Submission of the CFMEU, Construction and General Division, on the:

- ❑ 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

1. The construction industry is one of Australia's most important economic sectors. In May 2000 total employment in the industry was 707,600 (PC Austats, Labour Force Table 9I). The industry contributes 6.3% of Australia's total Gross Domestic Product and is Australia's fifth largest industry. (Employment Studies Centre, *'Constructing the Future'*, August 1999).

2. The Construction, Forestry, Mining and Energy Union (CFMEU) is the principal union in Australia's construction industry.

3. This submission will go to those issues in relation to the above Bills that impact most directly on the construction industry. In short, the submission will concentrate on the operation of the secret ballot provisions in a construction industry setting and the proposed changes to Picnic Days.

4. On issues contained in the four Bills not addressed in this submission, the CFMEU opposes the legislation and endorses the submission of the ACTU.

Section A: Picnic Days.

5. The Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000 seeks to exclude union picnic days from 'allowable matters' in Awards as

set out in section 89A of the Workplace Relations Act 1996. It also deals with tallies in the meat industry, on which the CFMEU will not comment beyond endorsing the submission of the AMIEU.

Public Holidays Test Case

6. It is only six years ago that a decision of the Victorian Government to remove a number of substitute holidays led to protracted industrial action in that State. Ultimately, the issue was the subject of proceedings before the Australian Industrial Relations Commission, which resulted in a Full Bench decision more commonly known as the Public Holidays Test Case (Print L4534). In that decision the Full Bench said:

> *"We also accept that the declaration of public holidays, by whatever legal instrument, is the prerogative of the various Governments. There is a need, therefore, to reconcile, if possible, the Commission's "safety net" function with the authority of the Governments. There are certain days which do <u>not</u> require any action by the States to permit their identification in the Commission's awards. No State law is necessary to define Christmas Day as 25 December, Boxing Day as 26 December or New Year's Day as 1 January. Good Friday and the Monday thereafter also stand in their own right……*
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> *Though there are some variations between States, we think that a prescription of ten days (excluding Easter Saturday) gives reasonable effect to the criterion of minimum change."* (p19-20)

7. The Full Bench then went on to decide that awards should normally provide;

> *"that holidays (or payment in lieu) be observed in respect of New Year's Day, Good Friday, the Monday thereafter, ANZAC Day, Christmas Day and Boxing Day;*

that holidays (or payment in lieu) be observed also in respect of the days specified in the relevant States and Territories as Australia day, the Queen's Birthday and Labour Day;

for an additional holiday (or payment in lieu) which may be a day identified by a governmental prescription (for example, Melbourne Cup Day) or a day otherwise specified (for example, for a union picnic); and

that when a prescribed holiday, other than ANZAC Day, falls on a Saturday or Sunday, a substitute day is provided." (p.20)

Award Provisions

8. Since that decision, most Awards have been varied to reflect the standard set by the Full Bench. This amendment however seeks to turn the clock back, but for no justifiable reason.

9. As for Picnic Day, this is included in the 10 day minimum. Where it exists in Awards the Award normally provides that where the employer arranges another day as a picnic day for their employees then that day can be substituted for the industry Picnic Day.

10. For example, the main construction industry Award, the National Building and Construction Award 1990, provides for a Picnic Day in New South Wales and Western Australia. Clause 20 (e) (iv) of the Award states that;

    "Where an employer holds a regular picnic for his/her employees on some other working day during the year such day may be given and may be taken as a picnic day in lieu of the picnic day here fixed."

Award 'Simplification'

11. Further, it seems illogical to begin a further Award 'simplification' process before the original process has concluded and been properly assessed.

This is a point that Senator Murray made strongly in his report on the Second Wave legislation in November 1999

> "… the fact is that the award simplification and modernisation process begun under the WRA is only half way through. There is little point proposing further rationalisation, simplification, or amendment until that process is bedded down, and its consequences fully understood." (Senate Employment, Workplace Relations, Small Business and Education Legislation Committee 'Consideration of the Provisions of the Workplace Relations Legislation Amendment Bill 1999' Democrat Senators' Report, page 396.)

12. Item 9 of the bill contains an insidious change to the Award 'simplification' process. The provisions here effectively take over from the Workplace Relations and Other Legislation Amendment Act 1996 (WROLA) process, but introduce subtle change which are not explained in either the Explanatory Memorandum or the Minister's second reading speech.

13. For example, the Government seeks to remove discretion from the AIRC as to whether or not they review an Award. The Minister has not bothered to explain why this attack on the independence of the AIRC is necessary.

Picnic Day – A Strong Tradition

14. In his second reading speech on this Bill, Peter Reith said that picnic days are "very isolated in their incidence and observance". This simply shows the Minister's lack of knowledge of the construction industry and the role of the Picnic Day. In New South Wales a large and well-attended Picnic Day is organised.

15. In Sydney, The CFMEU holds Picnic Day celebrations at Australia's Wonderland Theme Park. The day is very well attended by members and their families with over 9,000 people attending in December 1999. (see

attachment A) The New South Wales Picnic has been held at Wonderland since 1992 with large attendances in each year.

16. The picnic day serves as a rare opportunity for building workers from across the state to gather and socialise. This is important for an industry such as construction that is characterised by a highly mobile and often isolated workforce.

17. Further, as the photographs attached to this submission show, the Picnic Day functions are family days. This is an important annual event for workers who routinely work 6 days a week, ten hours a day.

The CFMEU invite members of the Committee to attend our Picnic Day functions in December to see that the Minister's view of Picnic Day observance in the construction industry is, at best, inaccurate.

State and Federal Award Inconsistency

18. Provision for a Picnic Day for New South Wales was inserted in federal construction industry Awards in 1963, to bring them in line with State Awards. Any removal of this day from the National Building and Construction Industry Award 1991 would re-introduce an inconsistency between the Federal and State systems.

19. This could result in some workers on a building site having an entitlement for a Picnic Day in December, while other workers had an entitlement for a separate day. This situation would cause confusion and delays throughout the construction industry.

Section B: Secret Ballots.

20. The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000 seeks to introduce new preconditions for the taking or organising of protected industrial action by employees and organisations of employees.

21. The CFMEU opposes the general thrust of the legislation on the grounds that it is discriminatory (seeking only to limit action by workers) and is in breach of Australia's obligation to International Labour Organisation covenants. For further discussion on these points we refer the committee to the ACTU submission.

22. This legislation represents a thinly veiled attack on the right to strike. The blatantly anti-union tenor of this legislation can be seen in the provisions requiring the statement on the ballot paper. The end result of the Government's approach would be that a ballot for the taking of industrial action would be more complicated and involved than the ballot to elect members of the House of Representatives. The attempt to impose additional costs on unions should also be seen in this light.

23. The CFMEU also endorse the comments made by Senator Murray on the last occasion the Government proposed these changes, and reproduce the relevant passages below.

> "At present pre-strike ballots are available to employees under section 136 of the Act, and the Commission can order secret ballots at its discretion under section 135. And of course, elections of union officials are by secret ballot. The provisions of Section 135 and 136 have apparently been rarely used, suggesting that there may be little real demand from employers or employees for further access to secret ballots.

However, the new provisions pose great dangers of actually escalating conflict, lengthening disputes, and making for more litigation. (see submissions from Professors Isaac and McCallum.) The committee heard evidence concerning the poorly designed Western Australian secret ballot laws, forced through their compliant upper house before the Coalition lost control of it. They have been an utter failure.

In short, the provisions of this Schedule add little to industrial democracy and add greatly to impediments to unions to undertake legitimate industrial action, while opening up the prospect of longer disputes and litigation.

This schedule should be opposed outright. It does not add to industrial democracy." (Senator Murray, Senate Employment, Workplace Relations, Small Business and Education Legislation Committee 'Consideration of the Provisions of the Workplace Relations Legislation Amendment Bill 1999' Democrat Senators' Report, page 398.)

Secret Ballots in the Construction Industry

24. The Government's proposal to make secret ballots mandatory before workers can take protected action is a recipe for disaster in the construction industry.

25. The legislation does not take into account the fact that construction sites are multi-employer workplaces and that one employer in the construction industry may have employees spread across numerous sites at any given point in time. It is simply ridiculous to attempt to enforce legislation in the construction industry that has been designed with a fixed, single-employer workplace in mind.

26. During the Second Wave Inquiry, the Senate Committee heard evidence from Master Builders Association representative Alan Grinsell-Jones.

When Senator Carr asked how the secret ballot provisions would work in practice on a major construction site Mr Grinsell-Jones stated:

> "I would have to say that we do see a great deal of difficulty in how the secret ballot provisions would operate on a major commercial project. How it would operate would depend upon a whole range of circumstances. If it is a dispute which involves one employer, that employer may have employees spread across a number of sites. That could be the nature of the dispute.….
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> As to the nature of industrial action which may be taken, it depends. If you had a series of disputes going on because a whole range of employers were involved in dispute with the CFMEU over the appropriate terms and conditions of employment, then you may indeed have a situation on a site where there were 20 different employers with their own employees, all of whom would have to have a ballot." (Mr Grinsell-Jones – Hansard, Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, 28/10/99, EWRSBE 707)

27. So, even though construction industry employers put the Government on notice that the legislation would cause difficulty in our industry, the proposal has been introduced for a second time without any effort being made to address this fundamental flaw.

Workers from a Non-English Speaking Background

28. A high proportion of construction workers come from a non-English speaking background. The complicated and language intensive nature of the process would disadvantage these workers and would constitute an additional burden for construction industry employers and unions.