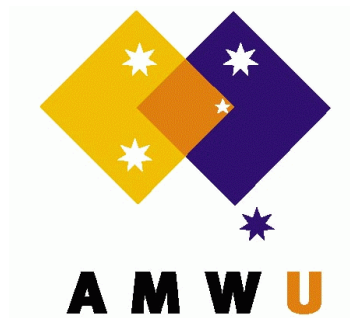


AUSTRALIAN MANUFACTURING WORKERS' UNION



**SUBMISSION TO INQUIRY INTO THE TRADE PRACTICES AMENDMENT
(SMALL BUSINESS PROTECTION) BILL 2007**

SENATE STANDING COMMITTEE ON ECONOMICS

AUGUST 2007

SUBMISSIONS OF THE AUSTRALIAN MANUFACTURING WORKERS'
UNION CONCERNING THE TRADE PRACTICES AMENDMENT (SMALL
BUSINESS PROTECTION) BILL 2007

1. The Australian Manufacturing Workers' Union (the AMWU) welcomes the opportunity to make a submission to the Senate Standing Committee on Economics' inquiry into the *Trade Practices Amendment (Small Business Protection) Bill 2007* (the Bill).
2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 130,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry.
3. The AMWU opposes the passing of the Bill.
4. The AMWU has long opposed sections 45D and 45E of the *Trade Practices Act 1974*. In this context, the union notes that the Senate Select Committee on Employment, Education and Training found in its 1993 investigation into sections 45D and 45E, that the use of those sections as a response to industrial action was "unduly harsh". The Committee went on to observe that sections 45D and 45E had been found by the International Labour Organisation to be inconsistent with Australia's obligations in relation to freedom of association (see *Convention 87: Freedom of Association and Protection of the Right to Organise Convention, 1948*).
5. Since that time the ILO has continued to call for the repeal or amendment of sections 45D and 45E.¹ For example, the ILO found in 1999:

The Committee notes that section 45D, as amended (section 45D, 45DA, 45DB), continues to render unlawful a wide range of boycott activity directed against persons who are not the employers of the

¹ See Creighton B, "The ILO and the Protection of Fundamental Human Rights in Australia" 22 Melbourne University Law Review 239 at 264-270.

boycotters. Breach of this provision may be sanctioned by one or more of the following: (i) a pecuniary penalty -- for a violation of sections 45D or 45DB, up to a maximum of A\$750,000 for a trade union and A\$500,000 for a person; for a violation of 45DA, up to a maximum of A\$10,000,000 for a trade union and A\$500,000 for a person (section 76); (ii) injunctions (section 80); and (iii) damages, with no upper limit as to quantum (section 82). The Committee notes with regret that the recent amendments to the Act maintain the boycott prohibitions and render unlawful a wide range of sympathy action. The Committee again recalls that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is lawful. With respect to the elevated penalties that may be imposed under the Act, the Committee recalls that (a) sanctions should only be imposed where there are violations of strike prohibitions or restrictions that are in conformity with the principles of freedom of association; and (b) sanctions should not be disproportionate to the seriousness of the violation (see General Survey, op. cit., paragraphs 177-178). The Committee expresses the firm hope that the Government will amend the legislation accordingly, and will continue to provide information as to the practical application of the boycott provisions of the Act.²

6. As recently as last year, the ILO again criticised section 45D of the *Trade Practices Act 1974* and called for its amendment or removal. The issue was subsequently noted by the ILO earlier this year.³
7. The Bill before the Senate Standing Committee on Economics provides in effect that the ACCC can pursue representative actions with respect to sections 45D and 45E against employees, unions and members of the community on behalf of businesses.

² CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Australia (ratification: 1973) Published: 1999

³ See CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Australia (ratification: 1973) Published: 2006; CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Australia (ratification: 1973) Published: 2007

8. The AMWU submits that in the context of the serious problems associated with sections 45D and 45E that have been highlighted by the ILO over a number of years, the bill currently before the Committee is in all the circumstances inappropriate and should be rejected as such.
9. For completeness we note that although the Bill refers to the protection of “small business”, there would appear to be nothing in the Bill to limit its operation according to the size of the business allegedly affected by a breach of section 45D and/or 45E. Notwithstanding this presumably deliberate sleight of hand in the drafting of the Bill, it should be noted that the principles underpinning the AMWU’s opposition to what is being proposed are not dependant upon the size of the businesses involved. The internationally recognised rights concerning freedom of association and the right to strike that are contravened by sections 45D and 45E apply regardless of the size of the employer.
10. On this basis, any potential amendment to the Bill which sought to delimit its operation according to the size of the employer involved would not be effective in resolving the AMWU’s opposition to the Bill.
11. The Senate has refused to pass bills that have sought to enable the ACCC to pursue representative actions for contraventions of sections 45D and 45E on many previous occasions (see for example the *Trade Practices Amendment (Country of Origin Representations) Bill 1998*, the *Trade Practices Amendment Bill (No. 1) 2000*, the *Workplace Relations and Other Legislation Amendment (Small Business and Other Measures) Bill 2001*, the *Trade Practices Amendment (Small Business Protection) Bill 2002* and the *Trade Practices Amendment (Small Business Protection) Bill 2002 [No. 2]*).
12. The AMWU urges the Senate to rebuff the latest instance of the Howard Government’s ideological obsession with pursuing unions, employees and others through trade practices legislation.
13. The AMWU strongly submits that the Bill should be rejected.