CHAPTER 3

CONCLUSION

Preserving enterprise agreements

3.1 At the beginning of this report reference was made to the debate over whether this bill represented an evolutionary stage in the move toward a deregulated labour market or something more radical. The Committee majority notes the apocalyptic tone of some of the evidence before it which speculates on the adverse result of the passage of this bill: that unions will be disempowered and suffer insurmountable legal barriers to their operation, and that as a result employees will be exploited; that the institutional legal framework of industrial law as we have known it since 1904 will be dismantled. The Committee majority has more confidence in the durability of industrial relations traditions than many of those who have appeared before it and who have lived on the system for most of their working lives.

3.2 The purpose of the bill is to preserve and to protect rather than to dismantle and to disempower. At the core of the legislative intention is the preservation of enterprise bargaining. If any element in the legislative history of industrial relations in Australia can be called 'radical' it is the advent of enterprise bargaining in the early 1990s. The reason for this is its assumption of the end of centralised wage fixing and the accommodation of remuneration and work practices to industry productivity. This bill simply further smooths a path to achieving these ends.

3.3 The Committee majority makes the obvious point that enterprise bargaining has been important for the transformation of companies and their ability to compete in global markets. The overall outcome of what has been a difficult period of industry readjustment, with restructuring to survive the rigours of competition, has been largely successful. As Ai Group sees it, enterprise bargaining has delivered real annual wage increases of, for example, 4.7 per cent in the metal manufacturing sector in the eight years between 1992 and 1999, as compared to the average annual inflation rate over that period of 1.8 per cent.[1]

3.4 Enterprise bargaining has also seen a marked decline in the number of industrial disputes. Between 1982 and 1992 an average of 237 working days each year were lost, per thousand employees, as a result of industrial disputes. In the period between 1993 and 1999, with enterprise bargaining in operation, the figure has dropped to 89 working days lost per thousand people.[2] This welcome trend is partly the result of industry restructure; the fact that the service industry has grown as manufacturing has declined; and the fact that a high proportion of people work in small businesses traditionally less prone to industrial disputes. Nonetheless, the trend also shows the emergence of a different style of industrial negotiation between unions and employees.

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1 Submission No 15, AI Group, p.7

2 There was in increase in the number of days lost in 1999, mainly the result of prolonged public and community sector industrial action in New South Wales in that year. Submission No 34, DEWRSB, p.13

Legislating for change

3.5 It is the normal experience for this Committee to inquire into legislation which is intended to introduce significant reform and which therefore attracts intense opposition from interest groups anxious to preserve the status quo. This inquiry has attracted over sixty submissions in a very short space of time, the overwhelming majority of them opposed to the intentions of the bill. This would be a matter of great concern were it not for the fact that such opposition is coming from a union movement with a steadily declining membership. Only 19 per cent of private sector employees are members of trade unions, and 26 per cent of the workforce overall is unionised. This results largely from structural change in the workforce. But it also indicates the changing interests and expectations of the workforce and the changing nature of work. It represents a decline in what was referred to in one submission as the collectivist culture of unionism, which constitutes a rejection of radical individualism.[3]

3.6 The Committee majority takes the view that this legislation recognises the reality of the changing workplace and the changing workforce. Legislative changes since 1993 have simply reflected these changes. This bill, and future legislation, are tied to broader economic and social realities. It would not be possible to have them enacted and implemented were this not so.

3.7 The Committee spent some time noting evidence on the legal institutional aspects of the bill, and here too was evident a prevailing view that the industrial relations legal culture that was founded in the *Conciliation and Arbitration Act 1904* ought not be tampered with. There was evidence that , for instance, it was important to have a single court with exclusive jurisdiction with respect to Commonwealth industrial law.[4] The clear intention of the government, with which the Committee majority agrees, is that the exclusivity of workplace relations law needs to be broken down: that common law and commercial law principles will add something to the processes of law as they apply to the workplace.

3.8 The Workplace Relations Amendment Bill 2000 has been criticised for its attempt to deal with a specific problem at a particular time, though why this should result in bad law has never been made clear. At the same time its critics have raised fears about its far-reaching consequences. The Committee majority concurs with the view that the legislation is far-reaching. It smooths a path toward both higher productivity and improved wages and conditions for those who achieve it.

The Committee majority commends the bill to the Senate.

John Tierney
Chair

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3 Submission No 33, CFMEU, p.6

4 Submission No 42, Professor Keith Hancock, p.3