Submission

To

Senate Education Employment and Workplace Relations and Standing Committee

on

Inquiry into the Fair Work Bill 2008

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BACKGROUND

1. The Electrical and Communications Association (ECA) is the peak industry body for contractors who operate in the electrical, data, communications and fire sector of the Building and Construction and domestic services industry in Queensland.

2. ECA is an industrial organisation of employers registered in the Queensland Industrial Relations Commission and is transitionally registered in the Australian Industrial Relations Commission.

3. The electrical contractor is second only to the principle contractor (builder) on site in terms of percentage of work performed and dollars generated by our sector of the industry, but unlike the builder the electrical contractor can find themselves working in any of eleven different areas, or types of workplaces throughout their normal working day.

4. ECA membership is over 1,750 (with approximately 85% defined as constitutional corporations) and is as diverse as the industry it represents, ranging from many small "Mum and Dad" businesses that employ only one or two people, right up to large multi national companies who employ more than 1,500 electricians in Queensland alone. This vast differential in size and demographic coupled with a need to stay competitive across a wide range of worksites has lead many of ECA's members to fully embrace the flexibility that the *Workplace Relations Act 1996* and its most recent amendments, allowing them to move away from the "one size fits all" Award or Collective Agreement and towards a more logical outcome that provides benefits to both employer and employee.

5. The Association is appreciative of the opportunity to submit its views on the Bill, and while ECA is mindful of the fact that the Bill is placing into the House the Government's policies leading up to last year's election, it is concerned that some aspects of the Bill if passed as it currently reads, would be detrimental to its members.

6. As such ECA's submission will not focus on the Bill as a whole, but target certain sections of the Bill which we believe will make operating an electrical business in Australia more difficult, make our members less inclined to take on further staff, has the potential for increased industrial disputation, has the ability to increase inflationary pressures or will impact economically on members.

ECA SUBMISSION

Fair Work Australia and related Bodies

7. The Federal Government is retaining the current (general) structure of a national industrial relations system for the private sector. ECA supports the general principle of this system as employers, employees and the wider community have gained an understanding of this type of industrial relations model since 2006 (with the introduction of 'WorkChoices').

8. The Government has established a new institutional framework for administrating industrial relations, Fair Work Australia (FWA). ECA supports the implementation of the single institution for employers and employees to utilise, in particular the establishment of a Specialist Division for the building and construction industry (to replace the Australian Building and Construction Commissioner).

9. FWA will be an independent body which will include the Office of the Fair Work Ombudsman. ECA supports the independence of these institutions. In particular, ECA notes that the President of FWA is not subject to direction by or on behalf of the Commonwealth.[1] This should ensure FWA will operate independently and free from political influence.

10. Employees will still have access to the Federal Magistrates Court and State and Territory Magistrates Courts to recover amounts of $20 000. The Federal Magistrates Court will continue to have a role in legislative compliance, which includes enforcing employment contracts that relate to the National Employment Standard (NES) and Awards.

[1] Section 583 of the *Fair Work Bill 2008 (Cth)*.

11. The Office of the Fair Work Ombudsman is also responsible for enforcing compliance of Awards and the NES (as well as conducting investigations into alleged breaches of thelegislation). ECA submits that the interpretation of the legislation and the decisions by the Ombudsman and the Federal Magistrates Court should be consistent to avoid the 'jurisdictional shopping' ECA has seen in the past.

Enterprise Agreements

12. The Fair Work Bill does not provide for statutory individual agreement making. ECA does not support the exclusion of statutory individual agreements, however accepts theelection commitments made by the Labor Party, to abolish Australian Workplace Agreements, leading up to the November 2007 election.

13. ECA supports the inclusion of enterprise agreements but submits that collective agreements are not suited to all businesses, particularly small businesses. Employers and employees have enjoyed the ability to negotiate individual agreements for more than a decade and protection that a statutory agreement offered to the parties.

Content of Agreements

14. The Fair Work Bill demands individual flexibility arrangement in enterprise agreements,[2] but does not offer the confidentially of individual agreements. Individual arrangements in enterprise agreements are impractical and work against the principles of a collective agreement.

15. For example, it is not uncommon for an employer to reward their hard-working and dedicated staff with incentives or rewards such an increase in their wage rate or extra leave entitlements (e.g. study leave). If an individual term stating that 'Employee X' will receive a pay increase of 5% while other employees receive only 3% in the same year. 'Employee X' may suffer reprisal from other employees.

[2] Section 202 (2) of the *Fair Work Bill 2008 (Cth).*

16. Productive and hard-working employees should be able to be reward by their employers without fear of suffering detriment from their fellow colleagues.

17. Further, the legislatures must be realistic about how the law will operate in businesses on a day-to-day basis. An employer may only be able to afford to give a 4% increase in wages to their staff annually however they should have the right to acknowledge the high standard of work some employees achieve by rewarding them with a 5% increase while the other employees receive 3% increase.

18. With regard to the consultation term clause in an agreement, the legislation (or possibly the regulations) will need to be clear and consistent on what is to be deemed major workplace changes e.g. major changes can include redundancies of more than 15 employees at any one time.[3]

19. The consultation term clause should not be used to prevent employer from implementing company policies such as drug and alcohol policies.

20. As an example, in the building and construction industry sites can require an employer to implement policies regarding drug and alcohol testing. Often the employer is contractually bound to implement these types of policies before work can commence at the site. If after consultation the employees and their union decide not to have the policy implemented at the company (or the site) the employer may lose the job as well as face a number of penalties under the relevant commercial contract. This would be an unacceptable outcome and not within the intention of the Bill.

Matters Pertaining to the Employment Relationship

21. Enterprise agreements can only include matters pertaining to the employment relationship and the union (to be covered by the agreement). Matters pertaining will include

[3] Section 205 of the *Fair Work Bill 2008 (Cth).*

deductions of union fees and salary sacrifice. The Bill does not allow matters that do not pertain to the employment relationship to be included in the agreement, such as union bargaining agents fees,[4] labour hire restrictions, discriminatory and unlawful terms.[5]

22. Further industrial action is not protected if it is in regard to an enterprise agreement where the action is in relation to matters not pertaining to an employment relationship.[6]

23. ECA is however extremely concerned that agreements may include matters pertaining to the employer and employee organisation relationship. This means that companies who negotiate an enterprise agreement with a union will be forced to include clauses that have only one effect – to strengthen the union control of the company.

24. This will in effect be tantamount to "turning back the clock" to the bad old days when union clauses were common place, such as those below which were provisions contained in the pattern agreement (*NAME OF COMPANY) & ELECTRICAL TRADES UNION OF EMPLOYEES OF AUSTRALIA, QUEENSLAND BRANCH CERTIFIED AGREEMENT – 2003/2005.;*

41. UNION RELATED PROVISIONS

General

The parties recognise the benefits to employees of membership of the Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia. Electrical Division – Queensland Branch.

It is agreed that the Company will encourage employees to remain and/or become members of that Union. The company undertakes not to discourage employees from becoming or remaining a member of the Union.

The company recognises the benefits of having workplace employee democratically elected Union delegates to represent the rights and interests of workers and to liaise with the company on workplace issues.

[4] *Electrolux Home Products Pty Ltd v Australian Workers' Union & Ors* [2004] HCA 40.
[5] Sections 194 and 195 of the *Fair Work Bill 2008 (Cth).*
[6] Section 409 and 410 of the *Fair Work Bill 2008 (Cth).*

Delegates. An employee elected as delegate shall, upon notification by the Union to the Company be recognised as the accredited representative of the Union. The representative shall be allowed reasonable time during work hours to submit to the Company matters affecting the employees, shall be allowed reasonable time during work hours to attend to job matters affecting the employee's Union and will allowed reasonable access to facilities Telephone, Facsimile as required and needed to perform the function to the extent available at the workplace.

Delegates Meetings Subject to work requirements and adequate notice being given the delegate will be allowed two hours bi-monthly to attend Union meetings

(b) Right of Entry & Inspection Provisions

The right of entry and inspection provisions for an authorised officer of the Union are in accordance with S372, 373, 374 & 375 of the *Industrial Relations Act 1999*. On request from an authorised officer of the Union, the Company will supply a list of Names of all workers and their classifications within 7 days of the request being made subject to the provisions of the *Industrial Relations Act 1999.*

(c) Transfer or termination of an Elected Delegate

The Union shall be notified in writing from the company 2 days prior to notice given to any shop steward/delegate in cases of termination or transfer. In the event of the Union disputing the decision of management to transfer or terminate the shop steward/delegate the employee shall remain on the job. Within 48 hours of the Union disputing the decision the matter will be heard by an agreed arbitrator whose decision will be final.

(d) Payroll Deduction Facilities

The company agrees to continue to provide payroll deduction facilities for the payment of Union membership fees where directed in writing by the employee. The monies deducted will be forwarded to the Union monthly. The company may deduct 0.25% of all fees deducted as an administration charge.

25. These clauses were deemed illegal for very good reasons – they were counter productive to productivity and shifted the balance of control of a company or a building site too far in the direction of the unions.

26. ECA believes that expanding the definition of "matters pertaining" beyond the relationship of employer and employee will have a detrimental effect to companies who are required to negotiate clauses such as the aforementioned into an enterprise agreement.

27. ECA strongly recommends that the current legislation remains in this Bill.

Role of Unions

28. Under the Fair Work Bill employers will be required to notify employees of their right to have representation, e.g. a union, when negotiating an enterprise agreement.[7] The union will automatically be a bargaining representative if an employee is a member of the union, unless the employee appoints someone else (to be the representative) and advises the employer.

29. ECA believes that there is potential for these provisions to be abused by parties to the negotiations, for example an employee may be coerced into joining the union that is negotiating their enterprise agreement. This would be a possible breach of the freedom of association provisions under the Bill and international law. FWA would need to take into account these factors when determining whether an agreement has been negotiated in good faith.[8]

30. Another issue is that an employer will lose their right to not bargain with a union(s), as an employer cannot refuse to recognise or bargain with a bargaining representative.[9] This clause removes the right of employers and employees to negotiate an agreement that is fair and equitable to both parties for themselves.

31. ECA has long been a proponent of the right for the employer and employee to negotiate an agreement that best suits them. This Bill removes that right from the two most important stakeholders, and forces them into a negotiation position that many do not want.

[7] Section 173 of the *Fair Work Bill 2008 (Cth)*.
[8] Section 187 (2) of the *Fair Work Bill 2008 (Cth)*.
[9] Section 179 of the *Fair Work Bill 2008 (Cth)*.

32. With regard to greenfields agreements, the Fair Work Bill does not include a provision for union greenfields agreement only employer agreements. When an employer intends to make a greenfields agreement they must notify all eligible unions, each union is then a bargaining representative.[10] This has potential to cause demarcation issues.

33. Additionally, there is the possibility of each of those unions could be attempting to 'push their own agendas'. This would be in contradiction of the good faith bargaining provisions of the Bill and would escalate the costs associated with negotiating the agreement.

34. ECA is also concerned by the addition of clause 183 of the Bill which entitles an employee organisation who is a bargaining representative to be bound by the agreement.

35. ECA sees this provision as the union seeking cover "through the back door". If there is a situation where a company employing 100 employees has 1 employee who is a union member and requests their union to be their bargaining representative, ECA's interpretation of the clause means that that union can then seek to have FWA bind them to the enterprise agreement even though the overwhelming majority of employees are not union members and/or do not want the union to be bound by the agreement.

36. ECA suggests that clause 183 of the Bill should provide for a vote by employees to ascertain whether or not the employee organisation should be covered by the enterprise agreement. A result of 50 + 1% would be needed before the FWA approved the employee organisation's application.

Dispute Settlement and Orders

37. FWA will be involved in disputes that arise during the agreement making bargaining process and under a modern Award. FWA only has the power to make binding decisions (regarding agreements and Awards) where the parties agree.

[10] Section 175 of the *Fair Work Bill 2008 (Cth)*.

38. Additionally, enterprise agreements will be required to have a mandatory dispute settlement clause which the Fair Work Regulations will provide for. Dispute settlement procedures in agreements must involve either FWA or another person or body independent of the parties and the procedure must provide for the representation of employees in the process.

39. ECA is supportive of a dispute settlement procedure that provides timely and fair outcomes on site. ECA has been requested by members on many occasions to assist them in the AIRC to settle disputes that have not progressed through the dispute resolution process but have been taken directly to the AIRC. This practice does not follow the intention of the current legislation, that matters be resolved as much as possible at the workplace level.

40. ECA submits that the Bill be strengthened to ensure that the dispute settlement procedure is followed and provide an opportunity for the parties to reach a satisfactory resolution before the issue is sent to FWA for conciliation or arbitration.

Good Faith Bargaining

41. Under the Fair Work Bill there is a requirement for parties, who are engaged in the bargaining process for enterprise agreements, to bargain in good faith. This will require the parties to:
    - Attend and participate in meetings at reasonable times;
    - Disclose relevant information in a timely manner (although commercial in confidence material will be protected);
    - Respond in a timely manner to proposals made by the other party;
    - Give genuine consideration to other parties needs and provide reasons for responses; and
    - Refrain from capricious or unfair conduct which undermines freedom of association or collective bargaining.[11]

[11] Section 228 of the *Fair Work Bill 2008 (Cth)*.

42. In 2007, the Liquor, Hospitality and Miscellaneous Unions (LHMU) lodged an application with the AIRC for an Order for a Protected Action Ballot. CSBP Limited also lodged an application with the AIRC to suspend or terminate the bargaining period as there was failure to genuinely try and reach agreement.

43. In this case the Commissioner was asked to take guidance by CSBP Limited's representative from the good faith consideration in the *Native Title Act 1993 (Cth).* Further to that, the Commissioner should consider *Western Australian v Taylor*[12] as in this case Chief Justice Sumner identified what he considered to be appropriate indicia of whether a party has negotiated in good faith, they were:

- unreasonable delay in initiating communications in the first instance;
- failure to make proposals in the first place;
- the unexplained failure to communicate with the other parties within a reasonable time;
- failure to contact one or more of the other parties;
- failure to follow up a lack of response from the other parties;
- failure to attempt to organise a meeting between the native title and grantee parties;
- failure to take reasonable steps to facilitate and engage in discussions between the parties;
- failing to respond to reasonable requests for relevant information within a reasonable time;
- stalling negotiations by unexplained delays in responding to correspondence or telephone calls;
- unnecessary postponement of meetings;
- sending negotiators without authority to do more than argue or listen;
- refusing to agree on trivial matters, e.g. a refusal to incorporate statutory provisions into an agreement;
- shifting position just as agreement seems in sight;

[12] (1996) 134 FLR 211.

- adopting a rigid non-negotiable position;
- failure to make counter proposals;
- unilateral conduct which harms the negotiating process, e.g. issuing inappropriate press releases;
- refusal to sign a written agreement in respect of the negotiation process or otherwise
- failure to do what a reasonable person would do in the circumstances.

44. The Commissioner also took into consideration whether the parties were 'genuinely trying' to reach an agreement. To be genuinely trying to reach an agreement the parties need to be making a real, true and authentic attempt or effort to achieve or accomplish an outcome. The Commissioner terminated the bargaining period as LHMU did not genuinely try to reach an agreement.

45. ECA submits that FWA should be open to consider the past interpretations from the AIRC of what is 'good faith bargaining' and whether parties are 'genuinely trying to reach an agreement'. This is an important consideration given FWA cannot approve an enterprise agreement where one or more bargaining representatives have used bargaining tactics that are inconsistent or not within the spirit of the provisions of good faith bargaining in the Bill.[13]

Flexible working arrangements

46. ECA is concerned with the inclusion of a clause providing employees with access to a formalised flexible working arrangements.

[13] Section 187 (2) of the *Fair Work Bill 2008 (Cth)*.

47. While ECA is supportive of providing flexibility and support to employees in maintaining a healthy work/family balance, it is concerned that the legislation limits the pre requisite for requesting the arrangements as having care of children under school age. ECA is of the belief that there are many employees currently working who do not have children under school age that may have valid reasons for requesting flexible working hours.

48. ECA is also concerned with the breadth of flexibility provided for in the clause, and the ambiguity currently contained in the clause when refusing the request.

49. ECA is hopeful that the Regulations will provide some clarity to the term *"reasonable business grounds"*. Should this not be the case then ECA believes that many requests which are refused will be taken to Fair Works Australia (FWA) for arbitration.

Industrial Action

Protected industrial action

50. Under the current laws protected action may only be taken by an employee who is a negotiating party to the proposed agreement or an employee who is a member of a union that applied for a ballot order authorising the action.

51. Employee industrial action is not protected if it is:
    - taken in support of prohibited content;
    - taken while a bargaining period is suspended;
    - taken, or organised by, persons who are not protected for that industrial action;
    - taken in support of pattern bargaining;
    - taken during the life of an agreement;
    - not authorised by a protected action ballot or taken in response to employer industrial action;
    - taken before the required notice has been given;

- taken, or organised by, an employee or union who have not complied with Commission orders and directions; or
- taken by a union but not authorised according to the union's rules.

52. Under the proposed laws protected industrial action will continue to be available only during negotiations for an enterprise agreement. For this action to be protected the parties must have genuinely tried to reach an agreement and complied with the good faith provisions and/or orders as provided for in the Bill. ECA supports the retention of the current laws relating to mandatory secret ballot provisions.

53. Work Choices limited the industrial action taken by an employer to lockouts. This means that the employer could only take protected industrial action in response to employee industrial action, taken proactively to support, or advance claims made in respect of a proposed agreement. Industrial action by an employer is not protected if the employer has not genuinely tried to reach agreement.

54. Under the proposed laws an employer can still under take protected industrial action in the form of a lock out. This action will only be protected where an employer locks out employees in response to employee industrial action.

Occupational Health and Safety (OHS) Exception

55. Under the current laws action taken by an employee because of a 'reasonable' concern of an imminent risk to his or her own health or safety is not industrial action. This means that employees are not at risk of orders, sanctions or strike pay under the law. The onus of proof falls on an employee claiming the health and safety risk.

56. Under the proposed laws the reverse onus of proof exception will be removed and the burden will no longer be on the employee to demonstrate that he or she acted out of a reasonable concern for his or her health or safety.

57. ECA submits that industries, particularly the building and construction industry can be vulnerable with the implementation of the proposed laws. As, in the past, employees and unions have exploited health and safety issues to explore unrelated industrial relations matters.[14]

Protected action ballots

58. Under WorkChoices an order for a protected action ballot could only be issued by the AIRC if it is satisfied that the applicant:

- has genuinely tried to reach agreement with the employer (during the bargaining period); and
- is genuinely continuing to attempt to reach agreement with the employer; and
- is not engaged in pattern bargaining.

59. Under the Bill, applicants will still be required to show that they genuinely tried to reach agreement before making an application for a protected action ballot. The ballots may be conducted by the Australian Electoral Commission (AEC) and if so the Commonwealth is responsible for all costs of conducting such a ballot.

[14] *Final Report of the Royal Commission into the Building and Construction Industry Reform*: *Occupational Health and Safety*, Volume 6, Royal Commissioner The Honourable Terence Rhoderic Hudson Cole RFD QC February 2003; paragraph 295.

60. Under the current laws the AIRC has discretion to refuse an application if granting it would be inconsistent with the objects of the protected action ballots division. The protected action is available for 30 days, however the AIRC can extend this period at its discretion. The Bill provides that industrial action will be protected if taken within 30 days after the declaration of the ballot results, and FWA can extend this period upon application by the applicant. It is not a requirement under the Bill that the employers must consent to this application.

61. A party can challenge an order for a ballot and the order can be stayed until the AIRC makes a determination. Under the proposed laws FWA will not be able to stay a ballot order, this means the employer will not be able to challenge an order by application to FWA.

62. The Bill provides that employers will have recourse, through FWA, if industrial action is taken after the ballot, and if certain requirements for protected action have not been met. This means that the employer will only be able to react once industrial action is taken. This could lead to greater costs to the employer as industrial action could be taken, by an order of FWA which has not met all of the requirements such as the parties genuinely trying to reach agreement. FWA will not be able to ensure the provisions of the Bill are met before allowing an application for a ballot to proceed.[15]

Termination of industrial action

63. The Fair Work Bill has removed the definition of a bargaining period, although industrial action can only be protected during bargaining for an enterprise agreement.[16]

[15] Chapter 3 Part3-3 Division 2 of the *Fair Work Bill 2008 (Cth).*
[16] Section 417 of the *Fair Work Bill 2008 (Cth).*

64. FWA will be required to order industrial action if the industrial action is not or would not be protected,[17] this power extends to industrial action by non-national system employees and employers.[18]

65. Industrial action may be suspended or terminated by FWA where:

- it is causing or may cause significant harm to the Australian economy; or
- to the safety or welfare of the community.[19]

66. The parties seeking to terminate the industrial action no matter how damaging to their own business will have to meet this high and at times unrealistic standard. The parties, particularly the employer, can suffer grave financial loss if industrial action is prolonged. This is particularly amplified by the fact that employers have no ability to challenge an application for a secret ballot (as mentioned above).

67. FWA will have power to suspend industrial action and determine a matter where the action is causing significant economic harm to, or is imminent for, both of the bargaining parties.[20] At times during the bargaining period, unions have provided an income to the workers who are engaging in industrial action. If this occurs it will be difficult for the employer to prove that both parties are suffering financially as a result of the industrial action.

[17] Section 418 of the *Fair Work Bill 2008 (Cth)*.
[18] Section 419 of the *Fair Work Bill 2008 (Cth)*.
[19] Section 424 of the *Fair Work Bill 2008 (Cth)*.
[20] Section 423 of the *Fair Work Bill 2008 (Cth)*.

Strike Pay

68. Currently an employer must withhold four hours pay for a period of industrial action if the action taken is four hours or less in a day. If the action is longer than four hours the employer must not pay an employee for the total duration of the action (on that day). This rule applies to protected and unprotected industrial action.

69. The Bill retains the four hour rule with regard to payment for unprotected industrial action,[21] and it will continue to be unlawful for an employer to pay, and/or an employee to demand or accept strike pay for any period of protected or unprotected industrial action.[22]

70. The Bill needs to protect employers when employees are engaging in unprotected industrial action as this can be detrimental to businesses. While withholding payment to can be a deterrent to employees often the cost associated with industrial action, whether protected or unprotected, to the employer can be far greater than the cost of wages.

Complete withdrawal of labour in Protect Action

71. Under the Bill where there is a complete withdrawal of labour the employers will be required to withhold pay for the actual period of industrial action taken. While this may appear to be a more balanced approach, as previously mentioned, the cost of withdrawal of labour to an employer far outweighs the cost of wages.

[21] Section 474 of the *Fair Work Bill 2008 (Cth)*.
[22] Sections 473 and 475 of the *Fair Work Bill 2008 (Cth).*

Overtime bans

72. With regard to overtime bans, it is ECA's understanding that employees do not ordinarily receive payment for overtime hours not worked. Therefore, only the employer will be affected by this provision with the loss in productivity and potential revenue.

Partial work bans or restrictions

73. The employer will now be able to choose to:

- accept the partial performance and continue to pay their employees full salary, or
- lock out employees, or
- refuse to accept partial performance and stand down the employees until they are prepared to perform all their duties, or
- issue a 'partial work notice' and pay according to work performed.[23]

74. The explanatory memorandum states that

"*This measure will provide employers with more discretion and flexibility on how to best manage the impact of the situation when action of this nature is taken. This may assist in resolving disputes more efficiently and may prevent the escalation of some disputes*".[24]

75. And

"*There will be no deduction from wages if an employee has not done anything except express an intention to not do something if asked, for example, work unrostered overtime or commence a task*".[25]

[23] Section 470 and 471 of the *Fair Work Bill 2008 (Cth).*
[24] R.308 of the Explanatory Memorandum , *Fair Work Bill 2008 (Cth).*
[25] R.311 of the Explanatory Memorandum , *Fair Work Bill 2008 (Cth).*

76. ECA submits that in some circumstances employers may be pressured or coerced by employees and/or unions into paying the employees full salary while the employees are engaging in partial work bans. Although an employer is not able to deduct monies for employees not accepting overtime, nothing in the Bill should stop the employer from disciplining the employee for refusing to obey a lawful instruction such a commencing a task.

Union Right of Entry

77. Under the current laws union officials have right of entry into workplaces if they:
    - have a federal permit and show it on request;
    - provide at least 24 hours written notice to enter (less if entering for health and safety reasons);
    - Only visit during working hours.

78. Union officials have the right to hold discussions with employees and the employer has the right to direct the union to a particular room at the workplace to hold the discussions and advise of the particular route they should take to access the particular room.

79. The following are some of the limitations on the right of entry powers for union officials:
    - The union has no right of entry to investigate a breach of an Australian Workplace Agreements (AWA) unless an employee makes a written request to the union. The union must identify the employee who made the request;
    - There is no right of entry for discussion purposes at workplaces where all employees are on AWAs or covered by employee collective agreements made after commencement of the WorkChoices reform;
    - There is no right of entry to investigate breaches of collective agreements (including union collective agreement) which are not binding on the union;

- The union may only investigate a breach of a non-union collective agreement, made after the commencement of Work Choices, if the union has a member who is bound by the agreement.

80. In Queensland, to enter the workplace the union official must show their state health and safety permit and, on request, produce their federal permit.

81. The union official may enter the workplace:
    - Where the Union official has a reasonable suspicion that a contravention of the Act is occurring, they need to provide written notice of entry as soon as practicable after entry;
    - To access certain employment records relevant to the WHS breach, least 24 hours notice must be given;
    - To discuss WHS matters with the employees, during meal and rest breaks only.
    - The union must give a written notice alleging a breach or suspected breach of health and safety laws upon entering the workplace.

82. Under the proposed laws some provisions of the WorkChoices laws have been retained, such as entry permits and notice requirements.[26] However, the Bill introduces a number of significant changes including:
    - Unions discussions no longer depend on the employees being subject to an Award or agreement that binds the union;[27]
    - Right of entry will be able to be dealt with in agreements (under certain circumstances);

[26] Section 518 of the *Fair Work Bill 2008 (Cth)*.
[27] Section 484 of the *Fair Work Bill 2008 (Cth)*.

- Union officials can request a different room for the purpose of conducting interviews or holding discussions in certain circumstances, including where the room or area is not fit for the purpose;[28] and

- Unions will have the right to inspect the records or documents of any employee related to a suspected breach (this includes non-members), make copies of them and remove them from site.[29]

83. Union right of entry is an issue that ECA deals with everyday, and is disturbed by the expansion of the union's right to enter onto a worksite.

84. Section 484 of the Bill provides for the union to enter onto virtually any worksite they desire, with the only proviso essentially being to ensure that work being performed on the premises are within the industrial interests the permit holder's organisation is entitled to represent.

85. ECA is regularly contacted by electrical contractors advising that a union representative has arrived on site and has (or is currently) breaching the right of entry provisions.

86. ECA strongly recommends that significant penalties be applied to permit holders who breach the right of entry provisions, other than the removal of their permit. ECA would prefer to see that individual held responsible for the breach and if the breach is proven then they should not only have their permit revoked but should also be subject to a series of penalty unit fines.

Unfair Dismissal

87. ECA is supportive of an unfair dismissal section within the Bill, but is of the opinion that the unfair dismissals provisions should not apply to businesses that employ less than fifteen employees.

[28] Section 492 of the *Fair Work Bill 2008 (Cth)*.
[29] Section 481 of the *Fair Work Bill 2008 (Cth).*

88. The removal of the unfair dismissal laws over the past few years coupled with the flexible industrial relations legislation has lead to many of our smaller members actively seeking to take on more employees.

89. The return of unfair dismissal legislation to all employers, combined with the onerous and somewhat vague criteria relating to considering harshness will have a detrimental effect on the employment patterns of ordinary small businesses.

90. ECA would strongly recommend that the unfair dismissal provisions exempt businesses that employ fifteen people or less.

ECA CONTACTS

91. The Electrical and Communications Association would like to thank the Senate Committee for the opportunity to tender its submission to the Inquiry into the Fair Work Bill 2008.

92. Should the Committee have any queries on any issues raised in this submission please contact Mr Paul Daly the Manager of Workplace Policy on 07 3251 2444.