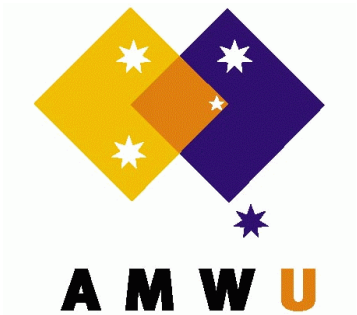
AUSTRALIAN MANUFACTURING WORKERS' UNION



Supplementary Submission to The Inquiry into the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009

Senate Education, Employment and Workplace Relations Committee

20 April 2009

SUBMISSIONS OF THE AUSTRALIAN MANUFACTURING WORKERS' UNION

1. The Australian Manufacturing Workers' Union (the AMWU) welcomes the opportunity to make a short supplementary submission to the Senate Education, Employment and Workplace Relations Committee concerning the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* (the Bill), in addition to our previous written submission. We wish to make specific submissions with respect to submissions which have been made to the Committee by other parties with respect to the Bill, and potential amendments to the Bill.

2. We made clear in our substantive submission of our support for the submission of the ACTU. We wish to make clear the tenor of our support, in particular for part 6.2 of the ACTU submission, in relation to State and Federal organisations.

3. We share the ACTU's concerns about the potential difficulties in matching State-based unions with a "federal counterpart" under the provision proposed in this Bill. We would therefore support the amended test proposed by the ACTU. However, we would be gravely concerned should this more facilitative test be married with a weakening of the proposed test at new s.158(5A).

4. We have noted the proposal of the AWU to weaken the new test which has been inserted in proposed s.158(5A) of the renamed *Fair Work (Registered Organisations) Act 2009* ("*FWROA*"):

> *(5A) Without limiting the matters that FWA may take into account in considering whether the association has been actively representing the members referred to in subparagraph (5)(b)(iii), FWA must, if the association is an association of employees, take into account the extent to which the association has:*
>
> *(a) sought variations to awards covering those members; and*
>
> *(b) exercised rights of entry in relation to those members; and*
>
> *(c) sought to bargain on behalf of those members; and*
>
> *(d) sought to increase its membership amongst persons to whom the eligibility rules of the organisation (as proposed to be altered) would apply.*

The AWU has proposed to render the above test a disjunctive one, by replacing the word "*and*", at the end of (a), (b), and (c) above, with the word "*or*".

5. In our view, this would render the test almost meaningless. It must be remembered that the test in s.158(5A) is already a much less restrictive test than the "conveniently belong" test which would otherwise apply to an application to vary eligibility rules under s.158(4). We find that we are unable to agree with a proposal which would recognise State system representation which in itself is somewhat illusory, and impute it with the legitimacy of Federal eligibility coverage.

6. The AWU have proposed to include the minimal "representation" of *persons eligible to be members*, as well as members, as "representation" which would qualify under an amended s.158(5A). The AMWU is firmly of the view that this would compound the essentially illusory nature of such State "representation", to now be reflected in federal eligibility rule coverage.

7. The "conveniently belong" test in s.158 would remain under the proposed *FWROA*. Should an organisation be incapable of satisfying the test at proposed s.158(5A), and thus be unable to give a relevant undertaking at s.158(5), there would be nothing to prevent an organisation making an application for a variation to their eligibility coverage under s.158 to which the test in s.158(4) would apply.

8. A combination of this Bill facilitating Federal unions being held to be the federal counterpart of State unions, and merging the eligibility rules of those two types of organisations, without any assessment of the legitimacy of those rules under *either* s.158(4) or proposed s.158(5A), would clearly undermine the integrity of the federal eligibility rules system. We can therefore only support the proposed ACTU amendment to the "substantially the same" test if the test proposed in this Bill at s.158(5A) is not weakened.

9. We must also disagree with any proposal for an automatic transfer of State demarcation orders to the Federal industrial relations sphere. For the same reason that eligibility rules should not transfer without some justification that they are appropriate to federal representation, demarcation orders from a State context cannot be automatically replicated at a Commonwealth level without an assessment of their appropriateness to the federal context. The content of such orders could easily overlap with, and undercut, long settled demarcation arrangements in terms of federal system representation. It would be most

unfortunate if an unintended consequence of these provisions would be to unsettle long demarcated relationships in the federal industrial relations system.

10. As we submitted in relation to proposed new representation orders, this new Bill does risk a real danger of enlivening disputation regarding long settled demarcation agreements. Incautious weakening of federal representation arrangements by injudicious importation of the diverse representation arrangements of the various States would run as great a risk.

11. The AMWU does generally welcome the ACTU submission with respect to federal counterpart arrangements for organisations, but we must emphasise that such marriages will only be complementary if they are managed with a steady hand. Opening up long settled federal demarcation arrangements, would undermine the very foundation of federal representation of workers upon which the Fair Work Act is to be based.