CHAPTER 4

CONCLUSION

4.1 Labor senators are concerned that this bill can only deepen Australia's dispute with the ILO in relation to the current government's industrial relations changes. As noted by a number of submissions, 'Australia is alone in seeking to proscribe pattern bargaining'. The flaws in this bill are characterised by both the government's duplicitous intent and the unclear effect of attempts to unfairly limit the bargaining process. The scope of the bill demonstrates that the agenda is more about constraining collective action than protecting enterprise agreements.

4.2 If a further object is to deal with intractable disputes and industrial action impacting upon the public interest, then measures should be introduced to enhance the role of the Commission as an independent umpire. ACCER contends that:

> …if the AIRC was given a proper role to assist the parties in the negotiation of enterprise agreements and it possesed effective disputes settling powers, there would be little need for the parties to resort to industrial action or legal remedies. The AIRC would thereby provide the mechanism for the protection of the rights of either employers or employees who are being coerced into an agreement not of their choice.[1]

4.3 Instead, the bill seeks to limit the discretion of the Commission under the guise of introducing 'new powers'.

4.4 The Government and the parties who have supported this legislation have made assertions that this legislation is necessary to overcome a type of industrial action that has been termed 'pattern bargaining'. The Labor senators believe that the problems currently facing industry are the direct result of the Government's 1996 legislation. The 1996 legislation made a number of changes to the powers of the Australian Industrial Relations Commission most notably in its ability to arbitrate to settle disputes. While much has been made of the insertion of 'protected action' into the Act by the *Industrial Relations Reform Act 1993* this must be considered in the context of the total legislative package that was in place at the time. None of the submissions supporting the current bill have taken into account the manner in which the 1996 legislation circumscribed the powers of the AIRC.

4.5 The 1996 Act circumscribed the Commission's powers in a number of ways. The limitation of arbitration to allowable award matters contained in s. 89A is an obvious example of where the Commission's traditional powers have been reduced.

4.6 The system under this Government has moved from a system where the independent umpire can make decisions based on a balanced consideration of the submissions of all of the parties to a dispute, to a Commission circumscribed by legislative proposals. The proposed bill would seek to circumscribe the powers of the Commission even further.

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1 Submission No. 38, Australian Catholic Commission for Employment Relations, p. 10.

4.7 The situation described by the Ai Group is similar to problems put to the Committee during the second wave inquiry last year which related to the Commission having little power to terminate a dispute and arbitrate a decision. The evidence by the union involved deals with an imbalance in the bargaining positions and unwillingness on behalf of one of the parties to bargain. The evidence provided concerned the 8 month lock out at G and K O'Connor meatworks in Pakenham in Victoria.[2] The Labor Senators conclude that the alleged 'pattern bargaining' is not the problem that needs to be dealt with, rather the problem lies in the Commission's inability to adequately deal with disputes and resolve them.

4.8 Leading on from the problem of dispute resolution is that the current Workplace relations Act has no requirement for parties to 'bargain in good faith'. This lack of a legislative requirement 'to bargain in good faith' that may be enforced by the Commission has resulted in an antagonistic environment characterised by an unwillingness by the parties to find agreement. In the inquiry last year the Victorian branch of the CPSU stated that:

> Where there is no commission that has the power to settle a dispute in a timely, cost-efficient manner, you are denying the rights of individuals to collectively bargain. The best intent of the Senate in inserting the section 170MX provisions has been thwarted by an employer intent on not negotiating in good faith. The removal of the good faith bargaining provisions from the legislation has allowed the commission to sit back and see who wins in the fight on the ground.[3]

4.9 Labor senators believe there is an alternative method of dealing with the concerns raised by the parties who do support this bill. Quite simply the solution to the issue outlined is for the Government to move to restore the powers of the Commission that it stripped from them in 1996.

4.10 Labor senators conclude that the bill should be rejected.

Senator Jacinta Collins **Senator Kim Carr**

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2 Senate EWRSBE Legislation Committee, *report on Consideration of the Provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill*, November 1999 p. 239.

3 ibid., pp. 239-240.