remain vulnerable, and should not be left award-free in the event that they cannot negotiate a suitable collective agreement or common law agreement. The QCU supports the ACTU submission on this point that, if a monetary figure is to be used to exclude certain employees from award coverage, the amount should be closer to $150000.

Modern awards will not be permitted to contain state-based differentials after 2013 (proposed section 576T). There could however be a widely observed custom within a particular State or Territory for such differential. As such there is no good reason to exclude its inclusion in a modern award (provided it falls within the range of allowable matters), simply because there are, for historical reasons, geographical limitations upon the observance of the custom. The QCU submits that the Commission should have the discretion to allow State-based differentials, taking into account all relevant factors.

The QCU notes that the Notional Agreements Preserving State Awards (NAPSA) expiry date has been extended to 31 December 2009. This is welcomed and relieves much of the pressure in modernising those awards as a first tranche of the AIRC "request". As such the QCU supports the removal of NAPSAs as a first round target for the award modernisation request and that award modernisation is undertaken generically without highlighting the NAPSAs.

The QCU supports the Bill allowing for the extension of pre-reform certified agreements. However we note that the Bill defines such agreements as pre-reform federal agreements. There are in addition to the federal agreements state agreements that were "transferred" into the federal jurisdiction by virtue of the corporate status of

---

[5] The average income in mining is $100,000 pa: ABS cat 6302.0.

the employer party to the agreement. These are commonly referred to as PCSAs (Preserved Collective State Agreements) or PISAs (Preserved Individual State Agreements). The QCU contends that the capacity to vary and or extend all pre-reform agreements should be a feature of this Bill. An amendment to Schedule 8 will be required.

The Bill also provides that the AFPC will only continue to adjust wage rates in existing APCS (Australian pay and Classification Scale). An unintentional consequence of this limitation is that there will be no capacity to make new APCSs where workers may be considered award-free. This would result in such workers only being subject to the FMW with no capacity for alternate pay scales to be adopted in advance of the award modernisation exercise being concluded. A real situation exists in this regard in relation to divers in Qld. This has been subject to an Inquiry by the Qld Workplace Rights Ombudsman.

The QCU notes the submission of the ACTU by way of proposed method for addressing this unintended consequence of the Bill. As such the Workplace Authority should have the power, upon application of an employee or organisation, to direct that a new business in a sector which is 'usually' regulated by awards is bound to observe the pay scale derived from the relevant award. Alternatively, the power could be given to the AIRC to direct, when roping a new employer into an existing award (under s.557) to order that the employer also be bound by the relevant pay scale.

Thank you: The QCU thanks the Senate Committee for the opportunity for presenting this material, and advocates that the changes proposed are adopted.

Qld Council of Unions
29 February 2008