APESMA

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28th August 2000

Mr John Carter
Secretary
Senate Employment, Workplace Relations,
Small Business & Education Legislation Committee
S1.61
Parliament House
CANBERRA ACT 2600

Email: eet.sen@aph.gov.au

Dear Mr Carter

Re: Various Bills to Amend the Workplace Relations Act 1996

1. I refer to the Senate's referral to the above Committee of the following four (4) Bills to amend the Workplace Relations Act 1996:

   - 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.

2. We outline our submission below.

Introduction

3. The Association of Professional Engineers, Scientists & Managers, Australia (APESMA) is an organisation registered under the Workplace Relations Act 1996 (the Act) representing over 25,000 professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, information technology professionals, managers and transport professionals throughout Australia. We are the only industrial association representing exclusively the industrial and professional interests of these groups.

4. By the nature of their academic training and their roles as professionals and managers in the workforce the employment arrangements for our members are often structured differently by employers when compared with other occupational and employment groups. For instance we estimate that at least 30 per cent of our members are employed under individual contracts with a growing proportion of this number, perhaps as high as 20 per cent, moving on to AWAs. This is particularly the case in public sector areas. We would also estimate that approximately 10 per cent of our total membership is engaged as contractors and consultants. We expect this number to grow significantly in areas such as IT, architecture and consulting engineering.

5. Our submission to this Senate Inquiry therefore endeavours to raise a number of key considerations in this context of the employment relationships applying to professional and managerial employees.

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

6. As remarked earlier APESMA is finding a growing proportion of the 30 per cent of its members employed on individual employment contracts moving to the AWA stream. Currently we estimate this to be around 1,500 or 20 per cent of those on individual contracts. Our experience is that the great majority of these are agreements made with professional and managerial employees in senior and more highly remunerated groups. However, it is evident to us that in some employment areas AWAs are also being extended further down the line to middle ranking and younger employees.

7. APESMA plays an active role in the provision of advice, support and representation to members negotiating agreements in the AWA bargaining stream. Whilst in the early days of the legislation we found a number of procedural difficulties relating to the certification process, these have since been largely rectified resulting in some streamlining of the approval process. However, we see the amendments to the Act now being proposed as taking a new and much more dangerous direction as they will have the effect of removing a number of in-built safeguards currently provided. Some examples of provisions in the Bill which will do this are:

- The exclusion of employees on remuneration of $68,000 per annum plus from the compliance checking and no disadvantage test.
- Commencement of AWAs on signing rather than after approval by the Employment Advocate.

- Repeal of the requirement for AWAs to be referred to the Australian Industrial Relations Commission if there are concerns about compliance with the no disadvantage test.
- Provision for AWAs to operate to the exclusion of a current certified agreement unless there is express provision to the contrary.

Our concern is that these changes will make it easier for employers to promote the use of AWAs at all levels of the workforce, whilst at the same time diluting the protections that are available to employees under the current Act. The AWA bargaining stream is essentially one directed at individual employment arrangements and we therefore believe it is important for there to be adequate safeguards in place for the protection of individuals from the risks of coercion and exploitation due to imbalances in the power relationships.

8. We therefore oppose the amendments contained in this Bill.

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

9. APESMA is opposed to the provisions of this Bill which we say will have no utility and will simply be used to thwart organisations in undertaking protected industrial action as part of the collective bargaining regime available under the Act.

10. Sections 135 and 136 of the Act currently provide scope for either the Commission to make orders for the conduct of a secret ballot or for members of an organisation to make application to the Commission for a secret ballot order. Our experience is that these provisions are used infrequently not because they are particularly cumbersome but rather because there is little optimism in secret ballots actually assisting the speedy resolution of disputes.

11. Our only experience with secret ballots under the current Act has been those ordered by the Commission under S135 (2A) in circumstances where a vote of employees was needed for the purpose of a S170LK agreement. The circumstances giving rise to the necessity for these orders have invariably been directly connected with bungled attempts by employers to have employees vote on whether they want to make such an agreement. It leads us to suggest that rather than require a secret ballot of members of an organisation before protected industrial action can be taken, the Government would do better to focus its attention on amendments to the Act requiring the Australian Electoral Commission to conduct secret ballots of employees for the purpose of determining whether a valid majority of them

wish to genuinely make a S170LK agreement. The costs for the conduct of these ballots should be borne by the employer.

Workplace Relations Amendment (Termination of Employment) Bill 2000

12. APESMA supports an unrestricted right for all employees to seek redress in the event of unfair dismissal in a cost free jurisdiction before an independent tribunal. We also see this principle extending to independent contractors. We are therefore opposed to this Bill which will have the effect of restricting the capacity of individuals to make applications under Part VIA Division 3.

13. We have earlier pointed to the growing proportion (currently around 10 per cent) of our members who are finding work as contractors and consultants. In parallel with this we have noticed an increasing number of disputes involving issues such as premature contract termination. For many contractors and consultants in this situation the only remedy is costly civil litigation. Our view is that the Act should be amended to enable disputes of this nature to be dealt with by the AIRC. Examples of this approach are available in the Queensland and New South Wales State industrial jurisdictions.

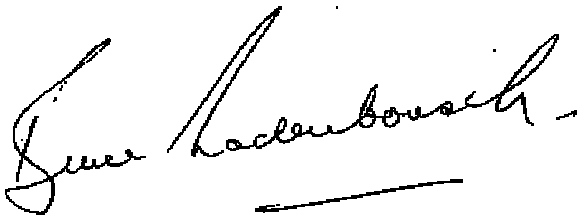
14. We particularly oppose those aspects of the Bill which would require the AIRC to have regard to the size of an employer's undertaking in determining whether there was a valid reason for termination and to limit jurisdiction in circumstances where termination was affected by operational requirements of the employer's undertaking. These amendments will have a major impact in industries such as pharmacy, IT, architecture and consulting engineering where employment establishments are typically small and where we find the incidence of employee grievances, including dismissals, is highest. Our experience is that this is a factor largely attributable to the high turnover of business ownership and the relatively unstructured nature of prevailing employment arrangements. The amendments proposed will deprive these high-risk sectors of the workforce from the limited protection they have under the current Act.

15. Finally, we say that the capacity for a respondent to have a motion for dismissal of an application for want of jurisdiction dealt with at any time will simply concentrate argument on technicalities at the expense of finding sensible solutions to dismissal grievances. The trauma of dismissal and the availability of access to an independent umpire to have grievances addressed in an atmosphere of "a fair go all round" will be lost to technical/legal argument.

Appearance before the Committee

16. We would be happy to appear before the Senate Committee to address matters raised in this submission. Alternatively I can be contacted on ☎ [(03) 9695-8831], facsimile [(03) 9696-9321] should you or your staff wish to discuss any of the issues raised in this short submission.

Yours faithfully



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Director Industrial Relations

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