

Australian Democrats Supplementary Remarks

To the Senate Employment, Workplace Relations and Education References Committee inquiry into Workplace Agreements

Report tabled 31 October 2005

These remarks of mine are deliberately characterised 'Supplementary Remarks', because on the whole I support the majority report, but would like to make some brief additional comments restating the Australian Democrats position on Australian Workplace Agreements (AWAs).

Why have AWAs?

Individual agreements (mostly common-law) are the most common agreement of all, and are particularly prevalent in, and important to, small business. Common-law agreements are often verbal, and not written.

As the majority report showed, a large number of agreements are individual agreements, with 31.2 per cent of all forms of agreement-making being unregistered individual agreements and 2.4 per cent being registered individual agreements (AWAs).

Individual agreements are most often used by small business, generally to pay over award payments. In larger business it is common for specialists, professionals, supervisors and managers to be on individual agreements.

The major advantages of unregistered individual contracts or common-law contracts are their practicality, their ease of use and understanding, and their wide acceptability. Their major disadvantage is when there is a breach of contract or dispute, as they are hard and costly to enforce since that requires resort to common-law courts. In addition there can be confusion when a relevant award or agreement will override the terms of a contract where there is a difference in entitlement.

One of the reasons the Democrats support AWAs as a matter of principle is that we believe that the statutory protections provided in individual agreements will nearly always be additional to and therefore superior to common-law protections, which historically in jurisprudence are built on master-servant precedents.

The Democrats support individual agreements being statutory industrial instruments, and oppose the notion that they should be exclusively common-law in nature.

We supported the introduction of AWAs in the Workplace Relations Act (WRA), and among our successful amendments were the vital protections of the global no-

disadvantage test, and the requirement that AWAs must be offered to all equivalent employees in a workplace.

We support the view taken by the Committee in Chapter 2: *The committee does not take issue with individual agreements per se, both statutory and common-law, provided they are underpinned by a comprehensive award safety net and adequate processes and resources are set aside to ensure compliance.*

Statutory industrial instruments, otherwise known as registered agreements, are of three categories: collective industry-general awards, collective enterprise-specific agreements, and individual agreements. Common-law agreements are in two categories: collective enterprise-specific agreements, and individual agreements.

The Australian Democrats strongly believe that a mix of agreement making – collective bargaining (union and non-union), collective awards and individual agreements – provides necessary flexibility in a modern economy, but all agreements must be fair to both employees and employers, and there must be an adequate safety net for employees' wages and conditions.

The Democrats' view is that collective agreements and awards under the existing Federal Act are often better for workers overall than individual agreements, but we recognise that individual agreements are a common and necessary part of working life, and statutory provision must be made for them.

However, anecdotal evidence that workers were being forced on to AWAs and some workers were worse off as a result led the Democrats to initiate this Senate inquiry. It has been over eight years since AWAs were introduced into federal industrial agreement making and we thought it was time they were reviewed to ensure they are meeting their stated objectives.

Our conclusion is that improvements and greater protections need to be built into the system, as opposed to the much reduced protections that the Government are proposing. That does not mean we oppose more effective process in the approval of AWAS.

Are AWAs meeting their stated objective?

The Democrats believe that the basic architecture of AWAs in the WRA is correct, that is: they are underpinned by a global no-disadvantage test referenced to the relevant applicable award; AWAs must be offered to all equivalent employees in a workplace; they are available on a pattern format for small business in similar fields; duress in offering AWAs is prohibited; and a system of checks and approval is in place.

We accept that modest reform to improve the approval process is warranted.

However, as the majority report has outlined there are significant flaws in the current system, particularly with the regulation of the system. In particular we are concerned with:

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- workers presented with 'take it or leave it' contract;
 - duress being regularly complained of with no effective remedies available;
 - evidence of pressure and coercion into moving from collective agreements or awards to signing individual contracts;
 - failure of the OEA to diligently apply the global no-disadvantage test;
 - that the OEA is both the promoter and regulator of AWAs.

The failure of the system means that some employers are taking advantage of workers not in a position to negotiate and are using AWAs to unilaterally end hard-won benefits and conditions.

The Government are proposing to make radical changes to the basic architecture of AWAs, which we are extremely concerned about and do not support, specifically:

- The Government's plan to abolish the global no disadvantage test adjudged against awards covering 20 allowable matters, and to replace it with a new 5 minimum conditions standard; and to
- Allow agreements to come into force before they have been approved and checked.

We are most concerned that workers with low bargaining power such as casuals and part-timers (particularly women), youth, unskilled, single parents, disabled, ethnic workers, will be forced on to the new version of AWAs which will mean they will be required to sign up to only the minimum conditions and standards.

This will lower wages across whole industries to the detriment of living standards and the Australian 'fair-go' tradition. It will force better employers to bring down their wages to compete with less scrupulous employers, and will be detrimental to the Australian economy and society.

Conclusion

We agree with the majority report that an agreement-making system which includes individual contracts should be underpinned by a comprehensive set of awards and provide an arbitral role for the Australian Industrial Relations Commission to ensure that parties to a dispute enter and conclude negotiations in a reasonable, fair and proper manner.

We do go further however, in that we also believe that there should be a national well-resourced independent regulator for workplace relations. We are concerned with the failure of the OEA – the promoter of AWAs – to properly apply the no-disadvantage test and to police duress.

Although the Government does plan to take away the OEA's compliance function, it intends to hand it to the low-profile Office of Workplace Services, thus making the Department of Employment and Workplace Relations a much-enlarged but far-from-independent regulator at the direction of the Minister. There is the obvious danger of partisan decisions being made.

We also agree with the majority report that there should be a requirement of the Government's WorkChoices Bill that employers and employees bargain in good faith.

Again we go one step further in that we believe that genuine choice should be built into the system, where if the majority of the employees want a collective agreement then they can, and those who legitimately want individual agreements also can.

We are concerned that monopolist employers such as Governments force whole classes of employees onto AWAs where they are inappropriate. We have never understood why large numbers of public sector workers, all doing the same work, and all in the same enterprise, should be pushed out of collective agreements on to AWAs.

Finally we agree with the majority report's conclusion that more time is needed to allow proper consideration of the range of issues raised so far during the inquiry. As mentioned, the Committee were unable to examine key witnesses and therefore to fully explore ways to improve the system to make it genuinely fairer, while still providing flexibility and choice.

Senator Andrew Murray