

Submission

to

**Senate Standing Committee on Education,
Employment and Workplace Relations**

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

Submitter: Ingrid Stitt

Organisation: Australian Services Union – Victorian Private
Sector Branch

Address: Level 1, 117 Capel Street, North Melbourne,
Vic, 3051

Phone: 03 9320 6700

Fax: 03 9320 6799

Email: istitt@asupsvic.org

Introduction

Background Information about the ASU

1. The Australian Services Union is one of Australia's largest Unions, representing approximately 120,000 employees.
2. The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.
3. The ASU has, during its existence, negotiated on behalf of its members an array of federal and state awards and agreements providing terms and conditions of employment. In the Federal system, the ASU nationally maintains about 200 underpinning awards, supplemented by hundreds of enterprise bargaining agreements.
4. The ASU has welcomed the opportunities presented to union members to bargain collectively with their employers for appropriate terms and conditions of employment and has fully participated in this system, despite limitations on the ability of unions to bargain on equal terms with employers introduced particularly by the Work Choices amendments in 2006/07.
5. The Australian Services Union – Victorian Private Sector Branch ("ASU") works with members in a wide variety of private sector companies and not for profit organisations across a range of sectors and occupational groups including but not limited to:
 - Transport, including passenger air transport, road transport and air freight transport
 - Clerical and administrative employees in commerce and industry generally
 - Wagering
 - Call centres
 - The legal services sector
 - Social and community services

6. Approximately 80 per cent of ASU members are women and employed in some of the lowest paid sectors and occupational classifications.

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ASU concerns about current Workplace Relations Act 1996 (Work Choices legislation):

7. The ASU strongly opposes the previous Coalition Government's Work Choices legislation and has in the past made submissions to the Senate and raised concerns over the unjust nature of the laws that have been detrimental to union members, non-union employees and their families.
8. It is widely accepted that these unjust laws were rejected by the Australian people at the November 2007 federal election.
9. The ASU members welcome the abolition of unfair statutory instruments that perpetuate unequal bargaining outcomes.
10. The previous Coalition Government created a system that enabled employers to impose on employees, particularly at the point of engagement, AWAs that frequently removed terms and conditions of employment from applicable industrial instruments without providing for adequate compensation.
11. With the scrapping of the previous 'no disadvantage test' (pre-fairness test), AWA's were used to cut pay and conditions of many thousands of workers who previously were protected by an Award safety net and a comprehensive 'no disadvantage test'.
12. Unfortunately, despite the introduction of the fairness test, the ASU's experience has been that AWAs have continued to be used to cut the wages and conditions of employees.
13. In summary, since 1996 the Union has dealt with many situations where members were forced to accept unreasonable terms and conditions of employment as a result of being employed under individual statutory instruments such as AWAs.

***The ASU Supports much of the Workplace Relations Amendment
(Transition to Forward with Fairness) Bill 2008:***

14. The ASU does not seek to make a comprehensive submission as the Union has participated in the development of the ACTU submission and supports that Submission and its recommendations.
15. However the ASU would like to make a brief submission outlining why the union has well founded concerns about Australian Workplace Agreements ("AWAs") or individual statutory agreements that can be made under the current Workplace Relations Act 1996 ("the Act"). In general the ASU strongly supports the present Government's proposal to amend the Act by removing the capacity to make AWAs and to amend the law to introduce a fairer industrial relations system subject to some modifications or amendments to the Bill that are discussed below at paragraphs 21 – 25.

Qantas Valet Parking AWAs, a recent case study:

16. Members of the ASU employed at Qantas Valet Parking have been given individual contracts by a new contractor (Equity Valet Parking Pty Limited) that diminished the terms and conditions of employment that were applied under the terms of their employment with the previous contractor (Hertz Australia Pty Limited).
17. On a take it or leave it basis, these employees had no choice, or more accurately were forced to accept the terms and conditions of employment offered by the company, or look for another job. This offer was made despite the overwhelming preference of the majority of these employees was to negotiate a collective agreement.
18. The ASU submits that this example clearly demonstrates the consequences and absolute unfairness surrounding the use of individual statutory contracts.
19. Most of these employees had worked for Qantas Valet Parking for a long period of time many of them were women and shift workers.
20. Qantas Valet employees will still be employed on sub-standard and unfair terms and conditions of employment in 2013 long after other employees are working under a new and fairer industrial relations system that is due to commence in 2010.

21. The situation at Qantas Valet Parking is exacerbated by the fact that there has been no transmission of business for these employees despite the outgoing contractor being willing to agree to such a transmission. Thus employees were left out on a limb completely at the mercy of the new contractor, and have become new employees who are subject to new qualifying periods of employment, and have been faced with completely new individual contracts of employment.
22. The final arrangements surrounding the change of contractor, and therefore the industrial avenues open to the new contractor were determined before employees and their unions had any consultation with either the outgoing contractor or the new contractor. These issues highlight the precarious effects of contracting out and the adverse impact on employees under the current legislation.
23. The circumstances surrounding the AWA offer and the content of the AWA are the subject of investigations by both the Workplace Ombudsman and the Victorian Workplace Rights Advocate.
24. These members were caught in an AWA time trap. The ASU therefore submits that the abolition of individual statutory contracts should be made retrospective to 1 December 2007 and that employers should not be allowed to exploit the period between the 2007 Federal election and the passage of the current Bill and continue to force employees onto unfair individual contracts.
25. In normal circumstances changes to the law would operate prospectively however the retrospective abolition of AWA's should be an exception to this general rule because it was well known and understood in the lead up to the 2007 Federal Election that Labor intended to abolish these statutory instruments if elected.
26. In the alternative the ASU Victorian Private Sector Branch submits that those AWA's that are made before the passage of the Transition Bill, but after 1 December 2007, and that subsequently fail the current fairness test, or preferably the new 'no disadvantage test' should be able to be terminated by either party prior to the nominal expiry date of the AWA.
27. In the current case of Qantas Valet Parking, workers have been forced to accept five year AWAs as a condition of employment. We advocate today that the Transition Bill should be amended to enable these employees to terminate their

AWA if their AWA fails either the fairness test or the no disadvantage test. If this does not occur these workers will remain locked out of Labor's new industrial system until 2013 and will not benefit from the stated policy objective of Labor to create access to a fairer bargaining system.

28. It is clear to the ASU and its members that employees acting alone can never match the bargaining power of employers and that individual agreements will result in the imposition of unfair terms and conditions of employment on individual employees. Individual contracts presented as a "take it or leave it" condition of employment will never enable genuine or good faith bargaining on just terms.

Conclusion

29. Subject to the proposed amendments outlined above and the terms of the ACTU Submission to the committee, the ASU calls for the immediate passage of the Bill without further delay.
30. The Union looks forward to continuing to act collectively on behalf of its members to establish terms and condition of employment which are fair, reasonable and decent and which suit the needs of enterprises and the economy as a whole.
31. The Union believes that this objective is only achievable in an industrial system which provides for and encourages collective action by employees who may actively participate in the determination of their specific wages and conditions of employment against a backdrop of a fair safety net of socially just employment standards.



Ingrid Stitt

Branch Secretary

Signed on behalf of the Australian Services Union Victorian Private Sector Branch