SENATE EMPLOYMENT, WORKPLACE RELATIONS, SMALL BUSINESS AND EDUCATION LEGISLATION COMMITTEE

Consideration of Provisions

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

Workplace Relations Amendment (Termination of Employment) Bill 2000

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CHAPTER 1

BACKGROUND TO THE LEGISLATION

1.1 On 16 August 2000 the Senate referred to its Employment, Workplace Relations, Small Business and Education Legislation Committee this package of bills amending the *Workplace Relations Act 1996*. The bills had been introduced separately into the House of Representatives on each of the four sitting days in the last week of June 2000.

1.2 The Committee received 37 submissions in relation to this package of bills. It held a public hearing on 31 August 2000. A list of submissions and witnesses at the hearing are to be found in appendices to the report.

Pragmatic means to principled ends

1.3 The Coalition government's 1998 workplace relations election policy contained commitments to further legislative reform. These were intended to be implemented through the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999. As this Committee described in its report on that bill tabled in November 1999 the process of workplace relations reform has been evolutionary, with the beginnings of a new focus on workplace agreements noted as far back as 1987. *The Industrial Relations Reform Act 1993* was a precursor to the *Workplace Relations and Other Legislation Amendment Act 1996.* The More Jobs Better Pay Bill made further proposals but did not pass the Senate. Minister Reith has described to the House of Representatives the reported indications that the Democrats would support several technical and procedural amendments presented in acceptable legislative form. These four bills are intended to implement only a small proportion of the measures that were contained in the More Jobs Better Pay Bill, but they contain important provisions in line with the policy principles itemised in the next paragraph. The Committee notes that the Government has therefore taken a pragmatic measure to ensure the maintenance of its principled stance on workplace reform and in pursuing its electoral undertakings.

1.4 The four bills contain policy elements which underpin the current act. These policy elements include:

- the workplace relations system should recognise a more direct relationship between employers and employees operating together in the workplace;

1.5 the workplace relations system must acknowledge Australia's place in a global economy and the importance of maintaining a competitive economy;

- a fair go for both employers and employees;
- genuine freedom of association and a choice of representation; and
- a simplified and more accessible system that puts the interests of workers and businesses ahead of the system's institutions.

Provisions of the legislation

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

1.6 The Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000 deals with procedural and technical amendments to the approval processes for Australian Workplace Agreements (AWAs). The improvements which are proposed draw on the experience of employers and employees over the first three years of the operation of the Act. The amendments provide for speedier agreements to be made. A proportion of AWAs are refused registration by the Employment Advocate because employees sign AWAs prematurely. A new provision gives employees a 'cooling off' period in which to withdraw from an AWA.

1.7 Australian Workplace agreements have become one of the most successful innovations which have characterised the shift from central awards to local enterprise agreements in the changing workplace culture. By 1999 AWA approvals have been averaging 3000 per month, and as at 31 July 2000 over 118,000 AWAs have been approved. They have extended to all industry groups. Ninety per cent of AWAs are made for private sector employees. Employers with fewer than 20 employees account for 41 per cent of all employers making AWAs, although most AWAs are still concentrated in larger businesses employing over 100 people.

1.8 The experience, over the past three years, of dealing with AWAs has highlighted the need to improve the efficiency with which they are negotiated and approved. Unless these improvements are made, the Government is concerned that the Office of the Employment Advocate may find it difficult to maintain and improve on the current service standards it either sets for itself, or which is stipulated in the act. The complexity of current statutory procedures for the making and approval of AWAs has been criticised by employers. In particular, there has been some criticism of the degree of formality involved, especially by employers without HRM specialist knowledge. Complaints have also been made that AWAs don't come into effect as soon as the parties have reached agreement.

1.9 The rights of employees are subject to greater protection under amendments proposed in this bill, with changes to the Employment Advocate's power to allow the legal pursuit of breaches of the act by employers and to allow the Employment

Advocate to take action on behalf of employees in need of protection. As the Employment Advocate's submission noted:

> It is quite common for the Employment Advocate to be criticised for failing to take legal action in cases alleging duress and other breaches despite the fact that the Employment Advocate has no legal power to do so under the current Act. The proposed provisions means that employees will not have to bear the burden of seeking orders as is the case under the current Act, but they may request that the Employment Advocate act on their behalf. Indeed, in the cases where the employee is unwilling to pursue the matter whether out of fear or other reasons, the Employment Advocate may act independently of a request under the proposed provisions.[1]

1.10 Amendments proposed in this bill, several of them supported by submissions from the Office of the Employment Advocate, are summarised as follows:

- simplification and acceleration of approval processes to allow AWAs to take effect from the date of signing, with the addition of a 'cooling-off' period to safeguard employee rights;

- strengthening the power of the Employment Advocate to initiate proceedings to recover penalties and underpayments on behalf of an employee, in respect of breaches of AWAs;

- removal of the provision for AWAs to be referred to the Australian Industrial Relations Commission for the application of a public interest test, for purposes of streamlining, and because this provision is so rarely necessary;

- more expeditious processing of the AWAs for high income earners;

- removal of the requirement for employers to offer identical AWAs to employees who may be doing comparable work, a practice which takes no account of the possibility of rewarding individual performance;

- removal of any legislative nexus between AWAs and any certified agreements, awards or other industrial instruments that may be operating in a workplace so that the parties have greater choice; and

- repeal of provisions enabling protected action to be taken in the negotiation of an AWA as they are not relevant to the negotiations of individual as distinct from collective agreements.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

1.11 The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000 provides for secret ballots becoming a precondition for accessing protected

1 Submission No 10, Office of the Employment Advocate, pp. 5-6.

industrial action. Protected action is available only in respect of single business certified agreements, and a decision by employees to take industrial action in pursuit of a new agreement should take place only after a deliberate decision by enterprise employees.

1.12 It has become clear that changes to secret ballot provisions introduced into the current act under section 135 have had limited success. Currently, the existing secret ballot provisions are infrequently used, and often after industrial action has already commenced. In the first three years of the life of the act only 9 applications have been made to the Industrial Relations Commission for a secret ballot under the provisions of section 135 of the act. The Commission has demonstrated on some occasions an approach of last resort rather than dispute prevention and settlement.[2]

1.9 At the core of the problem lies the fact that decisions about industrial action are generally taken at an organisational level rather than a workplace level, even though unions will dispute this contention. In 1995 an Australian Workplace Industrial Relations Survey showed that among unionised workplaces with more than 20 workers, unions failed to consult employees in relation to collective agreement negotiations at 27 per cent of workplaces. Evidence given to the Committee at its 1999 hearings on the More Jobs Better Pay Bill pointed to the incidence of 'wild cat' strikes resulting from the inadequate provisions of the current act. Disruptive action had occurred and was concluded before employers could take legal counter-measures.[3] The Committee accepts the government's argument that pre-industrial action ballots would strengthen the accountability and responsiveness of unions to their members, give individual employees the appropriate and necessary freedom to choose and prevent the inappropriate use of protected action by unions in pursuit of pattern bargaining outcomes.

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

1.10 The Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000 provides for the further simplification and modernisation of awards. Tallies, based on labour inputs rather that product outputs, are not standard provisions across awards, being restricted to meat industry employees. Picnic days are not standard provisions across awards and may be regarded as a relic of past industrial award practice. The intent of the legislation is to make the existence or retention of picnic days or tally provisions subject to local enterprise agreement rather than as an allowable matter under an award.

1.11 Amendments proposed in this bill are intended to emphasise the changed role of awards within the Workplace Relations Act. Awards are intended to provide a genuine safety net of minimum wages and conditions. This has resulted in a

2 Submission No. 23, Department of Employment. Workplace Relations, and Small Business,p.138

3 Senate EWRSBE Legislation Committee, *Consideration of the Provisions of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999,* November 1999, pp.110-111

considerable reduction in the number of allowable matters. Tallies and picnic days are anomalous allowable matters, and were listed for report in the More Jobs Better Pay Bill.

1.12 The industrial issue of tallies is inextricably linked with productivity in the meat industry. Tallies, being based on imputs rather than outputs, are claimed to impede productivity. A 1998 report of the Productivity Commission into the meat industry processing sector noted Australia's declining share of the world meat market, due, historically, to the fact that meat processing has been insulated from competitive pressures. The report noted recent improvements in productivity, due in large part to the Workplace Relations Act, but that more could be done. The most important single reform recommended was a move away from the highly restrictive tally systems and replace them with time worked, or payment based on factors such as yield and quality.

1.13 In September 1999 the Australian Industrial Relations Commission handed down a decision on tallies which was noted in the report of this Committee on the More Jobs Better Pay Bill 1999. In its decision, the Commissioner decided to delete the tally provisions from the meat industry award because they were not operating as minimum rates as required by the act. The Commissioner also commented that the tally provisions in the meat industry award had fallen into disuse because of its complexity – the tally provisions are over 50 pages long – and because of the conceptual difficulties involved in their application. The award provisions were exceedingly complex and seriously out-of-date.[4] The result is that employers have attempted to move outside the tally system through both formal and informal arrangements with employees.

1.14 Picnic day award provisions present the same kind of anomaly as tallies, although the point at issue is far less complicated. The Australian Industrial Relations Commission determined in 1994 and 1995 that there would be ten public holidays across Australia, with an additional public holiday specific to each state. The standard allows for the possibility of an entitlement to a union picnic day where it is taken in lieu of a state-specific holiday provided for in the minimum entitlement.

1.15 The amendment bill intends that union picnic days be subject to local agreement at the workplace level, particularly as it is not relevant to the majority of workers who are not members of unions. New provisions will ensure that union picnic days do not come within the scope of allowable award matters.

Workplace Relations Amendment (Termination of Employment) Bill 2000

1.16 The amendments proposed in this bill have their origins in Schedule 7 of the 1999 More Jobs Better Pay Bill and in the Workplace Relations Amendment (Unfair Dismissals) Bill 1998. Some changes have been made in response to comments made by the Australian Democrats in the Senate and in minority reports tabled by this Committee. The Workplace Relations Amendment (Termination of Employment) Bill

4 ibid., p.79

2000 addresses a number of procedural and technical deficiencies that have become evident during the four years in which unfair dismissal provisions have been tested.

1.17 The bill contains a range of provisions intended to reinforce disincentives to speculative and unmeritorious unfair dismissal claims. The bill also removes unnecessary jurisdictional and procedural burdens that unfair dismissal applications place on employers. A crucial weakness in the current act, intended for correction in these amendments, has been the united scope it gives to 'forum shopping' between federal and state jurisdictions. The bill will also extend rights under unfair dismissals provisions to a class of employees employed under agreements made under the old Industrial Relations Act, and who were inadvertently denied their rights under the current act. Two other provisions provide relief to employers: a right of employers to apply for an application to the Industrial Relations Commission to have an application for unfair dismissal dismissed at any stage of proceedings; and, that employees may only make one application of an unfair dismissal claim. The more important provisions of the bill are hereon described.

Prevention of forum shopping

1.18 'Forum shopping' occurs when aggrieved former employees, having lost a case in one jurisdiction attempt to find redress in another. The current act allows employees under federal awards to apply for a state unfair dismissal remedy, where state legislation permits. Amendments to the act which are proposed in this bill will prevent a person from applying for a remedy in two different jurisdictions. The Government believes, and the Committee concurs, that forum shopping can undermine the authority of legislation and result in inconsistent judgements where it is successful.

Exclusion of contractors from provisions of the act

1.19 Recent decisions of the Federal Court and Australian Industrial Relations Commission have highlighted legal differences on the issue of whether independent contractors may seek a remedy against unfair dismissal under these provisions. The Federal Court has taken a broad definition of the term 'contractor', to bring it within the scope of employee. The Commission has preferred a narrower definition. This amendment defines employee in terms that fit the Commission's definition.

Unmeritorious claims

1.20 Evidence was put to the Committee that some aggrieved former employees abuse process by making of ambit claims. This some times involves the employment of legal representation by such employees on a contingency fee basis. The Committee notes the inclusion in the bill of measures intended to reduce the incentives to pursue unmeritorious or vexatious claims. In light of the common experience of employers preferring to 'cut their losses' with a settlement at the conciliation stage, these include amendments which place the onus on the Industrial Commission to make a funding at the conciliation stage and prevent applications in respect of harsh or unreasonable termination from proceeding to arbitration where the Commission is satisfied that an applicant's claim has no substantial prospect of success. Amendments also provide

more powers to the Commission to award costs against parties where circumstances warrant.

Other provisions

1.21 In addition, the Committee notes the following provisions:

- Discouragement of the use of legal advice on a contingency fee basis for the purposes of promoting vexatious action;

- Additional power to the Industrial Commissioner to dismiss applications for unfair dismissals where an applicant fails to attend a proceeding;

- Amendments to make the award of costs more readily available in regard to vexatious claims;

- A requirement that the Commission have regard for the size of an employer's operation in determining whether a termination of employment was harsh, unjust or unreasonable; and

- Precluding the Federal Court from awarding compensation for shock, humiliation and distress arising from the manner of termination.

Conclusion

1.25 In summary, the legislation package represents both a technical adjustment to the Workplace Relations act and a clarification of policy to be implemented under the act. The amendments arise from the experience of both employers and employees, as well as agencies responsible for administering the act, over the past three years. Many of the amendments described in the previous section tighten the legislation by rendering more explicit the original intentions of the act. These are intended to make provision for changes consistent with principles set out in paragraph 1.3.

CHAPTER 2

CONSIDERATION OF THE ISSUES

General comments

2.1 The Committee has noted in previous reports that the most vociferous opposition to bills come from organisations and individuals opposed to modernising change. Such was the case with the New Tax System. It is also evident in the opposition of trade unions to this legislation which is intended to tidy up loose ends of the Workplace Relations Bill. The amendments proposed in this package of bills is intended to make the legislation work more effectively. The changes proposed are entirely consistent with the broad policy intentions of the parent act and follow logically the path already traced in that act.

2.2 Evidence submitted by organisations which have seen benefit from the current legislation support the proposed amendments. Opponents of the original legislation are equally opposed to improvements made to it, presumably on the grounds that anomalous or otherwise deficient provisions identified over the three years of its operation should remain in force not despite of, but because of these defects. The perpetuation of unintended consequences in the law has the purpose, it would seem, of creating difficulties for governments and their supporters and should not therefore be lightly amended. The Committee majority regard this view as an abuse of the Senate's role to review legislation on its merits, and of a legislative committee's role in securing workable legislation aside from broader policy considerations.

2.3 For the most part, therefore, the evidence dealt with in this chapter presents a range of views about the importance of having these bills passed by the Senate.

Evidence

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

2.4 The Committee received evidence, including case studies, from the Australian Chamber of Commerce and Industry which highlighted the need for the amendments proposed in relation to the administration of Australian Workplace Agreements (AWAs). Although there is strong support for AWAs in the private sector it appears that the process of implementing AWAs is seen as unnecessarily bureaucratic. Some of the technical provisions intended to protect employees have turned out to be hindrances to employment, or are now considered, with the benefit of experience, to be of no real benefit to employees who made AWAs. These comments relate particularly to time delays in having AWAs approved. The ACCI submission gave an instance of the difficulties presented by timeframes:

> A recent and not isolated case occurred where a manager recruited twenty three recruits with the intention of offering them AWAs. However, the

> manager was not aware of the timeframes required by the WR Act. The recruits had already commenced when the offer of the AWA was made. They had to be employed under Award conditions for several weeks until the offer was made and fourteen days had elapsed. Both the manager and the recruits found this situation convoluted and absurd. We receive regular complaints from managers that the timeframes associated with offering AWAs makes rapid recruitment difficult.[1]

2.5 The Committee also received evidence of support for the amendments which remove the requirement for employers to offer identical AWAs to employees who may be doing comparable work. ACCI advised the Committee that one of the most frequent complaints received by Telstra from staff members is their inability to tailor their AWAs. The complaint was that an AWA 'was not an individual contract but a mass contract with different peoples' name on it. Employees at Telstra were known to reject AWAs because there was no flexibility to align the contract to their own needs. Staff morale has been damaged in some workplaces because of the limitations posed by current legislation. As ACCI reported:

> Recently a manager negotiated with the staff members in his team and agreed to alter some of their AWAs to suit their mutual needs. The parties were distressed when they were advised that this contravened the WR Act, and the manager was required to offer the same terms to all the comparable employees. They were required to renegotiate back to standard terms and the positive spirit associated with the offer of AWAs in this workplace was seriously affected.[2]

2.6 The overly bureaucratic nature of the current arrangements for filing and approving AWAs has also been described in the ACCI submission. One large corporation explained that each time it files an AWA for an employee two separate forms need to be completed by hand, each form comprising 45 questions, which can only be transmitted to the Employment Advocate by post. The corporation believes that it is overly bureaucratic to require an individual approval for a generic AWA that has been approved many times previously.[3]

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

2.7 In its majority report on the More Jobs Better Pay Bill 1999, the Committee concluded that legislation was needed to require a secret ballot prior to protected industrial action, in order to ensure that employees in the workplace, rather than union officials from outside, could decide whether matters were serious enough to warrant industrial action. The Committee majority remains convinced of this view.

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1 Submission No.9, Australian Chamber of Commerce and Industry, p.17

2 ibid.

3 ibid., p.18

2.8 The submission from the Business Council of Australia strongly supported the amendments in this bill on the grounds that industrial action should not be seen as a substitute for genuine discussions; that final decisions to take protected action should rest with employees directly affected; and that employees should not be directed to undertake action that results in loss of pay.

2.9 The Business Council submission also points out that strikes are seen as votes of confidence in union leadership. There is an understandable reluctance to stay out of a strike regardless of how an employee may feel about an issue. The BCA believes that the secret ballot clause is likely to encourage employees to consider the merits of the cause of action rather than consider the more extraneous issue of whether to support the union out of feelings of 'solidarity'.[4]

2.10 The importance of secret ballot provisions in workplace relations law was highlighted in a submission to the Committee from Denso Manufacturing Australia. The company lodged an application pursuant to section 135 on 16 August 2000 to encourage a secret ballot among its employees as part of its negotiation with the AMWU under the shadow of Campaign 2000. The purpose of the secret ballot was to measure the resolve and the view of the company's employees to its proposals. The company was unable to secure a direction from the Australian Industrial Relations Commission for a secret ballot, for the likely reason – though this was not given – that the Commission regarded secret ballots as a last resort. As the Denso submission described it:

> During our negotiations, the union has refused to engage in a secret ballot of their members, preferring to use a show of hands when voting. The show of hands approach can be intimidating to employees who may wish to view their opinion in favour of the company proposal or against a union position. It is this form of intimidation that prevents people from voicing their true opinion at union mass meetings. Unions do not prefer secret ballots because it may limit their psychological influence when key decisions are being voted on.[5]

2.11 Master Builders Australia also supported the bill, referring to the lack of adequate provisions in current legislation when dealing with a recent dispute in the Victorian building industry. In this dispute the CFMEU claimed to have issued 2853 separate bargaining notices in Victoria. Most of those employers had also been served with notices of intention to take industrial action. MBA claims that by acting in this way, the CFMEU would have been able to take protected industrial action against employers in circumstances in which: employees at the workplace were never consulted; where no negotiation between the CFMEU and employers had been held;

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4 Submission No.32, Business Council of Australia, p.1-3

5 Submission No.12, Denso Manufacturing Australia, p.1

and, where the object was to enforce a pattern bargaining arrangement between the union and all employers.[6]

2.12 The Committee considered arguments put by unions like the CPSU/SPSF,[7] and supporting comment from academic workplace relations authority Mr Keith Hancock[8] that restricting the scope for industrial action would reduce the bargaining powers of unions and make last-minute compromises (on the expectation of strike action) less likely. The Committee majority does not believe that industrial action taken under the new laws would be less likely to result in a resolution of the dispute. The Committee majority notes that the Australian Industry Group (Ai Group), formerly sceptical of the value of secret ballots, now agrees that this process, overseen by the Industrial Relations Commission is an appropriate precondition for the taking or organising of protected industrial action.[9] The Committee majority believes that the bill will make union leadership more accountable to their members. For this reason alone it commends the support of the Senate to this bill.

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

2.13 The Committee notes in its consideration of the evidence on this bill that there remains in the Workplace Relations Act an accumulation of obsolete provisions. It notes that they remain despite previous efforts at modernisation. The issues of tallies and picnic days are textbook examples of residual industrial practices which appear to have no justification for remaining in existence apart from their appeal to union conservatism. They appear in this package of amending legislation as rallying points for nostalgia. The Committee found evidence given in defence of the retention of these practices particularly unconvincing.

2.14 The Committee noted evidence submitted by the Australasian Meat Industry Employees Union that claims for the inefficiency of the tally system were erroneous given that Australia Meat Holdings, the largest meat processor, uses tallies in establishing balanced teams for the slaughtering and boning of beef, thus ensuring properly distributed work as the sides of beef move down the processing chain.[10] It was argued that tallies bring their own kinds of efficiencies to bear on meat production. The National Farmers' Federation denied that tallies were inherently efficient, and that the reality was exactly the reverse. The National Farmers' advised the Committee that the issue of whether tallies continued in individual abattoirs was not the point at issue. What was at issue was the retention of tallies as an allowable award matter.

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6 Submission No.13, Master Builders Australia, p.1-2

7 Submission No.8, Community and Public Sector Union & State Public Services Federation Group, p.2

8 Submission No.4, Mr Keith Hancock, p.3

9 Submission No.37, Australian Industry Group, p.14

10 Submission No.25, Australasian Meat Industry Employees Union, p.7-8

> If agreement is reached about a tally system that suits a particular meatworks in order that production can be guaranteed to reach a minimum…then that is a function of enterprise bargaining. What we are talking about is eliminating tallies from the safety net, the tally system as reflected in the award which has, in the evidence of the Commission, not properly changed for 30 years. …What we are talking about is taking them out of the safety net.[11]

2.15 Tallies were described as a constraint on inputs: a system where the benefits of new technology, introduced to increase productivity, do not flow to those making the investment because of the formulae in the meat industry processing award. The Australian Industrial Relations Commission has described tallies as unfair and as a drag on productivity, but there was no indication that the Commission would scrap the tally system. This would best be achieved through legislation.

2.16 The Committee also heard that time was running out for the tally system. Ultimately the meat processing industry would have to become world competitive, or there would be two consequences. The first would be an increase in the export of live-stock bound for off-shore abattoirs. The second would be that local abattoirs that were now competitive would increase their business and others would close. The Productivity Commission has advised that there was a 30 per cent overcapacity in the industry.[12]

2.17 Like the tallies issue, that of picnic days appears relatively minor compared to matters which are the subject of other amendment bills in this package. Their importance is only diminished because of the relatively small numbers of people affected by their provisions. Picnic day is only an issue when its existence as an allowable matter gives a small minority of unionists an additional public holiday over and above the standard entitlement. The amendment proposed will not itself result in the demise of picnic days. Such a day would remain provided it was negotiated as a workplace agreement.

2.18 Evidence from The ACTU and individual unions suggests that removing picnic days as an allowable matter would be tantamount to abolishing the Good Friday holiday because of the decline in religious observance.[13]The amendment is seen as a symbolic 'cultural' attack on unions. The Committee cannot see any basis for this, and points to the obvious distinction that can be drawn between public holidays which are commonly observed across the whole community, and which are officially recognised, and those which are observed by particular groups. Thus, the day of the Chinese New Year and the feastday of the Epiphany are significant days for particular cultures without being recognised as public holidays The Committee heard evidence that:

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11 Mr Richard Calvar, *Hansard*, Canberra, 31 August 2000

12 ibid.,

13 Submission No.22, Australian Council of Trade Unions, p.22

> The lack of significance of union picnic day is highlighted by the fact that under the National Building and Construction Industry Award, which applies in all States of Australia, a union picnic day is only recognised as a public holiday in New South Wales and Western Australia. Even then there is a provision which allows for an employer to hold a regular picnic for their employers on some other day other than union picnic day and that day may be taken as a holiday in lieu of the union's picnic day. The status of the union's picnic day is thereby further diminished. Quite simply, union picnic day is only in the award in relation to New South Wales to bring that State into line with the number of public holidays which exist in other States covered by the award.[14]

2.19 All of the unions appearing before the Committee opposed this amendment, even though it no longer applied to their members. The Committee noted the strong opposition from the Construction, Forestry, Mining and Energy Union (CFMEU) but rejects its claim that there is any particular merit in claims that picnic days are 'family days', or that they 'serve as a rare opportunity for building workers from across the state to gather and socialise.'[15] If there is merit in such claims, the Committee believes that it can be tested at the level of enterprise bargaining.

Workplace Relations Amendment (Termination of Employment)Bill 2000

2.20 The unfair dismissal provisions of the current act, which have been the subject of two other inquiries by this Committee over the past twelve months, continue to be a matter of concern to small business. During this inquiry, the Committee received representations on this issue from a number of employer organisations, notably the Australian Industry Group, the Australian Business Council, the Australian Chamber of Commerce and Industry and the Victorian Automobile Chamber of Commerce.

2.21 The submission from the Australian Chamber of Commerce and Industry (ACCI) dealt quite fully with a number of provisions subject to amendment in this bill. ACCI gave strong support to the provision of restricted access of federal award employees to remedies under state legislation. It was argued that exposing employers to both federal and state laws was to place them in 'double jeopardy', or at least had the potential to subject employers to state remedies which could not have been anticipated under federal laws.[16]

2.22 According to the Victorian Automobile Chamber of Commerce (VACC) the high number of unfair dismissals claims in Victoria presents a misleading picture of the problem. VACC evidence was most persuasive and should put an end to claims by those opposed to government reforms that there is no evidence to justify these sensible measures. VACC gave evidence of a multitude of cases where they have had first hand experience of difficulties with the jurisdiction. Very few matters proceed to a

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14 Submission No.13, Master Builders Australia, p.2

15 Submission No.6, Construction, Forestry, Mining and Energy Union, p.50

16 Submission No.9, Australian Chamber of Commerce and Industry, p.3

hearing. The majority of cases are settled during conciliation at the insistence of the respondent because of the time and cost involved in settling a claim.[17] Relatively few claims have any merit basis, being intended for the most part to 'try out' the system for compensation. Interesting evidence was also given by VACC in relation to inflated costs of proceedings before the Commission: an issue addressed in the amendment bill in relation to curbing the role of advisers and the disclosure of contingency fee arrangements.

2.23 In Victoria the practice has grown for legal firms to solicit business from dismissed employees, whom they represent at up to $1200 for each appearance before the Commission. In the event of a successful claim against an employer, only a very small proportion of damages is retained by the applicant. Most goes to the legal firm. The Committee is satisfied that proposed amendments will curb the enthusiasm of legal firms chasing business from vexatious or unmeritorious litigators.

2.24 Another problem identified by the Victorian Automobile Chamber of Commerce is the number of claims that are lodged out of time with the Australian Industrial Relations Commission. These claims are costly and time consuming to an employer as it appears to be the view of the Commission that out of time applications should be allowed in most circumstances. The Committee agrees that the Commission appears to have exercised an overly wide discretion in allowing out of time claims. The act prescribes a period of 21 days in which applications must be filed. In one case, the Commission allowed a lapse of 267 days between a termination and a decision to lodge an application.[18] The Committee notes that the bill will tighten the test for accepting out-of-time applications.

2.25 The Committee heard compelling evidence in support of amendments allowing the Industrial Commission to dismiss an application where the applicant does not attend proceedings. There have been cases where an employer has been obliged to attend proceedings, often at great personal inconvenience and to the detriment of his or her business, and where an applicant has not appeared, giving no good reason for failure to do so. There have been cases where resolution has not occurred because of an applicant's lack of cooperation, or where the system is abused by an unscrupulous applicant. As a VACC representative told the Committee:

> In the instance we have at the moment, the employer has taken the whole day out to prepare witness statements. He has gone through excessive cost to ensure that his other witnesses are available for an arbitration hearing that is due to commence on Monday. We now have the lawyers frantically ringing to try and resolve the matter at the last minute. What happens if they simply withdraw? And it was without merit – another case of where the applicant had physically assaulted another employee. …It has been twice for conciliation. It is now scheduled for arbitration. The employer has been

17 Submission No. 24, Victorian Automobile Chamber of Commerce, p.4

18 Kamsteeg v. Telstra [Print Q3902] Submission No. 24, Victorian Automobile Chamber of Commerce, p.5

> involved in the preparation of this case, in appearances before the Commission, and it just really is unfair. …There should be a process through which this situation can be rebalanced. …a lot of employers are very concerned about the effects of receiving an unfair dismissal claim and how they will cope in defending it. It puts them off engaging employees.[19]

2.26 This evidence brings into focus the main purpose of this amendment, which is to rebalance the operation of the jurisdiction to ensure a fair go all round and to remove hindrances to employment which the jurisdiction creates. Over the past two years the Committee has taken evidence on termination of employment issues on three separate occasions. On each occasion the evidence pointed to the difficulties faced by small business, particularly single employer operations, in managing termination processes involving unmeritorious claimants. The bill does not substantially alter rights of access to the jurisdiction, rather, it makes sensible changes to prevent the jurisdiction being brought into disrepute by unmeritorious or vexatious claimants.

Conclusion

2.27 The four bills considered by the Committee present a modest and well-considered package of important amendments to the Workplace Relations Act. The intention of the legislation is to ensure that current legislation works more effectively in the light of three years of experience which employers, employees and other interested parties have had. Few if any submissions devoted any space to criticising the substance and principles of the Workplace Relations Act. Its supporters are critical of some of its detail, and the Committee majority is largely satisfied that the problems which have been identified are properly amended in these bills. This legislation contains most of the substance of the so-called second wave legislation considered by the Committee late in 1999. The report on the far more extensive More Jobs Better Pay Bill provide a more detailed summary of evidence on a wider range of issues than is to be found in this report.

2.28 The passage of these four bills will see a quite marked improvement in the operations of the act and would lead to much greater efficiencies in both its administration and in the consequences of its application to the workforce and to industrial productivity. The Committee majority is sometimes struck by the fascination with which opponents of workplace reform have for the forms and traditions of the old industrial relations regime, with all its residual complications and restrictions, and the prevailing notion that workplace relations represent some kind of final outcome rather than being a facilitative framework for employers and employees. The outcome from good workplace relations legislation is improved employment growth and higher productivity. It is noteworthy that in none of the evidence given to the Committee by trade union representatives were these matters mentioned.

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19 Mrs Leyla Yilmaz, *Hansard*, Canberra, 31 August 2000

Recommendation

2.29 The Committee majority recommends the Senate pass all four bills without amendment.

John Tierney

Chair

WORKPLACE RELATIONS AMENDMENT (AUSTRALIAN WORKPLACE AGREEMENTS PROCEDURES) BILL 2000

WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTION ACT) BILL 2000

WORKPLACE RELATIONS AMENDMENT (TALLIES AND PICNIC DAYS) BILL 2000

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2000

LABOR SENATORS' REPORT

LABOR SENATORS REPORT

Pragmatic 1. *Dealing with matters with regard to their practical requirements or consequences.* ***2***. *Treating the facts of history with reference to their practical lessons.* ***3.*** *Hist of or relating to the affairs of a nation* ***4.*** *(also pragmatical)****a****. concering pragmatism* ***b.*** *meddlesome.* ***c.*** *dogmatic.*[1]

1.1 Pragmatic means to principled ends these Bills are not.

1.2 The four bills that this report addresses are simply remnants of the Government's failed Workplace Relations Amendment (More Jobs, Better Pay) Bill 1999 (hereinafter referred to as the MOJO Bill). The MOJO bill was itself subject to inquiry by this Committee, and as such the provisions have already received detailed consideration. The current inquiry did not reveal any new evidence of any significance supporting the passage of these bills.

1.3 The Government Senators suggest in their selective and cursory report that the underlying reason for salvaging the provisions of these Bills from the wreckage of the MOJO Bill was "the reported indications that the Democrats would support several technical and procedural amendments presented in acceptable legislative form".[2] Simply put, the possibility of Democrat support was the reason for the introduction of these Bills.

1.4 However, in his Supplementary Report on the MOJO Bill, Senator Andrew Murray did not indicate any interest in these particular provisions. On our reading of his report, Senator Murray seemed supportive of proposals to: improve access for 700,000 award free Victorian workers to the federal awards system; remove prohibitions for the payment of strike pay; and require the Employment Advocate to be more "even handed" in approving AWAs. None of these matters have been addressed in these four Bills, or in the other two Bills dealing with the Workplace Relations Act introduced by the Minister since the tabling of the Report.

1.5 These Bills seem destined to fail from the time they were introduced. There is nothing pragmatic in that.

1.6 A good principle to underpin industrial relations is "a fair go all round". The Government Senators' report claims this principle is one of the underpinning policy elements of these Bills. We didn't invent the phrase, and neither did the Government

1 *The Australian Concise Oxford Dictionary* (3rd ed.) 1997. Oxford University Press: South Melbourne, p. 1053.

2 Government Senator's report, p.1.

Senators – it arises from years of judicial consideration. As noted in the Parliamentary Library's Bills Digest on one of these bills:

> The principle was expounded in an unfair dismissal case involving staff of the NSW branch of the Australian Workers Union in 1971, and a key element of the 'fair go all-round' approach was that the tribunal should not have its discretion fettered, as Justice Sheldon then commented:
>
> > In my view, the use of the old adjectives, with their overtones from other jurisdictions, tends to distort this basically simple approach in that they can be strained to mean that an employer can be less than fair in exercising his right to dismiss and yet stand outside the permissible area within which an industrial authority in its discretion may act
> >
> > …
> >
> > The less fetters there are on the discretion the better…but it is all-important that it should be exercised soundly. The objective in these cases is always industrial justice and to this end weight must be given in varying degrees according to the requirements of each case to the importance but not he inviolability of the right of the employer to manage his business, the nature and quality of the work in question, the circumstances surrounding the dismissal and the likely practical outcome if an order of reinstatement is made.[3]

1.7 We believe that principle to be as relevant today as ever. Over the course of this report, the failure of these four Bills to meet this most basic test of industrial fairness is dealt with. Many measures seek to remove discretion from the Australian Industrial Relations Commission (the Commission). We do not seek to accuse the Government senators of being unprincipled – we encourage them to re-examine their principles as they apply in the area of industrial relations – and see if they are equitable and provide for a "fair go all round". In our view, they do not.

Workplace Relations Amendment (Termination of Employment) Bill 2000

1.8 This Bill substantially replicates Schedule 7 of the MOJO Bill with a number of changes in accordance with concerns raised by the Australian Democrats.[4] In Labor's Minority Report on the MOJO Bill, we indicated that we did not support the amendments contained in Schedule 7 on the basis that the proposals would:

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3 Department of the Parliamentary Library, *Bills Digest No. 31 2000-01: Workplace Relations Amendment (Termination of Employment) Bill 2000*, September 2000, p. 10.

4 Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 11.

- cut off claimants from sources of financial and legal support;
- force them to represent and defend their own interests;
- make the system more complicated;
- make settlement more legalistic, and;
- tilt the balance of influence in unfair dismissal cases squarely and thoroughly to the side of the employer.[5]

1.9 During the course of this inquiry it became obvious that although minor amendments to the provisions were made, no attempt was made to address genuine concerns raised during the course of the previous inquiry. The proposed changes from the MOJO Bill merely tinkered at the edges.

1.10 Labor Senators concluded in their MOJO Bill report that there was little evidence and justification to support the Government's changes. At the outset Labor Senators believe that additional evidence to justify the Government's proposals was not forthcoming from this inquiry.

Jurisdictional Provisions

Forum Shopping

1.11 Labor Senators note that a number of items are proposed on the basis of preventing the "scope for forum shopping".[6]

1.12 Yet, as was pointed out by the Independent Education Union, these provisions may have some serious unintended consequences:

> The IEU believes this is also the case with Section 170 HBA which prevents a second application being made in relation to the same termination. Within the non-government sector, the employing authority of a very large number of schools and other educational institutions would be unknown to those who work in them. In some cases, it is a private company, in others the parish priest, in others, the Roman Catholic Bishop of a particular diocese, or the Board of an Independent school. This issue of "who is the employer" has been the subject of rigorous legal argument in the industry and it is quite likely that staff would not know the correct employer respondent. For an

[5] Labor Senators' Report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Consideration of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999*, November 1999, p. 358.

[6] Submission No. 23, Department of Employment, Workplace Relations, Small Business and Education, p. 14.

> application to be dismissed because the wrong employer has been mistakenly notified and a second application is not permitted is grossly unfair. The right to have your case heard on a matter as important as the termination of employment should not depend on such a narrow technical issue.[7]

1.13 For this reason the provisions relating to preventing forum shopping cannot be supported as they are currently drafted.

Eligibility

1.14 Labor Senators note that the provisions attempting to limit the scope of eligible employees for the purpose of a termination application are justified on the basis that "decisions by the Federal Court and the Commission have given rise to issues concerning the broad scope of the termination of employment provisions".[8] This Bill attempts to restrict independent contractors and demoted employees from accessing the termination provisions.

1.15 As we noted in the MOJO Bill inquiry "the broadening of categories of employees who are ineligible will lead to a grossly unjust and unfair system."[9] No evidence presented to this inquiry has led us to a different conclusion on these issues.

Discouraging Unmeritorious Applications

1.16 A number of provisions are directed towards preventing a party pursuing "unmeritorious claims" or engaging in "conduct that is merely designed to put pressure on the other party to settle irrespective of the merits of the case".[10]

1.17 The Bill attempts to deal with the issue in a number of ways.

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[7] Submission No. 29, Independent Education Union of Australia, p. 6.

[8] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 18.

[9] Labor Senators' Report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Consideration of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999*, November 1999, p. 348.

[10] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 21.

Conciliation Certificates

1.18 The Bill proposes a number of amendments designed to prevent an employee from proceeding to arbitration where the Commission is satisfied that an "applicant's claim does not have a substantial prospect of success".[11]

1.19 An additional provision to that included in the MOJO Bill gives the applicant an opportunity to provide further information in support of their application, in the event that the Commission certifies that the application is not likely to succeed.

1.20 The Commission is already obliged under the Act to issue a certificate assessing the merits of an application at the conclusion of conciliation. The Commission will consider the certificate on the question of costs if the matter proceeds.[12]

1.21 Labor continues to oppose these provisions and are not convinced that the additional change providing a right to the applicant to present further information overcomes our initial objection. That is, that it is inappropriate at the conciliation phase to invest the Commission with the power to dismiss an application. The merits of an application can only be made after an assessment of all of the evidence. The Shop, Distribute and Allied Employees' Association (SDA) submission pointed to an example where an applicant was advised at conciliation that they had little prospects of success, yet succeeded when the matter proceeded to arbitration.[13] It appears that Australian Chamber of Commerce and Industry (ACCI) is also familiar with such cases.[14]

1.22 As was noted by Mrs Yilmaz of the Victorian Automobile Chamber of Commerce (VACC):

> very few conciliators will actually give you a position on whether or not the application is likely to be successful.[15]

1.23 It is interesting to note that the majority of employer submissions received supported these amendments, with the exception of Australian Industry Group (AIG), who considered that "the mechanisms proposed in the relevant subsections may frustrate rather than promote" the objective of introducing greater rigour into the processing of 'unfair dismissal' applications.[16]

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[11] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 23.

[12] Submission No. 22, Australian Council of Trade Unions, p. 15.

[13] Submission No. 21, Shop, Distributive & Allied Employees' Association, pp. 5-6.

[14] Mr Hamilton, *Hansard*, Canberra, 31 August 2000, p. 16.

[15] Mrs Yilmaz, *Hansard*, Canberra, 31 August 2000, p. 54.

[16] Submission No. 37, Australian Industry Group, pp. 8-9.

1.24 The potential for this provision to increase costs was also recognised by a number of other submissions.[17]

Dismissal where the Applicant Fails to Attend

1.25 The Bill proposes to give the Commission power to dismiss an application where the applicant fails to attend a proceeding. In some cases the applicant may have a very good reason for failing to attend and they should be provided with the opportunity to respond before having the application dismissed.

1.26 Another objection to this provision is that it applies to applicants only – not to respondent employers who fail to appear. As Mrs Yilmaz readily agreed in her evidence, she was aware of occasions where the employer did not appear at a proceeding.[18]

Costs

1.27 The provisions relating to costs in this Bill do not differ from those contained in the MOJO Bill. As Labor indicated in our earlier report, we cannot support these provisions in their current form.

Regulating the Role of Advisers

1.28 One of the reasons the Government justifies provisions regulating the role of advisers is the perception that advisers are encouraging applicants to pursue unmeritorious claims. However, the only evidence pointing to such allegations was contained in submissions and evidence from employer organisations. In contrast, it must be remembered that applications had fallen by 49% as a result of the Government's amendments to this area of the law.[19] Also, as was noted by the Victorian Bar:

> There is no evidence that the Commission is being flooded by spurious unfair termination claims. The available statistics demonstrate that of the 926 unfair termination cases arbitrated by the Commission from 31

[17] Submission No. 22, Australian Council of Trade Unions, pp. 14-16; Submission No. 21, Shop, Distributive and Allied Employees' Association, p. 3; Submission No. 28, Slater and Gordon, p. 6.

[18] Mrs Yilmaz, *Hansard*, 31 August 2000, p. 53.

[19] Labor Senators' Report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee *Consideration of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999*, November 1999, p. 351.

December 1996 to 25 June 1999, 662 were decided in favour of the employee and 264 were decided in favour of the employer.[20]

1.29 Of greater concern are allegations, by employers and/or their representatives, of professional misconduct of legal professionals in the manner in which cases are conducted.[21] As was pointed out professional bodies, such as the Law Society, as well as the Courts regulate the conduct of its professionals.[22] Complaint mechanisms exist for investigation and action against a lawyer acting in the manner alleged in a number of the employer submissions. There was conflicting evidence as to whether employers had availed themselves of such mechanisms.[23]

1.30 In any event, the evidence of Mrs Yilmaz was that she was not "hopeful of any outcome" if such a complaint was raised.[24] It is extraordinary that a number of serious allegations of professional misconduct by the legal profession raised by Mrs Yilmaz's organisation, and used as the basis of justifying a number of provisions in this Bill, have not been referred to the appropriate body for investigation.

Contingency Fee Arrangements

1.31 The Bill proposes to require a representative from either side to disclose the nature of their cost arrangement to the Commission. Senator Murray has been an advocate of requiring "no win no fee" arrangements to be a matter of public record.[25] However, as has been indicated, it is difficult to see what bearing those matters will have on the merits of the application.[26] Contingency and no win no fee arrangements result from escalating legal costs and the inaccessability of the legal system.[27] It is inappropriate that they somehow reflect on the merits of the application. These provisions are not supported.

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[20] Submission No. 35, Victorian Bar Inc., pp. 4-5.

[21] Mr Hamilton, *Hansard*, 31 August 2000, Canberra, pp. 17–19; Mrs Yilmaz, *Hansard*, 31 August 2000, Canberra, pp. 49–51, 53.

[22] Slater and Gordon Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee inquiry into the provisions of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999, p. 16.

[23] Mr Hamilton, *Hansard*, 31 August 2000, Canberra, p. 18, where he said he thought that he had heard that complaints had been made; cf: Mrs Yilmaz, *Hansard*, 31 August 2000, Canberra, p. 53, where she said that she was not aware of any circumstances where the matters had been raised with professional bodies.

[24] Mrs Yilmaz, *Hansard*, 31 August 2000, Canberra, p. 53.

[25] Report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee *Consideration of the Workplace Relations Amendment (Unfair Dismissals) Bill 1998*, February 1999, p. 24.

[26] Submission No. 28, Slater and Gordon, p. 8.

Penalty Provisions for Advisers

1.32 The Bill proposes that the Federal Court may, on the application by an applicant, respondent or Minister, award a penalty against an adviser for encouraging the pursuit of an unmeritorious or speculative action. These provisions differ slightly from the MOJO Bill amendments – as the definition of adviser is narrowed to include only those advisers engaged for a fee or reward and not volunteers.

1.33 One concern relates to the reverse onus of proof which would "require the representative to vet an applicant's claim", thus placing the "representative in an untenable position."[28]

1.34 Another concern is the Minister being granted *locus standii* under the provisions to make an application for a penalty. Surely it is up to the parties to determine whether it is appropriate to make a penalty application, having regard to how the proceedings were carried out.

1.35 Labor cannot support the provisions as they currently stand.

Additional Criteria for Deciding Unfair Dismissal Applications

1.36 A number of provisions are designed to "assist in reducing … special burdens" on "certain types of businesses, especially small business".[29]

Termination on the Ground of Operational Requirements

1.37 These provisions will prohibit the Commission's jurisdiction from finding a termination was unfair if the employer can establish that the termination was effected because of the employer's operational requirements, unless there are exceptional circumstances. The inclusion of exceptional circumstances has been added from the provisions as they appeared in the MOJO Bill.

1.38 As Labor Senators noted in our previous report, this "contravenes the right to contest the fairness of termination by workers, and opens the way to exploitation and injustice for employees".[30]

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[27] Submission No. 28, Slater and Gordon, pp. 7-8.

[28] Slater and Gordon Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee "Consideration of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999, p. 14.

[29] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 35.

1.39 The inclusion of "exceptional circumstances" does not alleviate our concerns in relation to these provisions. We cannot support the amendments.

Size of Employers Establishment

1.40 These provisions direct the Commission, in an unfair dismissal, to have regard to the size of the employer's undertaking, establishment or service and any likely impact thereof on the procedures followed in effecting the termination.

1.41 The Government is of the opinion that the burden of dealing fairly with an employee fall more heavily on small business, as they do not have the same access to "legal expertise".[31]

1.42 We rejected in our previous report that issues of fairness in the workplace, and particularly in relation to the manner in which an unfair dismissal is carried out, should not be conditional upon the size of the employer's business. All workers are entitled to justice and fairness. These provisions also ignore the hardship and burden faced by an unfairly dismissed small business employee.

1.43 These provisions are not supported.

Time Limits

1.44 These provisions restrict the matters the Commission and the Federal Court can take into account when deciding an out of time application for both unfair and unlawful terminations. The Government seeks to curtail the "more generous" approach to extending the time limit which they perceive has been taken by the Commission and the Court since the 1996 amendments.[32] The time limitation was amended from the pre-1996 limit of 14 days from the date written notice was given to the post-1996 limit of 21 days from the termination taking effect.

1.45 As was pointed out by Slater and Gordon in their submission to the MOJO Bill inquiry, the 21 day time limit is "a major disadvantage to unfairly dismissed employees", in terms of becoming aware of their rights and assessing whether to

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[30] Labor Senators' Report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee *Consideration of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999*, November 1999, p. 356.

[31] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 35.

[32] Submission No. 23, Department of Employment, Workplace Relations and Small Business. p. 36.

proceed.[33] This is compounded when the employee is from a non-English speaking background or regional area.

1.46 Against this background it should be noted that many other actions in civil courts have much longer time limitations.

1.47 These provisions are not supported.

Compensation for Shock, Humiliation and Distress

1.48 These provisions seek to prevent the Commission and the Federal Court from including in any damages amount, a component by way of compensation for shock, distress, humiliation, or other analogous hurt, caused by the manner in which the employee's employment was terminated. These provisions do not differ from those set out in the MOJO Bill.

1.49 The Government did not intend the inclusion of any such amount in a termination application.[34]

1.50 The Industrial Relations Court set out the circumstances in which damages will include an amount for shock humiliation or distress should be included:

> There is an element of distress in every termination. To ensure compensation is confined within reasonable limits, restraint is required. But in this case there were unusual exacerbating circumstances that make it appropriate to include in the compensation an allowance for the distress unnecessarily caused to Ms Burazin. These circumstances include Ms Burazin having to suffer the humiliating experience of being escorted from Blacktown's premises by the police. Having regard to these circumstances, the compensation assessed by the trial judge should be increased by the sum of $2000, to $5000.[35]

1.51 The circumstances in which such damages will be awarded require "exacerbating circumstances". There has been no evidence to suggest that this is inappropriate nor that the inclusion of such damages is an affront to justice. Considering that such damages must not, combined with the other damages assessed, exceed the total amount of compensation payable under the Act, then it is difficult to sustain the Government's objections.

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[33] Slater and Gordon Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee inquiry into the provisions of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999, pp. 18-19.

[34] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p. 37.

[35] *Burazin v Blacktown City Guardian Pty. Ltd.* (1996) 142 ALR 144 (a case decided under the pre 1996 laws, but the principles have been adopted as applicable under the 1996 Workplace Relations Act – see *Liu – and – Coms 21 Limited* Print S3571).

1.52 These provisions are not supported.

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

1.53 As already discussed these amendment have been dealt with in detail in 1999 during the inquiry and report into the MOJO Bill, consequently it is not the intention of the Labor Senators to reproduce the evidence and findings of that process. It is important to note that the Labor Senators are of the opinion that the deficiencies identified in that process remain in the current bill.

1.54 Of particular concern to the Labor Senators is that the Employment Advocate, Mr Jonathon Hamberger did not appear before the Committee to makea case for these changes. During the 1999 inquiry Mr Hamberger appeared before the Committee but did not make a case for the changes and in fact said on transcript:

> I just did not feel it was appropriate for me or my officers to advocate particular amendments. That is really an issue for the government and for the minister.[36]

1.55 It appears that the absence of Mr Hamberger from this inquiry is an endorsement of that view. His written submission on this occasion also fails to address a number of relevant matters.

1.56 The Committee has been reliably informed that it was the Department's initiative to drop the Office of the Employment Advocate from the Committee's witness list. This information carries particular weight given the Department and the Minister's previous form with respect to Senate Committee practice. Were it the case that such interference in the conduct of a Senate committee inquiry took place, it is most improper and does not enhance the case to extend the Office of Employment Advocate's powers.

1.57 Ms Lynn Tacy, Deputy Secretary of the Department confirmed that this Bill enhances Mr Hamberger's powers as Employment Advocate at the expense of the Australian Industrial Relations Commission.

> **Senator CARR**—So the interpretation I am putting to you would be correct: more discretionary power would be given to the OEA at the expense of current circumstances where that discretion is with the commissioner?
>
> **Ms Tacy**—Yes, because the OEA would be responsible in effect for testing all AWAs.
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> **Senator CARR**—Yes, so it is actually a proposed reduction in the powers of the commission.
>
> **Ms Tacy**—Yes, it is making the OEA responsible for all elements of the testing of AWAs.[37]

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[36] Mr Jonathon Hamberger, *Hansard*, Canberra, 28 October 1999, p. 487.

1.58 The issue of public confidence in the Office of the Employment Advocate was canvassed in the 1999 Minority report, and no new evidence has been put to the Committee to refute the conclusions of the Labor Senators that:

> Overall the Labor Senators were not persuaded that the OEA has not undertaken its role in a biased manner. In any event, lack of public confidence in the impartiality of the OEA would be enough to dissuade employees from attempting to seek redress through this office.[38]

1.59 This conclusion has been confirmed and strengthened by the 11 August 2000 decision of Senior Deputy President Harrison concerning AWAs in the security industry. The Department's discussion of this case, where AWAs had been approved by the Employment Advocate originally and then subsequent AWAs referred to the AIRC was unconvincing – particularly as no Departmental officer before the Committee had read the case. Public confidence cannot be expected to exist in an organisation that conducts its operations in secret. Justice must not only be done but must be **seen** to have been done.

1.60 The *Workplace Relations Amendment (AWA Procedures) Bill 2000* is substantially the same as the provisions of the MOJO Bill that dealt with AWAs. They may be summarised as:

- provide for AWAs to take effect on the date of signing or, if later, the date specified in the AWA as the commencing day, or, in the case of a new employee, the date the employment commences;
- permit employees to sign AWAs at any time after receiving a copy of the information statement prepared by the Employment Advocate and an explanation of the effect of the agreement;
- permit an employee party to an AWA that provides for remuneration of $68,000 per year or less to withdraw consent within a cooling-off period;
- remove the requirement relating to offering identical AWAs to comparable employees;
- simplify the approval process by:
    - consolidating the existing assessment of filing requirements and approval requirements into a one step approval process;
    - removing the requirement that the Employment Advocate refer AWAs to the Australian Industrial Relations Commission where there is concern that the AWA does not pass the no-disadvantage test – the Employment

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[37] Ms Lynne Tacy, *Hansard*, Canberra, 31 August 2000, p. 58.

[38] Labor Senators' Report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee *Consideration of the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999*, November 1999, p. 233.

Advocate would apply the no-disadvantage test in all cases (subject to principles which may be developed by the Commission); and

- providing a more streamlined process for AWAs that provide rates of remuneration in excess of $68,000 per year;

- amend the provisions dealing with the relationship between AWAs and certified agreements and awards made under subsection 170MX(3) of the WR Act; and
- remove the limited immunity available in respect of industrial action taken in support of a claim for an AWA.

1.61 These issues have been dealt with in great detail in the 1999 Minority report and only selected aspects will be dealt with in this report.

Commencement Date

1.62 The legislation proposes that AWAs are to take effect from the date of signing or a later agreed date or, in the case of, new employees, the date employment commences. The AWA stops operating on the earlier of the expiry of 60 days from signing if no application has been made to the Employment Advocate, the day a refusal notice is issued, it is terminated or another AWA starts to operate.

1.63 What this may mean is that an unapproved AWA may operate in excess of 80 days before it is approved.

> **Senator CARR**—Thank you. I would appreciate it if you would. I am interested to get the time lines here because it is feasible, from what you have told me, that within the employer advocate's guidelines for there to be a period of up to 80 days and for that to still meet the guidelines—isn't that so? It is 60 days for the employer to notify and at least another 20 days, and still be within these voluntary guidelines—is that correct?
>
> **Ms Tac**y—Yes, the 60 plus 20—[39]

1.64 Ms Tacy is being optimistic as a further 8 per cent of AWAs take longer than 20 day to approve. Labor Senators believe that a potential 80 day delay in assessing an agreement is a totally unacceptable outcome.

1.65 Of major concern to Labor Senators is the fact that in this 'never-never land' that employees may find themselves in where they are subject to an agreement that has not been through any approval procedures is that the Department failed to adequately answer a question as to what protections were in place for employees prior to approval of the AWA after which time the dispute resolution procedures would presumably apply.

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[39] Ms Lynne Tacy, *Hansard*, Canberra, 31 August 2000, p. 59.

> **Senator CARR**—Can you help me here? What protection is there for workers in these circumstances if there is a dispute with their employer during that 80 days?
>
> **Ms Tacy**—They have to agree in the first place. An AWA is an agreement so they have signed the agreement before it takes effect. There is a cooling off period when they can withdraw that consent. Within that 20 working days the sorts of processes that the OEA has involves checking genuine consent and they are also obviously checking other aspects.
>
> **Senator CARR**—In that 80-day period—and you are talking 20 but I am saying, and I think you have agreed, that it is possible for it to be at least maybe 80 days—what protections do workers have in those circumstances in the case of a dispute with their employer?[40]

1.66 No convincing evidence was provided to the inquiry in either submission or in the hearings that persuaded the Labor Senators that the proposed changes to AWA approval procedures were either necessary or could be entrusted to the Employment Advocate.

Signing of AWAs

1.67 The Labor Senators believe that the changes to allow employees to sign AWAs immediately will increase the possibility of undue pressure being brought to bear on employees particularly those in vulnerable positions. The ability to access independent advice before signing is particularly important given the lack of review mechanisms for AWAs after being lodged. During the 1999 MOJO Bill inquiry a number of serious allegations were made concerning the manner in which the Office of Employment Advocate has undertaken its statutory role. Convenience was the primary reason given to justify the proposed changes. Labor Senators are not convinced that administrative convenience is a sound reason to remove what little protections currently exist for employees under the Act.

No NDT for AWAs in excess of $68,000

1.68 The issue of waiving the 'no disadvantage test' for AWAs that have salary packages in excess of $68,000 does not appear to have any logical rationale. Under questioning the Department advised that this figure had been chosen, as it was "the figure that was originally in the legislation for termination of employment".

> **Senator JACINTA COLLINS**—I do not think it answers the question about the impact on workers' bargaining position but I can understand why you do not want to answer that. Moving on then to some other aspects of the AWAs bill: the figure of $68,000 has been chosen as that cut-off for the no disadvantage test. On what basis was that figure chosen?

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[40] Ibid.

> **Mr Leah**y—That is the figure that was originally in the legislation for termination of employment.
>
> **Senator JACINTA COLLIN**S—And it is not indexed there either, is it?
>
> **Mr Leah**y—Yes, it is indexed there.
>
> **Senator JACINTA COLLIN**S—So why is it not proposed to be indexed here?
>
> **Mr Leah**y—That was a government decision.
>
> **Senator JACINTA COLLIN**S—Just more inconsistency.
>
> **CHAI**R—Policy, Senator Collins.
>
> **Senator JACINTA COLLIN**S—I am not pursuing it, Chair. The officer was welcome to say that it was not for him to answer. I note that the recovery of underpayments is to be made in an eligible court: won't this impose time and cost burdens on employees who have been underpaid, and isn't it more appropriate for this function to be undertaken by the Industrial Relations Commission?[41]

1.69 The justification is obviously flawed. Even if Labor Senators were to accept that employees with a salary package of $68,000 were entitled to less protection than other workers there is no justification for not indexing the amount. Currently indexation has increased the unfair dismissal figure to $71,200. By any measure the proposal in this bill is flawed.

Offering identical AWAs to comparable employees

1.70 Labor Senators believe that the proposal to remove the requirement that an employer must make available AWAs in similar terms to comparable employees would provide an opportunity for employers to discriminate between employees. The current provisions do not require that AWAs be all the same merely that comparable employees have access to the same terms and conditions of employment. No evidence was presented that persuaded the Labor Senators that there was a real need for this to be altered.

1.71 Alternatively, the inflexibility with which the OEA applies the current provisions is highlighted by their database AWARIS where:

> Most of the employment conditions data are indicative rather than actual, because these data are collected from the first AWA approved with each employer. All later AWAs from an employer are assumed to contain the

[41] Mr Barry Leahy, *Hansard*, Canberra, 31 August 2000, p. 69.

> same provisions as this first AWA and are entered into the database as such...[42]

Simplify AWA approval process

1.72 Labor Senators believe that any simplification of the AWA approval process cannot be supported if it comes at the expense of the limited means of review that currently exist. The fact that neither submission from the Employment Advocate addressed the need for increased powers and that Labor Senators were unable to question a representative from the OEA has not persuaded Labor Senators that these amendments are necessary. The issue of the need for a transparent process was addressed by the ACTU. This is particularly apt given the apparent conflict of interest of the OEA promoting and adjudicating on AWAs identified during the 1999 inquiry process.

> **Senator JACINTA COLLINS**—Ms Rubinstein, you raised the other issue: if discretion is to go down to the level of the Employment Advocate, how is public interest addressed?
>
> **Ms Rubinstein**—It would be addressed by the Employment Advocate.
>
> **Senator JACINTA COLLINS**—With no transparency?
>
> **Ms Rubinstein**—The reason why it was referred to the commission was to have that way of looking at things. There is no doubt that the Employment Advocate is under enormous pressure to produce numbers of AWAs. The Employment Advocate's performance is judged by the government in relation to the number of AWAs that are approved. With the best will in the world, that is very difficult pressure for an individual to be under, and it would be very difficult to resist. The commission's current involvement, while inadequate, is at least some independent break on that process of pressure.[43]

1.73 The AIG also expressed concern that an appeal mechanism is necessary for reasons of fairness and natural justice.[44]

1.74 Proponents of the need for simplification of the process have only attempted to remove the small amount of safeguards that currently exist. There is no significant case for simplifying the approval process.

1.75 Labor Senators note this point is highlighted in the recent report *Agreement Making in Australia under the Workplace Relations Act: 1998 and 1999*:

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42 Department of Employment, Workplace Relations and Small Business and the Offie of the Employment Advocate, *Agreement Making in Australia under the Workplace Relations Act: 1998 and 1999*, 2000, p. 75.

43 Ms Linda Rubinstein, *Hansard*, Canberra, 31 August 2000, p. 39.

44 Submission No. 37, Australian Industry Group, p. 6.

> The low incidence of AWA refusals (because of failure to meet the Additional Approval Requirements under s.170VPA of the Act) suggests that the provisions are generally operating as intended and employers are aware of their obligations under the WR Act.[45]

and:

> Two per cent of AWAs were refused approval in 1998 but less than 1 per cent in 1999…by far the most common reason for refusal of an AWA was a failure to meet the number of days required fro the employee to hold an AWA before signing. The proportion refused for this reason increased significantly in 1999 (from 51 to 85 per cent)_ but it should also be noted that the absolute numbers involved is far less (29 per cent fewer AWAs were refused approval for this reason in 1999 than in 1998). The quite technical nature of the provision (para 170VPA(1)(b) of the WR Act) can create inadvertent breaches. It seems, however, that employers and employees have both become more knowledgeable about AWA requirements and are thus less likely to breach them.[46]

Relationship between AWAs and certified agreements and awards made under subsection 170MX(3) of the WR Act

1.76 No convincing evidence was provided during the inquiry process that persuaded Labor Senators that the proposed changes were either desirable or necessary. Given the relatively small number of agreements and awards certified under s. 170MX, and the bitterness often associated with such decisions, it is not considered appropriate to allow for these awards or agreements to be set aside through the use of AWAs.

Remove the limited immunity available in respect of industrial action taken in support of a claim for an AWA

1.77 It is considered that the right to access protected action by employees is a fundamental right. The removal of this right, for even the small proportion of the

45 Department of Employment, Workplace Relations and Small Business and the Offie of the Employment Advocate, *Agreement Making in Australia under the Workplace Relations Act: 1998 and 1999*, 2000, p. 5.

46 Department of Employment, Workplace Relations and Small Business and the Offie of the Employment Advocate, *Agreement Making in Australia under the Workplace Relations Act: 1998 and 1999*, 2000, pp. 78-79.

work force covered by AWAs would be of concern to the Labor Senators. The Department of Employment, Workplace Relations and Small Business claimed that:

> these provisions enabling protected action to be taken in the negotiation of AWAs, as they are not relevant to the negotiation of individual as distinct from collective agreements.[47].

1.78 It is noted that the Department has given no justification as to why the ability to access protected action is not relevant to the negotiating process. Further the removal of this right to a class of employees may once again be contrary to Australia's international obligations.

1.79 In addition the Department further justifies the removal of these provisions because:

> The AWA industrial action provisions appear to have been used only in very rare circumstances.[48]

1.80 While Labor Senators agree that the use of protected industrial action by employers to force employees onto AWAs is not a practice that should be encouraged, the justifications given in the submission by the Department are fallacious and could just as easily be applied to provisions concerning secret ballots which are also not often invoked.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

1.81 The issue of compulsory secret ballots for strike action was canvassed at length in the Committee's inquiry into the MOJO bill. No additional evidence has been provided to this inquiry that invalidates the findings of the Labor Senators in their minority report to that inquiry.

1.82 The Department in its submission has effectively criticised the Australian Industrial Relations Commission for the manner in which it has approached decisions relating to secret ballots. In particular an application by the management of Denso Manufacturing to order a secret ballot which was subsequently denied by Watson SDP is used as evidence to support the proposed amendments. It appears that the Department is now adopting the same tactics as the Minister and ignoring the fact that the Act provides the discretion to the Commission order a secret ballot to assist in the prevention or settlement of a dispute. Clearly Watson SDP did not consider that a ballot would have assisted in this particular case. We also note that this was an employer application regarding a ballot amongst employees!

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[47] Submission No. 23, Department of Employment, Workplace Relations and Small Business, p 54.

[48] Ibid.

1.83 As justification for these proposed amendments the Department in its submission has cited the experience of the United Kingdom. The Minister has also consistently claimed the UK experience as justification for his policy on secret ballots. When questioned about the UK experience by the Committee, Mr Hamilton of the Australian Chamber of Commerce and Industry noted that:

> Firstly, the legal context between Britain and Australia, in this area, apart from the common law, is very different. We have a lot of provisions about democratic control of the internal affairs of trade unions, which, as demonstrated by the disastrous Scargill experience in Britain, was simply lacking. So there is a strong element of democratic control, and always has been.[49]

1.84 Mr Hamilton recognised two issues that the proposed amendments ignore. Firstly that there is a vast difference between British and Australian industrial relations laws and secondly that Australian trade unions are democratic organisations whose rules are regulated by the *Workplace Relations Act.*

1.85 There are considerable differences between the proposed amendments and the British model this is supported by the Department, in evidence before the Committee Ms Tacy said:

> I acknowledged earlier that there was some significant differences.[50]

The ACTU in its submission states:

> While the UK system is unacceptably complex and technical, and does lead to a great deal of litigation, it is not as rigid or restrictive as that proposed in the Bill.[51]

1.86 It is disingenuous of the Minister and the supporters of these amendments to ignore the acknowledged differences between the British model and the proposed Australian laws.

1.87 The issue of democracy is also quoted as justification for these amendments. Labor Senators note that the principle of democracy could be extended to employers contemplating industrial action or lock-outs. When this was put to the Department the negative response was unconvincing.

> **Senator JACINTA COLLINS**—I note that you quote in paragraph 27 the ACCI submission to the 1999 inquiry. The rationale that is quoted about democratic processes could be greatly extended, couldn't it? For example, you could give shareholders the right to vote before employers undertake industrial action such as lockouts or even secret ballots to end strikes.

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[49] Mr Reg Hamilton, *Hansard*, 31 August 2000, Canberra, p. 20.

[50] Ms Lynne Tacy, *Hansard*, 31 August 2000, Canberra, p. 65.

[51] Submission No. 22, Australian Council of Trade Unions, p. 8.

> **Ms Tacy**—A single employer entity making a decision about lock-outs is a bit different from a number of different individuals taking industrial action.
>
> **Senator JACINTA COLLIN**S—What is the difference?
>
> **Ms Tacy**—One is a single employer entity.
>
> **Senator JACINTA COLLIN**S—And the other is a group of single workers.
>
> **Ms Tacy**—Yes, but they are all making individual decisions about whether to support collective action.[52]

1.88 Labor Senators are not advocating the extension of secret ballots to shareholders however it is noted that lock out actions can have an adverse affect on shareholder earnings through falling dividends and, therefore, using the same logic that proponents for these proposals use share holders could also claim the right to be consulted prior to actions which may affect their financial position.

1.89 As the issues of quorum and the 'electoral role' were addressed at length in the 1999 Minority report it is not intended to repeat them here, except to note that these issues remain as major concerns to the Labor Senators. Labor Senators support the current secret ballot provisions as balanced and reasonable for the parties to a dispute.

Tallies and Union Picnic Days

1.90 The issue of meat tallies was dealt with at length during the Committee's inquiry into the MOJO Bill. The conclusion of the Labor Senators, which was supported by Senator Andrew Murray, was that this issue was best dealt with by the Australian Industrial Relations Commission. This finding has been justified by the Full Bench decision of 1 September 2000. Labor Senators maintain that the appropriate forum for dealing with the issue of tallies is the AIRC. The AIRC has now determined the matter in one Award and established a process which should progress expeditiously. This process, unlike the provisions in the Bill, will also ensure that appropriate safeguards established by the Commission are maintained.

1.91 The issue of union picnic days was also addressed during the 1999 inquiry. The justification by the proponents of these amendments is the fallacious claim that unions account for only 20 per cent of the workforce.

> **Senator FERRIS**—But we are saying that there is still a choice. Given that union membership is now around 20 per cent of the workplace, you are saying that those people should not have a choice about continuing to work on that day if they want to, by saying, 'We

52 Ms Lynne Tacy, *Hansard*, 31 August 2000, Canberra, p. 67.

> don't particularly want a public holiday for that day, we'd prefer to work.' You are imposing a situation on 80 per cent of a workplace which may be non-unionised.[53]

1.92 Senator Ferris is not correct in her assertion, according to the Australian Bureau of Statistics union density currently stands at 26 per cent of the workforce. However to take Senator Ferris' reasoning to its logical conclusion other public holiday must surely be in danger of attack by this Government. In 1950 the Gallup poll found that 23 per cent of Australians went to church weekly – in 1997 this figure had fallen to 18 per cent. ABS statistics indicate that in 1947 35 per cent of Australians went to church within a fortnight by 1983 despite changing the question to a monthly measure church attendance was down to 28 per cent.

1.93 Similarly support for the Monarchy in Australia according to the Morgan poll has dropped from 77 per cent in favour of a Monarchy in June 1953 to 38 per cent in favour of a Monarch in November 1999. On this basis the Queen's Birthday holiday would have to be in danger.

1.94 No one is seriously contemplating the removal of Christmas, Easter or the Queen's Birthday as public holidays despite the fact that the reasoning used by Senator Ferris is just as valid.

1.95 Labor Senators conclude that the amendments are based on an ideological agenda and not the facts.

1.96 The facts include issues such as that picnic days often apply with respect to non-union members or enterprise picnic days. They form part of the Commission's public holiday's test case and these matters should remain with the Commission.

1.97 Finally we note caution expressed by AIG that application and hearings associated with this exercise may result in the wastage of significant resources to no practical benefit. This is particularly concerning given the serious funding constraints faced by the Commission.

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[53] Senator J Ferris, *Hansard*, 31 August 2000, Canberra, p. 12.

Conclusion

1.98 In summary these bills represent a rehash of matters addressed during the inquiry into the Workplace Relations Amendment (More Jobs Better Pay) Bill 1999. There has been no new evidence of any significance promoting the measures contained in these bills, accordingly Labor senators recommend that the bills be rejected.

…….. ……

Senator Jacinta Collins **Senator Kim Carr**

WORKPLACE RELATIONS AMENDMENT (AUSTRALIAN WORKPLACE AGREEMENTS PROCEDURES) BILL 2000

WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTION ACT) BILL 2000

WORKPLACE RELATIONS AMENDMENT (TALLIES AND PICNIC DAYS) BILL 2000

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2000

AUSTRALIAN DEMOCRATS

SENATORS' REPORT

INQUIRY INTO FOUR WORKPLACE RELATIONS AMENDMENT BILLS 2000

SENATOR ANDREW MURRAY : SUPPLEMENTARY REPORT

This Inquiry has addressed four bills introduced by the Government in June. With some variations, all four of the bills have been drawn from provisions in the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999. That bill was the subject of an extensive inquiry by this Committee. My report to that Inquiry dealt with all of the schedules to that bill. The comments that I made at that time on the merits of the various schedules by and large continue to apply to these bills which reflect those schedules.

The Democrats may move amendments to some of these bills, particularly after reflecting on the evidence presented to this Inquiry.

The Democrats reserve our final position on these bills until we debate the bills in the Senate.

Senator Andrew Murray

APPENDIX 1

LIST OF SUBMISSIONS

List of submissions received from organisations

SUBMISSION FROM:	SUB. NO
Ai Group, SYDNEY, NSW	**37**
Australasian Meat Industry Employees Union, SYDNEY, NSW	**25**
Australian Catholic Commission for Employment Relations (ACCER), MELBOURNE, VIC	**17**
Australian Chamber of Commerce and Industry, MELBOURNE, VIC	**9**
Australian Council of Trade Unions (ACTU), CARLTON SOUTH, VIC	**22**
Australian Education Union, SOUTH MELBOURNE, VIC	**18**
Australian Liquor, Hospitality and Miscellaneous Workers Union, HAYMARKET, NSW	**11**
Australian Manufacturing Workers' Union, GRANVILLE, NSW	**31**
Australian Nursing Federation, KINGSTON, ACT	**1**
Building Industry Picnic Committee, CARLTON SOUTH, VIC	**2**
Business Council of Australia (BCA)	**32**
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), ROCKDALE, NSW	**27**
Community & Public Sector Union (State Public Services Federation Group), SYDNEY, NSW	**8**
Community and Public Sector Union (PSU Group), MELBOURNE, VIC	**7**
Construction, Forestry, Mining and Energy Union (CFMEU), SYDNEY, NSW	**6**
Denso Manufacturing Australia Pty Ltd, ALTONA, VIC	**12**
Department of Employment, Workplace Relations and Small Business, CANBERRA, ACT	**23**
Health Services Union of Australia, FLEMINGTON, VIC	**16**
Independent Education Union of Australia (IEU), SOUTH MELBOURNE, VIC	**29**

International Centre for Trade Union Rights (ICTUR), MELBOURNE, VIC	**34**
Master Builders Australia Inc, TURNER, ACT	**13**
Maurice Blackburn Cashman, CARLTON, VIC	**36**
National Farmers' Federation, KINGSTON, ACT	**5**
National Meat Association of Australia, CROWS NEST, NSW	**26**
National Tertiary Education Union, SOUTH MELBOURNE, VIC	**15**
National Union of Workers, NORTH MELBOURNE, VIC	**3**
Office of Employment Advocate, SYDNEY, NSW	**10**
Shop, Distributive & Allied Employees' Association, MELBOURNE, VIC	**21**
Slater & Gordon, MELBOURNE, VIC	**28**
States of New South Wales, Queensland and Victoria, BRISBANE, QLD	**33**
The Association of Professional Engineers, Scientists and Managers, Australia, MELBOURNE, VIC	**19**
The Victorian Bar Inc, MELBOURNE, VIC	**35**
Transport Workers' Union of Australia (TWU), CARLTON SOUTH, VIC	**30**
United Trades & Labour Council of South Australia, ADELAIDE, SA	**14**
Victorian Automobile Chamber of Commerce, MELBOURNE, VIC	**24**
Victorian Trades Hall Council, CARLTON SOUTH, VIC	**20**

List of submissions received from individuals:

Mr Keith Handock, ADELAIDE, SA	**4**

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE AT THE PUBLIC HEARING

The following witnesses gave evidence at the public hearings:

THURSDAY, 31 AUGUST, 2000

CANBERRA

WITNESSES

BURROW, Ms Sharan Lesley, President, Australian Council of Trade Unions

CALVER, Mr Richard Maurice, Director, Industrial Relations, National Farmers Federation

COLE, Mr Ted, Advocacy Team Leader, Department of Employment, Workplace Relations and Small Business

COONEY, Mr Justin, Federal Industrial Officer, Australasian Meat Industry Employees Union

FREEBURN, Mr Lloyd Douglas, Assistant General Secretary, National Union of Workers

GRINSELL-JONES, Mr Alan Reginald, National Director, Industrial Relations, Master Builders Australia Inc

HAMILTON, Mr Reginald Sydney, Manager, Labour Relations, Australian Chamber of Commerce and Industry

JACKSON, Mr Robert Louis, Senior Associate, Employment Unit, Slater and Gordon

LEAHY, Mr Barry, Group Manager, Workplace Relations Policy and Legal, Department of Employment, Workplace Relations and Small Business**.**

MARLES, Mr Richard Donald, Assistant Secretary, Australian Council of Trade Unions

MAXWELL, Mr Stuart Glyn Robeson, National Industrial Officer, Construction, Forestry, Mining and Energy Union, Construction and General Division

MENDLESSON, Mr David Martin, Federal Industrial Officer, State Public Services Federation Group, Community and Public Sector Union

RUBINSTEIN, Ms Linda Esther, Senior Industrial Officer, Australian Council of Trade Unions

SMYTHE, Mr James Edward, Chief Counsel, Workplace Relations Policy and Legal Group, Department of Employment, Workplace Relations and Small Business

TACY, Ms Lynne, Deputy Secretary, Department of Employment, Workplace Relations and Small Business

WAINWRIGHT, Mr Raoul David, National Legal/Research Officer, Construction, Forestry Mining and Energy Union, Construction and General Division

YILMAZ, Mrs Leyla, Manager, Industrial and Employee Relations, Victorian Automobile Chamber of Commerce