Submission
No 11

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

Organisation: Australian Workers Union

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Position: NSW Secretary

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Theme:

Summary

120YEARS
STRONGER TOGETHER

THE AUSTRALIAN WORKERS' UNION
1886-2006

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Committee Secretary
Legislative Council Standing Committee on Social Issues
NSW Parliament
Parliament House
SYDNEY NSW 2000

Dear Committee Secretary,

RE: SUBMISSION TO THE INQUIRY INTO IMPACT OF COMMONWEALTH *WORKCHOICES* LEGISLATION

This submission is supplied by The Australian Workers' Union (AWU), New South Wales branch.

Even though the laws have only been in for a relatively short time, unscrupulous employers have used them as an excuse to terminate, threaten or treat workers in a demeaning manner. Rather than the stated intention of these laws being work choices for employers and employees, they have become a draconian power tool for those who wish to exploit workers that are in a vulnerable position.

The AWU welcomes the inquiry by the NSW Legislative Council and is willing to participate in any hearings and organise for effected workers to appear, if available.

I look forward to presenting our union's stance on these and other issues at the public hearings.

Please contact me if you require any further information.

Yours Sincerely,

Russ Collison
NSW SECRETARY

Submission

to

Legislative Council Standing Committee on Social Issues

Inquiry into Impact of Commonwealth *WorkChoices* Legislation

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Inquiry into Impact of Commonwealth *WorkChoices* Legislation

Summary

This report outlines in detail the major concerns The Australian Workers' Union (AWU) has regarding the impact of the Commonwealth *WorkChoices* Legislation. The AWU's major concerns are:

- Insufficient and inappropriate infrastructure set up by the Commonwealth Government to adequately support the needs of the workers.
- The inability for the majority of workers to genuinely bargain with employers. The report examines issues and identifies examples.
- Impact of *WorkChoices* on women will result in many women being worse off and without adequate industrial protection. This is evidenced in mushroom, hairdressing and sport and fitness industries.
- Impact of *WorkChoices* on casuals and their inability to effectively negotiate.
- Impact of *WorkChoices* on low-skilled workers with loss of many entitlements since they are allegedly rolled into one inclusive rate (with no penalty rates).
- Impact of *WorkChoices* on rural workers with state awards being better renumerated than federal awards and specific issues affecting rural workers.
- Impact of *WorkChoices* on fairness and equity issues particularly in regard to a person's ability to negotiate and people with disabilities.
- Impact of *WorkChoices* on young workers and its effects on the skills shortage.
- The negative consequences of *WorkChoices* on family and community life.
- Difficulty of employees working in small and micro businesses.
- Lack of transparency of the Australian Fair Pay Commission and its focus on economic justifications rather than the living wage requirements.
- The reduction of the powers of the Australian Industrial Relations Commission to arbitrate.
- Other issues such as removal of the no-disadvantage test, the attack on union rights, and removal of unfair dismissal rights of employees.

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Inquiry into Impact of Commonwealth *WorkChoices* Legislation

This report from The Australian Workers' Union, New South Wales Branch, is a submission to the NSW *Legislative Council Standing Committee on Social Issues* Inquiry into the Impact of Commonwealth *WorkChoices* Legislation. The terms of reference of the inquiry was stated as:

That the Standing Committee on Social Issues inquire into and report on the impact of Commonwealth WorkChoices legislation on the people of New South Wales, and in particular:

(a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment,
(b) the impact on rural communities,
(c) the impact on gender equity, including pay gaps,
(d) the impact on balancing work and family responsibilities,
(e) the impact on injured workers, and
(f) the impact on employers and especially small businesses.

To address the above points, this report is structured into the following areas:

1) Inability of the Australian Government instrumentalities to protect workers.
2) The ability for workers to genuinely bargain.
3) Specific reference on the impact of the legislation on:
    a. Women
    b. Casual employees
    c. Low-skilled workers
    d. Rural workers
    e. Fairness and equity issues.
4) Impact upon balancing work with family responsibilities and community life.
5) Small business work environment for employees.
6) Conclusion.

1) Inability of the Australian Government instrumentalities to protect workers.

1. The AWU NSW Branch expresses great concerns on the ability of the Federal government to effectively support workers. Workers need support at the time of negotiations and during the life of the agreement to ensure that wages and conditions are maintained as per the agreement. The Federal Liberal Government, even though not outlawing unions' participation in negotiations, has effectively limited the number of bargaining items and reduced settlement procedures through judicial means.
2. The Howard Government announced in March 2006 that it will be allocating an additional $97 million over 4 years to the Office of Workplace Services (OWS) to employ 200 inspectors. OWS is set up "as an independent agency with an expanded scope to monitor workplaces and give advice to employees and employers under the *WorkChoices* reforms" (Australian Government, *WorkChoices* Fact Sheet 13, 2006). The AWU believes this is inadequate for the protection of workers due to:
    a. It is a short-term measure to last 4 years only. In three years, all transferred State awards will be abolished leaving many workers exposed to negotiate all their entitlements or face being placed on the 5 minimum standards only. At this point, when workers will be at the most vulnerable, the workplace inspectors will disappear. The Howard Government's announcement is purely a politically driven initiative to mask emerging problems.
    b. The employment of 200 workplace inspectors is the equivalent of one inspector for every 50,000 workers. It would be impossible for each inspector to be able to give the appropriate support to workers.
    c. The distribution of additional workplace inspectors has not been announced. Will they be divided amongst the States based on the proportion of the workforce?
        - If so, NSW will gain approximately 64 inspectors. These 64 inspectors are to provide assistance to approximately 3.25 million workers in NSW. This is excluding the current unemployed.

- Given that approximately two-thirds of NSW population resides in the greater Sydney metropolitan area, only one-third or 21 workplace inspectors are expected to assist Wollongong, Newcastle and all country areas of New South Wales. **This is equivalent to one inspector per 38,000 square kilometres.**

d. There are also accessibility issues regarding workers going to the Workplace Inspectors offices since there is only 2 offices in NSW, one at 7th Floor, North Wing, 477 Pitt Street, SYDNEY and the other at Level 1, 24 Beaumont Street HAMILTON. There are **no further offices planned to be open until at least the end of 2006, some 9 months after the implementation of *WorkChoices* legislation.**

3. The AWU also expresses concerns to the impartiality of these inspectors since they will all be employed under an Australian Workplace Agreement (AWA). There is no indication that they will be given a fair choice and hence any prospective inspector that wishes to be employed using award conditions will not be selected. Accordingly, these new workplace inspectors may encourage workers from awards to AWA's.
4. Conflict of interest issues will arise since the OWS is alleged to be an independent body that will also give advice to employers and employees. There is a possibility where an inspector may act as an adviser to an employer, some of the employees at the same workplace and then be the arbitrator of any issues that may arise. This is possible since so few workplace inspectors will be employed or since they are covering large geographical areas.

2) The Ability of Workers to Genuinely bargain

5. The new Australian Government *WorkChoices* legislation treats workers as a commodity. Workers are seen as an input to the business much like raw materials or overheads. Workers are selling their labour to employers and need to guarantee knowledge, ability and quality. In return they are paid a wage.
6. The problem with this model is that training is relegated in importance. Employers are anticipating workers to come with the required skills. The skills shortage highlights the problems that have emerged as governments and businesses reduce training commitments.

7. Treating workers as a commodity also decreases the sense of importance of human value. Workers, as humans, need to be nurtured and enhanced so as not to only make a positive contribution to the business but also for the wider good of society. *WorkChoices* destroys the nurturing and replaces it with the market driven efficiency and effectiveness outcomes model.
8. The no-disadvantage test has been removed and hence there will be no benchmarking of any new AWAs. If workers were unsure of their rights, they may sign away their entitlements without being aware of what their original award entitlements were.
9. The OEA submission to the Senate Employment, Workplace Relations and Education Committee inquiry into Workplace Agreements (September 2005) (page 14) states that "specific provision for wage increases was made in 38 per cent of AWAs coded. Increases were provided as either fixed percentage increases, or were linked to changes in the Consumer Price Index (CPI), safety net adjustments, or performance."
10. The AWU expresses its profound concern that of the existing 459,393 AWAs that have not reached their nominal expiry date (OEA Senate Submission 2005, page 9), that close to 285,000 AWAs have no increase provision. Over a quarter of a million Australians will have to rely on the generosity of their managers on whether they will have a wage increase over the next 3 years. Over a quarter of a million Australians will have the same wage rate for the next three years when the cost of petrol, mortgage, rents, health care, interest rates and other expenses are constantly rising.
11. 62% of AWAs have no provision for wage increases (based on the above point). If the current AWAs are a reasonable representation of how AWAs will be in the future, given the Government's desire to see all workers on AWAs (as evidenced by every worker in the OEA having AWAs) this will result in approximately 6 million Australian workers having no provision for a wage increase and having to rely on the good nature of the employer coupled with good business fortunes, on whether a wage increase will be paid or not.
12. Even though 62% of AWAs do not have a provision for a wage increase, the OEA Employee Attitude Survey 2001 found that 34 percent of AWA employees did not receive a wage increase. Therefore, more than half of the employers that did not have a provision for a wage increase took advantage of this clause. That is, over 156,000 employees currently on AWAs have not received a wage increase or will probably not receive a wage increase over a 3-year period.

13. For workers on AWAs with no provision for a wage increase, they will miss out on any safety net adjustments for the duration of the AWA. The new legislation has been extended AWAs from 3 to 5 year terms.
14. The ability of a worker to be able to enter into genuine negotiations is limited by the prevailing market conditions of their labour at the time; their ability to negotiate suitable terms; their willingness to enter into negotiations based upon their personal psyche; and/or, their personal circumstances where they may be in a sufficient weakened state that they are willing to accept almost any offer given to them (particularly in circumstances where the prospective employee on unemployment benefits will lose their benefits for 8 weeks if they do not accept the job).
15. The AWU notes that there have been many occasions where employers have refused to enter into negotiations to have a Certified Agreement registered with either the Australian Industrial Relations Commission or the New South Wales Industrial Relations Commission. This is predominantly the course of action by most Clubs in NSW.
16. **Cronulla Golf Club**, deciding they prefer to have a Policy and Procedure Manual that was overviewed by Clubs NSW rather than entering into meaningful dialogue with course maintenance staff. Many of the outstanding claims have not been addressed.
17. **Crown Scientific Pty Ltd,** after the shares were brought out by **Cospak Pty Ltd**, the new management decided to end 6 months of negotiations and cancel the current certified agreement since the new management believed the redundancy provisions and other conditions were too generous. The Australian Industrial Relations Commission held it was not in the public interest to terminate the agreement. The introduction of *WorkChoices* legislation results in any new AWA or Certified Agreement being able to be unilateral after giving the required notice. There is no right of appeal and accordingly, all existing terms and conditions will be removed and replaced with 5 minimum standards.
18. The AWU has coverage of the Golf and Bowling course maintenance staff and it has been brought to the union's attention on numerous occasions that employees are initially employed on above award wages and then rarely receive any wage increases. An example is **Palm Beach Golf Club** whose Superintendent received only 3 wage increases in 9 years resulting in wages not keeping pace with inflation or award safety net adjustments. Once the AWU became involved, he was guaranteed wage increases over the following 2 years.

19. **Boeing** workers at RAAF Williamtown (NSW) have been asking for a union negotiated agreement. Boeing management have refused to enter into any meaningful dialogue.
20. During proceedings at the Australian Industrial Relations Commission regarding the Boeing dispute, management admitted that its refusal to negotiate with the AWU and its members was "philosophical" in nature. Boeing management also claimed that members of the AWU were not intelligent or discerning enough to properly understand material provided by the AWU.
21. The Australian Government ran full-page advertisements stating that they will "preserve the right of workers to have a union negotiate a collective agreement if they wish." If this is correct then how can Boeing refuse to negotiate with workers being represented by the AWU? It required the intervention of the **NSW Industrial Relations Commission** to force all parties to the negotiating table.
22. Mr Bill Shorten, National Secretary of The AWU, stated on 24 May 2005 that "There's no question that the double standards forcing Boeing mechanics who weren't on strike out the gate, being stood down by their very tough employer, double standards, big business is going to be the winner under the new Howard laws. The workers are going to come second, the poor are going to get poorer and the Boeing dispute, where workers merely want a union agreement not individual contracts and now they're being stood down, is a taste of things to come."
23. The AWU does not promote redundancies. However, in a Judgement and Decision of His Honour the President of the NSW Industrial Commission, on 31st January 2005 (IRC 2610, 6510, 6518, 7263 of 2004), decided that workers were entitled to the payout of redundancies rather than transmit to a Company which had little paid up capital and refused to negotiate with the AWU about an ongoing enterprise agreement.
24. Justice Wright interpreted the Certified Enterprise Agreement and relevant State Award which both weighed heavily in his Decision. The matter identified as **Unilever Australia Ltd, AP Foods (Sydney) Pty Ltd AWU** and TWU - various proceedings regarding proposed sale of Marrickville site.
25. Unilever, having made a corporate decision to sell its manufacturing margarine / fats / oils business, then negotiated with the prospective buyer. On the basis that the business was transmitting from one employer to another, Unilever attempted to avoid its Enterprise Agreement/Award responsibilities on the payment of redundancies.
26. The prospective buyers, APF, had $100 of paid up capital and no intention to negotiate an enterprise agreement with the AWU, under the NSW *Industrial Relations Act 1996.*

27. Unilever made a decision that redundancies were not payable, because the business was transmitting and they had found, what they believed, was to be suitable alternative employment.
28. The AWU instigated a case in the NSW Industrial Commission and His Honour Justice Wright found in favour of the AWU based on the facts; that Unilever must pay redundancies at the point of sale of the business and that APF did not qualify as a suitable alternative employer based on the evidence and submissions.
29. The Judgement of His Honour was not appealed by Unilever and remains intact.
30. **This possibility has now been completely lost since this action cannot succeed in the Federal jurisdiction.**
31. The power and ability to negotiate is directly related to the capacity of the employee to negotiate an appropriate outcome. An individual employee of a business can conceivably negotiate a better 'deal' than another employee even though both may be doing similar work and producing similar outcomes. The Australian Government, through the establishment of individually negotiated employment agreements, encourages individual employees to achieve the best outcome the individual could possibly negotiate, thereby resulting in differential pay based on similar work performance outcomes.
32. The AWU takes umbrage to Prime Minister John Howard's comment on the ABC Four Corners report where he states:

    JOHN HOWARD: ...the insufferably arrogant assumption made by the present industrial relations system that men and women in Australia are too stupid to be trusted with the responsibility of deciding what is good for them.

33. The fact is that many Australian workers do not wish to engage in any form of confrontation (whether peaceful discussion or a verbal stoush) with their employer. As explained above, the overwhelming power lies with the employer and most workers will not be able to maximise their full potential earnings. This is in contrast with the general business maxim that businesses are to maximise profits.
34. Many workers feel uncomfortable in approaching their employer on their own. Many prefer a union to undertake anonymous negotiations whether it is in relation to pay issues or occupational health and safety concerns. WorkChoices stops the AWU to examine a sample of workers pay and conditions so as the individual would not be identified.
35. The above examples such as Cronulla Golf Club, Boeing and many uncited examples are instances where employees preferred to have a union negotiated agreement, which was rejected by management using Federal government legislation.

36. Under the Federal Government changes, the union needs to identify the individual worker that has made the complaint. The result of this is:
    - For employers with less than 100 employees, the employee could be targeted or dismissed. The employee can only challenge it through the Federal court (a costly process);
    - Employees will be reluctant to enforce their rights and would lose their rightful entitlements;
37. The fear factor on employees to discuss their AWAs with anyone else is further antagonised by s83BS of *WorkChoices* which results in 6 months gaol for any person publicly exposing an AWA. Therefore the employer will have an unfair advantage over the employee. Any third person, whether a union official, relative or the press can be gaoled for 6 months for simply discussing the contents of an AWA.
38. Ms Louise Markus MP (Federal member for Greenway) in her second reading speech argued "the opportunities afforded by this government such as the right to speak freely." Then why does the government wish to implement legislation that will result in 6 months imprisonment (no fines or lesser sentence) simply for exposing an AWA that could be rorting an employee's pay rates or conditions?
39. This is further compounded by s104 *WorkChoices* regarding coercion and duress. Even though subsections (1) through to (5) addresses situations that may lead to coercion or duress, subsection (6) then exempts an employer from forcing an employee to sign an AWA as a condition of employment. This is hypocritical and needs to be deleted from the proposed Bill. An unemployed person will have no choice other than to take what's on offer or face losing the unemployment benefit. The prospective worker will not be able to negotiate to have the award as a basis of an employment contract.
40. Only workers with skills that are scarce or senior management will be able to negotiate a reasonable outcome for themselves. The vast majority of workers, particularly the young, women, rural workers, unskilled and unemployed will be subject to the demands of an employer.

3a) Specific reference on the impact of the legislation on women.

41. Employment surveys demonstrate that women in general receive lower wages for similar work. *WorkChoices* is of no real benefit for women workers.
42. Further evidence of workers inability to bargain can be gained from the hairdressing industry. The industry is characterised by predominantly female workers, working in a close environment with the business owner. Difficulties faced by workers include:
    a. Difficulty in entering into an enterprise agreement with the owner;
    b. Business owners frown upon any staff member joining the union. The owner generally takes it as an insult to them personally;
    c. With the proposed new unfair dismissal laws exempting businesses with less than 100 employees, there is genuine concern that union member employees will be targeted; and,
    d. There are many examples where employers do not pay the current superannuation contribution as deemed by the current NSW award. **Prodigy Hair Salon** (Hurstville) has not paid super to the workers for the past 6 years.
43. Mushroom farm disputes also highlight where workers, predominantly women, are forced into signing AWAs. The owner tells the workers to either sign the AWA now or have your hours reduced.
44. **Imperial Mushrooms** places workers on a 3 month training program at $14.00 per hour and then on completion of the so-called training, employees sign an AWA with an all-inclusive rate of $16.55. This all-up rate includes long service leave, annual leave, sick leave, carers leave, maternity leave, and public holiday rates. There is no guaranteed number of hours but the roster identifies the worker will work 4 days on and 2 days off. The net effect of these arrangements is that the worker will be over $600 worse off in their first year when compared to the award of a permanent part-time level 1 farmer. Since there are no regular hours, the workers should be deemed as casuals which results in the worker being approximately $3,500 worse off at the end of their first year of their employment.
45. It is difficult for women with children to work at the mushroom farm since they need an identified work completion time stated in advance so as child-care services or picking children up from school can be arranged. Management often disclose the number of hours to be worked on the day.

3b) Specific reference on the impact of the legislation on casual employees.

46. Casual workers have the most to lose. There ability to negotiate a suitable contract is limited. The competition on the supply-side of labour often exceeds demand. This can be attributed to school leavers entering the market on mass at year end; the need for senior high school students, college and university students to supplement their income to pay for fees and living expenses; and, itinerant workers (such as overseas holiday workers or women returning to the workforce).
47. AWAs allow employers to reduce the minimum hours required to work as specified in the awards and create split shifts. Split shifts will make family and community life almost impossible to co-exist with working arrangements.
48. It has been brought to the attention of the AWU that non-union members at **AMF Bowling Centres** are required to pay uniform deposit fees even though this is contrary to the award.
49. The health and fitness industry has many casual workers and live predominantly on award entitlements and conditions. AWAs will allow employers to further diminish entitlements and working conditions.
50. **Walls Nursery** refused to pay long service leave to a causal employee. The employee was employed under the Nurseries Employees (State) Award. The employee worked as a casual for 13 years working a shift roster that required much flexibility.
51. Without union or award protection, many entitlements and yearly wage increases will be substantially reduced for casuals.

3c) Specific reference on the impact of the legislation on low-skilled workers.

52. OEA Senate submission (page 15) states that 41 percent of the AWAs coded had one or more loadings such as penalty rates, shift rates, overtime, allowances, annual leave, annual leave loading, sick leave, rostered days off and other payments incorporated into the hourly rate.

53. There are a number of alarming issues relating to the content of AWAs regarding hours of work and flexible work organisation as discussed by the OEA Senate submission. Additional studies are required to examine the full implications of the expected new regime the workers are expected to operate in. The issues include:

    a. Only 15 percent of AWAs have a limit on the number of hours worked per day (OEA Senate submission page 16 based on data supplied by ACIRRT). In effect, the minimum 10 to 12 hour break between shifts has been eliminated in 85 percent of the AWAs. When considered in conjunction with the fact that 54 percent of AWAs include penalty rates in ordinary pay rates, this will result in employers being able to pressure employees to work either extended continuous shifts or having limited breaks between shifts. This will have a massive adverse impact on occupational health and safety concerns as well as on overall performance of the employee. Furthermore, AWAs require a worker to have their 38 hour week averaged other a 12 month period. This can create a situation where an employee during peak season works 57 hour weeks (for six months) and then for the remainder of the year works 19 hours a week.

    b. Among AWAs that identified a daily span of hours, 24 percent had 16 or more hours. In the retail trade industry 46 percent of AWAs contained a span greater than 12 hours. In effect, a hairdresser could be anticipated to put in excess of 12 hours work a day, particularly during 24-hour Christmas trading which not only raises safety concerns regarding employees health but also safety concerns for the customer.

    c. 38 percent of AWAs allow the employer to direct employees to carry out duties as required. This raises implications in regard to whether adequate training and assistance will be provided to employees to undertake work outside their normal work practices.

    d. 11 percent of AWAs give the ability to move employees between sections and sites. The implication arises whether:

        i. appropriate compensation for travelling is provided;

        ii. would suitable overnight accommodation be provided if required; and,

iii. an employee such as an aerobics instructor or hairdresser working for an employer with several locations may be required at Manly on Mondays, Blacktown on Tuesdays, Hornsby on Wednesdays, Wollongong on Thursdays and Newcastle on Saturdays. Even though the above example may be considered an over exaggeration, the AWU has seen incidences in the sporting industry where technicians were based at Enfield and were on call to go to Wollongong.

54. 52 percent of AWAs coded did not have a provision to accumulate sick leave (based on OEA Senate submission page 18). Accordingly, there is firstly no incentive to accumulate sick leave days since these days would be lost at the end of the year. Secondly, if a worker becomes gravely ill at no fault of their own, for instance heart attack or cancer, they would not have any accumulated sick days to allow for a full recovery before returning to work.

3d) Specific reference on the impact of the legislation on rural workers.

55. Whilst rural workers in New South Wales are covered by a number of industry specific state awards, the only applicable Federal awards are the Horticultural Industry (AWU) Award 2000, the Pig Breeding and Raising (AWU) Award 1999 and the Pastoral Industry Award 1998.

56. The Federal Horticultural Industry (AWU) Award 2000 covers employees working in the growing and packing of fruit and vegetables, and the preparation of vineyard products. In NSW these employees would be covered by the Horticultural Industry (State) Award, the Mushroom Industry Award, the Fruit Packing State Award and the Wine Industry State Award. All employees currently under these state awards are worse off under the Horticultural Industry (AWU) Award 2000. The following table shows how:

Pay level	Horticultural Industry (AWU) Award 2000 Federal Award	Horticultural State Award	Mushroom Industry State Award	Wine Industry State Award	Fruit Packing State Award
Level 4	$540.90	$555.00	$557.30	$558.30	$555.40
Level 3	$517.80	$547.00	$549.00	$544.10	NA
Level 2	$501.00	$526.20	$534.10	$534.10	$547.00
Level 1	$447.10	$503.30	$505.30	$517.80	$505.30

57. The Federal Pastoral Industry Award 1998 covers employees involved in the shearing and crutching of sheep, as well as any employees involved in the sowing, raising and harvesting of crops. In New South Wales these employees would be covered by the Cotton Growing, Cotton Ginning, Sugar Field Workers and Pastoral Employees State Award.

58. Most employees currently under these State awards will be worse off under the Pastoral Industry Award 1998. The following table shows how:

Pay level	Pastoral Industry Award 1998 Federal Award	Pastoral Employees State Award	Cotton Growing State Award	Cotton Ginning State Award	Sugar Field Workers State Award
Station Hand Grade 1 (less than 12 mths experience)	$467.40	$467.40	$501.10 (General Farm Hand)	$484.10 (General Hand)	$486.50 (less than 12 mths)
Station Hand Grade 2 (more than 12 mths experience)	$492.40	$492.40	$561.20 (rural tradesperson)	$561.20 (Ginner)	$502.70 (greater than 12 mths)

59. Rural workers face particular challenges with particular reference to the:

- difficulty of finding alternative employment opportunities in some towns;
- inability to negotiate comparable wages outcomes to the major cities and towns;
- need to be multi-skilled; and,
- difficulty in obtaining suitable training (either through distance or availability of courses).

3e) Specific reference on the impact of the legislation on fairness and equity issues.

60. The question of fairness and equity needs to be taken into account when substantially changing the means of entering into employment contracts. Even though the current 170BB of *WorkChoices* defines equal remuneration for equal work, it would be difficult for an employee to take action due to:

- The difficulty of obtaining what fellow employees are earning on their respective AWAs;

- It being an offence to disclose another AWA. This will give the opportunity for an employer to renumerate differently for the same work without being identified; and/or,
- The employee feeling uncomfortable to take his/her employer to the Commission, particularly if there are less than 100 employees at the workplace, for fear of losing their job.

61. The opportunity for different wage rates being struck even though there is equal productivity, skills set and knowledge between workers can occur due to a number of reasons, which include (but not limited to):
    - A worker may be shy or reserved and would be content with any offer rather than cause any possible conflict;
    - A worker may not have the skills or knowledge to undertake detailed negotiations since the worker's expertise lies with the work performed as opposed to workplace negotiations;
    - A worker may not be fully aware of what their talents are worth in an open market place;
    - Management could have the assistance of human resource consultants or industrial lawyers, or employer representative bodies to formulate the offer and details of the contract whereas the worker could be on their own;
    - Many employers would have internal human resource managers whose job is to provide the best outcomes for management rather than maximising the remuneration of each individual worker;
    - A worker seeking employment for the first time (young employees) would find it difficult to negotiate against the experience of the employer and/or their management team;
    - Mothers returning to the workforce after a long absence from the workplace due to supporting young children would be vulnerable since they would be more likely to undersell their abilities so as to rebuild their skill base;
    - Workers from a lower socio-economic background knowing that their unemployment benefits will be cut if they refuse to accept a job that is not comparable to equivalent employment remuneration in the market;

- Workers from a cultural and linguistically diverse background would find it difficult to negotiate an appropriate agreement against an employer or their representative that has a good command of the English language;
- Unskilled workers will find it difficult to deal with the power of an experienced manager;
- A manager may have a personal preference to reward an employee higher than another employee simply based on personal preference; and,
- An employer facing adverse economic conditions would not offer the benefits that are in the existing awards especially when many of these benefits will be removed with the award simplification process.

62. The proposed legislation s83BB(2) of *WorkChoices* requires the employment advocate to encourage parties to the agreement to take into account the needs of workers in disadvantaged bargaining positions (such as women, non-English speaking background, young people, outworkers etc). The fresh hold level for assistance is considerably low. The requirement is simply to encourage parties to take into account any special needs but not necessarily need to accommodate it to any great extent.
63. It is disconcerting to note that under s83BB(2) of *WorkChoices*, people with disabilities was not listed. The introduced Industrial Relations amendments only take into account people with disabilities when considering supported wage system but not in relation to AWAs. Consequently, there are two alternatives, either people with disabilities are excluded from entering into AWAs or there are no protection mechanisms for people with disabilities in AWAs.
64. The above demonstrates that the labour market is not an efficient market. It is inappropriate to compare the market for human labour to a commodities market. The end result of the above scenarios is that wages can be driven down each time a new wave of employees are entering the workforce. Employers, especially those employing less than 100 employees, have the capacity to change over staff to keep costs down. Numerous parliamentarians including the Prime Minister have stated that these reforms are to ensure Australia remains competitive. Amendment Section 7J(d) ensures that junior employees and employees with disabilities wage rates are to be competitive in the labour market. With the award simplification and trade-off of entitlements such as penalty rates, overtime rates and holidays, these employees could be subject to an all-up rate that could exploit these workers. Young workers or people with disabilities may be required to

work long hours, reduced breaks and holidays resulting in employee fatigue and "burn-out". Consequential effects are that the skill shortage would get worse as less people will take up apprenticeships.

3f) Specific reference on the impact of the legislation on young workers.

65. The OEA submission to the Senate inquiry states that in excess of 74 percent of employers that have less than 100 employees have no provision for training. These employers would also be unlikely to have detailed policies developed for workplace training. Accordingly, the skills-shortage and related problems currently faced in Australia is likely to be exasperated through the lack of any supported training by employers.
66. The lack of training is further highlighted by the fact that approximately 40 percent of employees under the age of 21 are employed on a casual basis. These employees are unlikely to have employers spend time or money on their training apart from their core duties. Accordingly, Australia's skill shortage will be made much worse under a system that has AWAs as its basis.
67. OEA Senate submission (page 25) states that 'young employees were much more likely than older employees to be employed in organisations with less than 100 workers.' Consequently, if the Federal Government is serious about addressing skill-shortages and youth training it needs to formulate policies that require employers to provide suitable training.
68. Employer driven AWAs will be able to take advantage of young employees through:
    a. Young workers willing to give up rights and conditions so as to obtain their first job;
    b. Young workers being less likely to know what existing wages and conditions are in the market;
    c. Young workers being less likely to know who to approach when they wish to have independent advice.
    d. An employer, with their experience and likely support through internal management or human resource company, is in a better bargaining position than a young employee.
69. Many of the problems faced by young people have been discussed above concerning casual workers.

4) Impact upon balancing work with family responsibilities and community life.

70. Quality of life issues need to be considered in relation to annual leave and sick days being incorporated into one all-up rate. Workers going on annual leave will not be paid since it was technically paid to them in advance. Many people will find it difficult to budget, especially with increasing petrol prices and other costs of living expenses. This will result in people not taking any holiday breaks and working for several years before a suitable holiday break is taken. This will have an adverse impact on the worker's own health, home, family life, and ability to undertake community volunteering.
71. OEA Senate submission illustrates that 34 percent of the AWA workforce have annual leave absorbed into their hourly rate. If translated to the entire workforce, assuming the Howard Liberal Government achieve 100 per cent take up rate of AWAs, this will mean that over 3 million Australian workers will not have any provision for paid holiday breaks. Apart from the impacts described in paragraph 57, the impact on the tourism industry and related industries will be horrendous and result in many job losses.
72. Approximately only 16 percent of AWAs allow sick leave to be used for carer's leave. Approximately 24 percent of AWAs have paid provision for family leave. Therefore only 40 percent of AWA employees have access to family leave provision compared to 100 percent of award employees. This represents approximately 60 per cent of the workforce that will be worse off under AWAs.
73. OEA states that training provisions, like many family-friendly initiatives, are found in human resource guidelines or organisational policies and practices. This raises concerns that these guidelines and policies can be changed at management's discretion and often without consultation from employees. **Crown Scientific Pty Ltd** during 2005 issued a series of policies regarding redundancy provisions, discipline and others without discussion with the employees. Only through proper consultation with the workforce, with support from unions, would appropriate outcomes be achieved.
74. The *WorkChoices* legislation will have large-scale ramifications on the entire population in Australia and resulting in a major shift in societal values. The shift in societal values is based on a move from collectivism and mateship to a culture based on individual acceleration of satisfying one's own wants at the expense of another.

75. The introduction of Australian Workplace Agreements (AWA's), which becomes the overrides awards and certified collective agreements, reinforces the notion that the individual wants are greater than the collective needs. The public debate whether the wants of an individual is more important than the collective needs has not occurred. On the ABC 4-Corners (26/9/05) report by Sally Neighbour entitled *Brave New Workplace* highlighted the lack of debate regarding workplace changes. From the transcript:

> PETER HENDY, AUSTRALIAN CHAMBER OF COMMERCE & INDUSTRY: Well, the government didn't go into the last election with plans to make major changes to industrial relations. They decided to do that after they realised that they'd won the Senate and they had the numbers in the Senate to proceed with reform.

5. Small Business Work environment for employees.

76. The ability of the employer to pay appropriate wages and provide adequate conditions could be dependent upon whether the employer:
    - is facing financial hardship;
    - is aware of award rates changing; and/or
    - is unscrupulous in nature.
77. The AWU hopes the last pre-condition listed above is the exception rather than the rule. Competitiveness requires businesses to reduce costs so as to maintain profit margins. Cost reductions can be a result of overhead reduction, not renewing capital equipment or reduction in the number of workers or reducing working pay and conditions.
78. Even though the government has been publicising the economic successes over the past 10 years it is important to note the difficulties that are present in the current climate especially in relation to small business. The following situations have resulted in workers entitlements being vastly reduced. But not for the efforts of the AWU, these workers would have forfeited money that they were rightly entitled to. The current situations listed below are some examples of cases that The Australian Workers' Union is currently investigating.

79. Hairdresser located in Merrylands NSW has underpaid an employee since their first day of employment, which was approximately four and a half years ago. Based on the wages records supplied by the employer, the underpayment is approximately $10,000. The wage records where not kept in the required manner. This makes determining the employee entitlements for Thursday nights and/or weekends attracting overtime rates, penalty rates or meal allowances near impossible without instigating a major investigation and legal argument. Tool allowance was not paid and superannuation was not adequately covered either.
80. **Prodigy Hair Salon** located in Hurstville has not paid superannuation to one employee for the past 6 years and the four other employees (who have been working for up to 4 years at the establishment) do not have superannuation accounts opened. It is anticipated that non-payment of superannuation contributions would be in excess of $40,000.
81. Hairdresser located in Campbelltown region has underpaid workers and not paid the appropriate superannuation contributions.
82. Landscape supplier in South-west Sydney had not paid wages to an employee for approximately 5 weeks due to financial hardship the business was facing. This matter has now been resolved.
83. Recent liquidation of **Milman International** that operated at Myers and David Jones across Australia found many workers having their mortgage payments and/or health insurance premiums deducted from their pay but not forwarded to the appropriate institutions.
84. A Glebe Hairdresser is using 2003 award rates to pay current workers. When questioned about the payment of wages he intimidates workers by yelling "go find a job elsewhere", "I'm the best employer you will ever work for." The employees until recently said that they did not want any form of confrontation and because the employer sounded so confident that he was right the employees did not follow through with the complaints until recently.

85. The mushroom pickers at many of the farms in the Sydney region find it difficult to negotiate with their employer in relation to wages and conditions. At a mushroom farm in north-western Sydney the employer argues that the workers are part-timers and equivalent to a level 1 employee. The only certainty of work time was the days of work (4 days on, then 2 days off) but hours are normally announced on the day. This makes the employees casually employed not part-timers. The workers should be employed at level 2 since they are responsible for quality and are assessed on performance. AWAs signed by employees require them to work up to six public holidays at normal rates, hourly rates that include sick leave, long service leave, annual leave etc with the final AWA rate below the appropriate award rate.
86. According to s83BS of *WorkChoices* the revelation of the employer would result in 6 months imprisonment. This would restrict employees' representatives to expose these rorts.
87. Case number 124298 before the Chief Industrial Magistrate's Court regarding **WR & VJ Grattan Pty Ltd** trading as **Leura Country Gardens** concerning underpayment of wages according to the Nurseries Employees (State) Award (NSW). The underpayment involved annual leave, penalty rates for public holidays, overtime for worked meal breaks and outstanding superannuation. The matter was favourably settled to the satisfaction of the employee and the Australian Workers' Union as the applicant.
88. Case number 124297 before the Chief Industrial Magistrate's Court regarding **Abby Precast Concrete** (formerly Danmark Precast Pty Ltd) concerning the underpayment of wages and superannuation. The employee was employed under the Danmark Precast Pty Ltd Enterprise Agreement 2000. The employee was paid at a lower rate than what was prescribed in the Enterprise Agreement for the entire working period of over 4 years. The matter was favourably settled to the satisfaction of the employee and the Australian Workers' Union as the applicant.
89. *Workchoices* makes workers significantly worse off compared to the NSW legislation in the recovery of monies. Examples include:
    - The amount before solicitors can be involved in small claims has been halved. The NSW legislation is $10,000 compared to *Workchoices* of $5,000. This can make the procedure more costly.

- NSW Industrial Relations Act s379(5) requires all parties to agree before solicitors are involved in a small claim. *WorkChoices* s725(2)(e) requires the court to decide whether solicitors are to be involved. This takes away the veto rights of the employee to have the employer being represented by a solicitor.
- *WorkChoices* s725(2) has no reference for an employee to have an agent, such as a union to act on their behalf, for small claims. NSW Industrial Relations Act s379(5) allows an agent to act on behalf of the employee.

90. Outsourcing in the golf and bowling industry is increasing as contractors are able to deliver short-term financial savings for the club to maintain the course but generally the contractor employs people with less skills and at lower pay rates. In the medium to long-term grounds suffer and the quality and satisfaction for members decrease at which time it is too late to reverse the damage.
91. The above incidences are a sample of daily issues reported to The Australian Workers Union. The Australian Workers Union expresses its profound reservations that by reducing the award provisions coupled with secretive AWA contracts that this will somehow empower employees to be able to negotiate on their own or with the assistance of family or friends (unskilled in workplace negotiations) a suitable workplace agreement.

6. Conclusion

92. The above is an initial sample of the problems that the AWU has identified with the *WorkChoices*. There are many other concerns such as the:
    - Australian Fair Pay Commission;
        - Short-term appointment commissioners which impacts on their ability to act independently;
        - Economic factors and competition are given far too much weighting;
        - Ability to have irregular wage reviews;
        - Ability to exclude junior workers and people with disabilities from wage increases; and,
        - Many other factors.
    - The reduction of the powers of the Australian Industrial Relations Commission to arbitrate;
    - Removal of the no-disadvantage test;
    - The attack on union rights, and,

- Removal of unfair dismissal rights of employees.

93. In conclusion, the AWU New South Wales Branch submission addresses concerns raised with particular reference to the:
    a. Office of Employment Advocate (or its subsidiary, Office of Workplace Services) with a lack of staffing resources to adequately assess each individual workplace contract and provide insufficient independent support services;
    b. AWAs that do not have provision for wage increases;
    c. Lack of adequate conditions with particular reference to working hours;
    d. Lack of carers leave when compared to current Award provisions;
    e. Youth and women losing out in AWA negotiations especially in small businesses. This was highlighted by hairdressing and the mushroom businesses; and,
    f. The ability for management to reject workers requests for a union negotiated agreement even though Federal government advertisements indicate that all workers have the right to choose between AWAs or an enterprise agreement. This is particularly evidenced by the Boeing dispute.
94. The industrial relations system must address the above concerns and establish a fair, just and equitable system where:
    a. Workers have the right to choose to have a union negotiated agreement where employers cannot refuse such a request;
    b. the IRC has powers of arbitration;
    c. that each AWA is examined carefully and the appropriate award and job classification is justified;
    d. Family/Carers leave, annual leave, sick leave, bereavement leave and maternity/paternity leave are protected for all workers; and,
    e. Training rights are enhanced and protected.

This submission has been prepared and provided by :

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Russ Collison
AWU NSW Secretary

Dated this 26th day of May 2006