

18<sup>th</sup> November, 2005



Mr John Carter  
Committee Secretary  
Senate Employment, Workplace Relations & Education Committee  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600

Dear Mr Carter,

In response to matters raised by members of the Senate Employment, Workplace Relations and Education Committee during our appearance before the Committee on Tuesday, 15<sup>th</sup> November, we provide the following information:

### ***Hours of Work***

#### ***Salary packaged managers – information requested by Senator Joyce***

Senator Joyce mentioned that in his experience whilst working in the banking industry had been that mostly ‘salaried’ employees worked overtime, particularly on Saturdays.

However, Saturday or weekend work is now increasingly worked by employees other than packaged managers in our industry. Weekend work is performed by many people in our industry ranging from base grade clerical roles to various levels of management. Branches in some States now commonly trade on Saturday, requiring tellers and sales staff; call centres operate 24/7 requiring Operators and Supervisors to work; and some back office functions across the finance sector also require some employees to work on Saturdays.

Currently, many of our awards and agreements contain mutual agreement standards for the establishment of rosters that require individual input from staff that must be taken into account by management in preparing work rosters. Our awards and agreements also have ‘voluntary’ protections around weekend work and prescribe penalty rates for work outside normal hours.

In relation to the number of salary packaged employees in the industry, approximately 40% of staff in the major banks are offered Total Employment Cost (TEC) packaging. This type of packaging is generally offered to staff appointed to Management level positions.

Those salary packaging arrangements are underpinned by the relevant award and collective agreement in place at the time. Typically, staff are offered the opportunity to have their employment costs, including the value of rostered days off, concessional lending, vehicles and other associated matters paid as a total salary package. In most instances the packaging arrangement has the effect of the employee having opted out of the hours provision of their award.

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Most employees who are appointed to management level roles take up the offer of TEC packaging, as the packaged salary figure is more attractive than that prescribed by the award or agreements. However, in some cases staff have elected to withdraw from such packaging, in favour of reverting to collective agreements, because the value of the package has eroded over time. This has tended to be where their hours of work have become excessive, with no extra remuneration.

Our awards contain long standing provisions that cap the salary level at which overtime applies, which has generally been set at the lowest management level in the pay scale. It has been well understood that when employees move into a management position they forego overtime payments.

The mutual agreement and voluntary weekend work protections in our awards and agreements are overwhelmingly supported by our members as demonstrated in the survey results provided to the Committee in our submission.

They are also overwhelmingly supported by Managers, as evidenced in an Hours of Work Survey of Members during September 2005. The following is a brief summary of the findings in relation to Managers:

### **Background**

5,841 returns were received – 1,054 of these classified themselves as Managers.

- 94% of Managers worked full-time;
- 60% were contracted to work 40 hours or more per week;
- 47% worked in a retail branch environment and 25% worked in head office or administration centres;

### **Main findings/results**

- The vast majority of Managers felt working on Saturdays or Sundays should be voluntary (93% and 95% respectively);
- Managers believed that Saturday work should be paid at time and a half (51%) or double time (25%);
- 66% of Managers believed that Sunday work should be paid at double time, while 20% thought it should be paid at time and a half.
- 97% believed that changes to their working hours should only occur by mutual agreement between them and their manager (83% strongly agree and 15% agree);
- 49% felt that '*more staff*' would help to improve their work/life balance;
- 95% believed that employers have an important role to play in helping employees balance work and family responsibilities (54% strongly agree and 40% agree);
- 44% of Managers agreed that their personal life was suffering due to the hours they worked;
- The majority of Managers (68%) consistently worked hours that they were not compensated for.
- 97% believed it was important for hours of work and any related benefits to be protected in enterprise awards and agreements (75% strongly agree and 22% agree);
- 70% were concerned that the Government's proposed Industrial Relations changes would undermine their existing hours of work arrangements (41% very concerned and 29% concerned).

In an industry that already records 1,171,000 hours overtime each week, these conditions are vital to safeguarding members capacity to balance their work and family commitments.

The FSU submits that:

- the safety net of award conditions concerning penalty rates for overtime, shift work and working on Saturdays, Sundays and public holidays should be protected;
- the voluntary nature of weekend work in our industry should be maintained;
- employees should have a genuine say in the rostering of their hours of work; and
- the current Bill does not afford these protections.

### ***Averaging of ordinary hours***

Under the industrial instruments applying to most employees in the finance sector, employees' hours of work are calculated in four week periods. For example, an employee working a 38 hour week will work those hours on the basis of 152 hours in a 4 week cycle. The Bill's proposal that an employee's 38 ordinary hours per week can be averaged over a 12 month period is unreasonable and removes the predictability of regular hours necessary for most employees who need to balance their work and family responsibilities.

The FSU submits that:

- the 38 ordinary hours provided for under the AFP&CS should be averaged over a 4 week period; and
- the number of ordinary hours should be averaged over a 4 week period on a pro rata basis for part time employees.

### ***Pay equity – information requested by Senator Siewert***

The Finance and Insurance sector has the largest gender pay gap of any Australian industry. The current female to male ratio of earnings for full-time workers is 77%.<sup>1</sup> An ABS table of data relating to earnings in all industries can be found at Annexure A of this letter.

Pay equity is a complex issue. The FSU believes that the following industry factors contribute to the pay gap, and make it difficult to identify *exactly what the pay gap is* for any given occupation within the finance sector.

- The predominance of performance based pay, including a vast array of incentives, bonuses and commissions. In practice, performance based pay systems can be applied in a highly discretionary way.
- Lack of transparent pay relativities between jobs.
- Employers relying on complex state and national market-based pay data.
- Inconsistent job evaluation systems which may not have a direct link to individual pay outcomes.
- Privacy/Secrecy.

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<sup>1</sup> Source: *Australian Social Trends*, ABS, 2005. The ABS used average hourly ordinary time earnings figures for full time adult non-managerial employees. This data is useful because it allows for the fact that men generally work more hours than women, it is not influenced by overtime earnings, and it does not include managerial salaries that can distort average wages.

- Operating in a very competitive, global market.

Not surprisingly, these industry features are consistent within the banking and insurance sector overseas where the gender pay gap is also high. In the UK and Canada, unions and governments have taken steps to try and close the gap. Here the FSU has commenced a campaign to encourage major employers in conducting gender pay audits and to cooperate in closing the gender pay gap.

However, if we are to overturn pay inequity – some 30 years after the Equal Pay Cases – a central and efficient industrial mechanism is required. The WorkChoices Bill does not provide this solution.

The FSU has long been concerned about the difficulty in running work value or other cases to address pay inequity. The initiative of several state governments in undertaking Pay Equity Inquiries and amending their legislation, was a positive development for employees under state industrial relations systems in recent years. Given the industry factors identified above, the FSU is particularly attracted to the work evaluation approach taken by the Queensland Government. Such an approach can help “unpack” the range of assumptions behind female dominated jobs.

An equivalent mechanism is urgently needed in the Federal sphere. The FSU notes the inclusion of s.90ZR in the WorkChoices Bill, to give affect to the ILO Convention on Equal Pay. However, the Bill is not clear on how the principle of “equal remuneration for work of equal value” will be applied in practice through the Australian Fair Pay Commission (AFPC). Nor does it provide answers to such questions as:

- How will the AFPC will be obliged to consider equal pay in adjusting the minimum wage?
- Will the AFPC be obliged to collect and consider gender based pay data in its deliberations on pay?
- Will the AFPC be obliged to conduct work value investigations where requested by employees or employee organisations?

Of further concern is that the Bill does not oblige the AFPC to conduct wage reviews on an annual basis nor to consider the living *needs* of the low paid (many of whom are women), when reviews are heard. And, whilst the AIRC will have an in-principle ability to apply equal pay provisions, their capacity to make, amend or review awards, and to arbitrate industrial disputes, will be severely reduced under the provisions of the Bill.

#### *Direct and Indirect Discrimination*

As much as any other industry dominated by female employment, finance sector employees require a comprehensive wage safety net.<sup>2</sup>

The pay setting and reduced award safety net provisions of the Bill will directly discriminate against women in our sector. If real wages decline over time through the need for employers to consider cost and “competitiveness”<sup>3</sup>, women at the lower end of the earnings ladder will indeed be worse off.<sup>4</sup>

The primacy given to AWA’s under the Bill stands to compound the likely pay affects on women in the finance sector. AWA’s under the current system are premised on a more comprehensive and meaningful no disadvantage test. If a greater number of workers in the finance sector move to AWA’s, more of their pay will be “at risk”. Under the Bill, AWA’s may expressly exclude penalty payments, non expense related allowances and bonuses. In an industry such as ours where performance pay is increasingly

<sup>2</sup> In 2004, 55% of the finance and insurance workforce were women.

<sup>3</sup> *Explanatory Memorandum*, pg.15

<sup>4</sup> In the Finance Sector in 2004, women held 69% of jobs in the ABS Elementary Clerical, Sales and Service Workers category, while men comprised 74% of all Mangers and Administrators. *ABS Labour Force Survey*, (unpublished data), May 2004.

replacing cost of living increases, workers may have their current hourly rate of pay preserved, but little else. Over time, their real wages will fall. On the face of it, women workers in our industry would be better off on awards with no AWA's which can undermine the matters (including penalties rates), which will be allowable as award matters.

We fear that the Bill will indirectly discriminate against women in several ways, as the myriad of protections it removes combine to affect women's earnings over time.

- In original Submission to this Inquiry, we examined the likely affects of removing skills-based classifications structures from Awards. Though problematic, the current structures in the majority of our 79 awards are either workplace or industry specific. As we state in our Submission "*The removal of skills based classification structures is an invitation to employers to take an arbitrary approach to classification and promotion...*" (pg. 20). Over time, women stand to lose the structures which currently provide them with some means of valuing their work, particularly in classifications which are female dominated. Already the rapid move to greater "at risk" pay in our industry has blurred the objective criteria for measuring and improving the gender pay gap; (indeed, it contributes to the finance sector having the largest gender pay gap of any industry). As women in our industry move to AWA's, their pay will ostensibly be individualised and there will be no protection against loss of earnings relative to males earnings. This would be true for both women and men in different jobs and those working side by side in the same job.
- Of the approximately 150 current enterprise agreements in our industry, the majority have provisions around hours of work. As stated in our original Submission, workers have been able to achieve workplace flexibility through bargaining, via provisions giving them input into their hours of work. Under WorkChoices, the lack of regulation around hours – and in particular, the proposal to average hours of work over 12 months – will have the effect of diminishing certainty over pay. This will indirectly discriminate against women workers. As stated to the Inquiry:

*"...the removal of provisions around span of hours, variation to hours of work and rostering will leave workers more vulnerable to unpredictable hours, less control over hours and a diminished ability to balance work and family. The absence of penalty and overtime rates from the AFPC Standards will compound this vulnerability"* (pg. 16).

The lack of protection for part-time workers afforded by the Bill will further disadvantage women, as the vast majority of part-time workers in our industry are women.<sup>5</sup> In an industry already characterized by large amounts of overtime, (see pg. 15 of FSU Submission), women may be forced to work longer, but less predictable hours in order to achieve a decent income. This contradicts the Government's purported desire to assist workers in balancing work and family. FSU submits that the consequences will be dire for female employees in our industry and can only contribute to a widening of the gender pay gap.

The FSU supports the Submission and Recommendations made by the Sex Discrimination Commissioner to this Inquiry in respect to pay equity. Namely that:

- the AFPC be required to establish a specialist unit to develop and monitor pay equity mechanisms;
- simplifying provisions around making pay equity claims, including allowing for individual disputes or complaints within the industrial relations jurisdiction;

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<sup>5</sup> At May 2004, of all males employed in Finance and Insurance, 7% were part-time, compared with 26% of all women employees. ABS Labour Force Survey, (unpublished data), May 2004.

- requiring the Equal Opportunity for Women in the Workplace Agency (EOWA) to conduct workplace pay equity audits similar to those contained in Canadian and UK legislation;
- requiring pay audits and/or action plans to be carried out by employers as part of enterprise bargaining under the WorkChoices Bill;
- requiring the Employment Advocate or the Office of Workplace Services (OWS) to investigate, research and regularly publish pay equity outcomes for all individual and collective agreements;
- requiring the Employment Advocate to conduct specific employer pay equity audits of AWA's lodged by individual employees;
- requiring Workplace Inspectors to conduct pay equity paper reviews during site visits;
- conducting broad reaching education campaigns targeting employers and the general public;
- providing incentives such as tax breaks for employers who comply with voluntary pay equity audits and action plans; and
- developing stronger contract compliance regulation with regard to pay equity.

### **AWA's**

As detailed in the FSU's original submission, most finance sector employees are on low wages with limited job security and low skills. Many of these employees are employed by some of Australia's largest, wealthiest and most powerful companies achieving record profits, and headed by CEO's on salaries of up to \$9 million a year. With over a decade of deregulation, technological change, globalisation and off-shoring, company takeovers, corporate mergers, the outsourcing of work, bank branch closures, restructures and retrenchments, change and uncertainty are an every day reality for finance sector employees.

This means that power imbalance between employee and employer in the finance sector is huge: any suggestion that AWA's are 'negotiated' between an employee and their employer on a 'level playing field' is simply a nonsense.

It is even more absurd to suggest that a prospective new employee has any real prospective of genuinely negotiating their overall terms and conditions of employment with a finance sector employer from whom they are hoping for an offer of employment.

The FSU has assisted many members in the negotiation of AWA's with their employers. However, most employers in the finance sector using AWA's tend to use pro forma agreements, with only the personal details of the employee and their rate of pay added in. In our experience, there has been little opportunity for the genuine negotiation of conditions of employment, with the exception of some flexibility around the hours of work.

Whilst it might be said that the signing of an AWA indicates that an employee has 'accepted' an AWA, the reason behind that acceptance most often belies genuine choice. It is a common requirement of finance sector employees that a wage increase or eligibility for promotion is conditional upon signing an AWA. This should be prohibited.

Under the present legislation, finance sector employees entering into AWA's are at least protected from a reduction in their overall terms and conditions of employment by the application of the no-disadvantage test. Presently, the no disadvantage test is applied against the employee's own wages and conditions to which they would otherwise be entitled to under their award. This protection will be all but lost under the proposed new system, when the no disadvantage test will be measured against an artificial set of 5 legislated minima that are the AFP&CS.

The Bill proposes to further disadvantage employees who enter into an AWA by giving the employer the power to unilaterally terminate an agreement at, or with effect from, the nominal expiry date. And, having had their agreement terminated and not replaced, the employee's entitlements are dropped down to the wage and leave provisions of the AFP&CS, instead of reverting to their safety net award conditions. Indeed, the Bill prohibits an employee who has been on a workplace agreement that has been terminated from ever being covered by their award.

The worsened power imbalance likely to be caused by the Bill between employers and their employees, together with the removal of a meaningful and genuine no disadvantage test, leaves wages and conditions potentially exposed to the unilateral and capricious behaviour of an employer.

The FSU submits that:

- AWA's should not have primacy over collective agreements that are already in operation in a workplace/enterprise;
- an offer of employment by an employer should not be conditional upon the prospective employee signing an AWA;
- an employee's access to a pay increase or promotion should not be conditional upon the employee signing an AWA;
- the anti-coercion provisions in the Bill should be strengthened to afford better employee protection;
- the requirement for secrecy regarding the contents of AWA's and the parties to AWA's should be removed;
- the no disadvantage test should be restored as a meaningful measure of the contents of an AWA against the employee's award entitlements;
- an employer should not have the right to unilaterally terminate an AWA at or from the nominal expiry date; and
- in the event that an AWA is terminated at or from its nominal expiry date, the employees should revert to their safety net award conditions rather than the AFP&CS.

### ***Collective agreements***

The Bill before the Committee does not compel an employer to bargain in good faith, or to even bargain at all.

Even in instances where the majority of employees in a workplace/enterprise vote in favour of entering into a collective agreement with their employer, there is no compulsion for the employer to do so. Indeed, as shown in the Case Study 1 in our original submission, an employer can completely disregard the clear and reasonable wishes of its staff to be covered by a collective agreement. In the cited case, the employer unilaterally determined to discontinue bargaining and to issue AWA's for employees to sign,

indicating that it was the only way for staff to obtain a wage adjustment and conditions similar to other employees within the employer's group of companies.

The Bill will serve to also reduce protections for employees covered by collective agreements, by the removal of the meaningful no disadvantage test and by giving employers the power to unilaterally terminate an agreement at, or from, the nominal expiry date. As with terminated AWA's, if a collective agreement is terminated and not replaced, employees will no longer have the protection or benefit of their agreement or their safety net award, but will drop down to the minimal AFP&CS.

The FSU submits that:

- the no disadvantage test should be restored as a meaningful measure of a collective agreement against the employee's award entitlements;
- if a majority of employees in a workplace/enterprise have voted in favour of being covered by a collective agreement, the employer should be compelled to enter into negotiations for the making of a collective agreement;
- an employer should not have the right to unilaterally terminate a collective agreement at or from the nominal expiry date; and
- in the event that a collective agreement is terminated at or from its nominal expiry date, the employees should revert to their safety net award conditions rather than the AFP&CS.

### ***Limitations on agreements***

Of further concern is the limitation the Bill imposes on matters which the parties to an agreement can include in an agreement. Rather than serving as a protection for employees, the declaration of 'prohibited content' by regulation serves to limit genuine bargaining, particularly in relation to the making of collective agreements negotiated between employers and unions.

The WorkChoices pamphlet indicates that the list of prohibited content includes trade union training leave. It is impossible to imagine this being anything other than a restriction on the capacity of unions to educate members in order to improve their bargaining position.

The Bill's empowerment of the Minister to arbitrarily add to the list of prohibited content by regulation without recourse to Parliament represents undue and unreasonable political interference in, and politicisation of, the agreement making process.

An agreement negotiated between the parties in good faith and endorsed by staff in good faith stands to be undermined, at least in part, by an arbitrary action of the Minister.

The FSU submits that:

- the content of collective agreements should only be limited to matters which pertain to the requisite employer/employee relationship;
- the prohibition of trade union training leave from collective agreements is an attack on collective bargaining rights and should be removed from the list of prohibited content in order to satisfy accepted international expectations and standards; and
- the Minister should not be empowered to restrict the content of agreements by regulation.

## *Transmission of business*

In the constantly changing environment of the finance sector [which we have described in detail in our original submission and earlier in this letter], our members face yet another danger with the Bill proposing to remove current protections for our members who are likely to be caught up in future transmissions of business.

In most instances in our industry, the employees transmitted across to the new employer with their work. Although they might be said to have ‘chosen’ to work for the new employer, they have little real choice but to do so, as there is no opportunity to access a retrenchment severance payment if they were to refuse employment with the new employer.

However, those employees who do transmit across to the new employer at least have the protection of their industrial instruments transmitting with them under the current Act.

The Bill seeks to remove that protection, by limiting the transmission of industrial instruments for a maximum period of 12 months. At the end of that period, if the transmitting industrial instruments are not replaced by a new collective agreement or AWA, the employee’s entitlements are stripped back to the 5 basic minimum conditions under the AFP&CS.

As detailed in our original submission, it is our experience of transmissions of business in the finance sector that, after an initial period during which the new employer familiarises themselves with the work resulting from the transmission, they ‘rationalise’ the number of employees they need to do that work, and retrenchments occur. If that rationalisation of employees occurs after the industrial instruments cease to be binding on the new employer, employees will be able to be retrenched without the benefit of the retrenchment severance payment to which they would otherwise have been entitled under their collective agreement or award. And, of course, the AFP&CS does not include a retrenchment severance payment.

The FSU submits that:

- An employer to whom employees transmit with their work as a result of a transmission of business should be bound by any award and/or collective agreement by which those employees are covered without restriction; and
- Industrial instruments transmitting with employees to their new employment should continue to operate until or unless they are replaced by a new agreement.

## *Unfair dismissals*

The unfair dismissal threshold the Bill seeks to introduce will leave many employees in the finance sector exposed to the unilateral and capricious behaviour of unscrupulous employers, without access to any remedy.

The Bill fails to clearly define an employer who employs 100 employees or less than 100 employees. This leaves the door open for employers who employ more than 100 employees to restructure themselves into subsidiary companies each employing 99 or fewer employees, thereby avoiding the unfair dismissal threshold and denying their employees any access to a remedy in the event they are unfairly dismissed.

Of further concern is the Bill's proposal that no employee will have access to the unfair dismissal process in the event they are dismissed for 'operational reasons'. The constant changing nature of the finance sector means that any employer can arbitrarily dismiss an employee citing operational reasons, the employee has no access to a possible remedy, and the employer is not called to account for their actions.

The FSU submits that:

- the unfair dismissal threshold should be removed;
- alternatively, the unfair dismissal threshold should be reduced to employers of 15 or fewer employees; and
- employees should not be exempted from the unfair dismissal process on the basis that they have been dismissed for operational reasons.

The above is for the information and consideration of the Senate Employment, Workplace Relations & Education Legislation Committee. We are happy to provide any additional information if that is of any assistance to the Committee.

Yours sincerely,

**PAUL SCHRODER**  
**National Secretary**

Industry (ANZSIC)	Average hourly ordinary-time earnings		Female/Male earnings ratio	Increase in average hourly ordinary-time earnings since May 1994		Proportion who are female
	Males	Females		Males	Females	
Finance & Insurance	\$30.30	\$23.30	0.77	85.0%	65.7%	54.3%
Mining	\$34.30	\$27.10	0.79	43.2%	52.3%	13.3%
Accommodation, Cafes & Restaurants	\$17.60	\$17.10	0.97	43.1%	47.1%	47.6%
Property & Business Services	\$24.70	\$21.70	0.88	55.9%	46.6%	45.2%
Health & Community Services	\$25.00	\$21.40	0.86	50.2%	40.7%	71.1%
Manufacturing	\$22.40	\$19.40	0.87	56.1%	52.7%	23.2%
Electricity, gas and water supply	\$28.80	\$24.50	0.85	64.2%	58.2%	21.1%
Construction	\$23.40	\$19.60	0.84	52.4%	46.0%	9.9%
Wholesale trade	\$21.60	\$19.80	0.92	54.2%	51.5%	28.4%
Retail trade	\$18.10	\$17.00	0.94	48.7%	47.6%	38.0%
Government administration & defence	\$24.70	\$24.10	0.98	56.1%	54.3%	43.6%
Education	\$27.90	\$25.50	0.91	33.0%	40.2%	65.1%
Education	\$23.70	\$22.10	0.93	37.5%	39.3%	45.0%
Cultural and recreational services	\$25.40	\$20.00	0.79	45.5%	39.9%	44.5%
Personal and other services	\$22.60	\$20.60	0.91	45.1%	42.0%	29.8%
Transport and storage	\$26.70	\$22.40	0.84	54.6%	40.4%	34.9%
Communication services						
<b>All industries</b>	<b>\$23.60</b>	<b>\$21.60</b>	<b>0.92</b>	<b>50.9%</b>	<b>47.6%</b>	<b>40.3%</b>