SENATE EMPLOYMENT, WORKPLACE RELATIONS, SMALL BUSINESS AND EDUCATION COMMITTEE

Inquiry into the Workplace Relations Amendment Bill 2000

Submission by the Australasian Meat Industry Employees Union

Introduction

1. The AMIEU is opposed to the amendments proposed by the Government to the Workplace Relations Act (WRA) in the:

- Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000
- Workplace Relations Amendment (Termination of Employment) Bill 2000
- Workplace Relations Amendment (Australian Workplace Agreement Procedures) Bill 2000
- Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

2. The AMIEU opposes all four Bills because:
   - they undermine the safety net value of awards,
   - restricts the rights of the Union to take protected industrial action and thus tilts the balance of bargaining power in favour of the employer,
   - does not address the disadvantage faced by employees in negotiations when the employer is hell-bent on imposing AWAs.

3. The AMIEU supports the submission made by the ACTU. The AMIEU's submission will concentrate on the Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000 ('the Bill') as this Bill is of particular application to the meat industry.

REMOVAL OF TALLIES AS AN ALLOWABLE AWARD MATTER

4. The AMIEU draws the Employment, Workplace Relations, Small Business and Education Legislation Committee's ('the Committee) attention to the submission by the Union into the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999. In that submission the Union:
   - stated that the Australian Industrial Relations Commission (AIRC) is reviewing the tally system as part of the process of reviewing awards,

- to remove tallies as an allowable award matter would inhibit the Australian Industrial Relations Commission from implementing the Federal Meat Industry Decision (Print R9075), particularly those aspects of the Decision dealing with the tally provisions of the award in question,
- that the evidence presented during the AIRC hearings showed that meat processors while not using the award prescribed tally system were using their own arrangements whether contained in certified agreements or by way of private arrangements between the employer and employee/s and/or Union.

5. Much of the case before a Full Bench of the AIRC was in relation to the tally system in the Federal Meat Industry Processing Award 1996 ('the FMIPA'). This tally system is contained in Appendix 3 of the FMIPA and is brought into effect by clause 26 in the main body of the FMIPA.

The AIRC Decision

6. In its decision the AIRC resolved to remove Appendix 3 and clause 26 from the FMIPA. It decided this because, amongst other factors, the AIRC believed that the FMIPA tally system did not comply with subitems 51(6) and 51(7) of the Act. That is the provisions of the Act going to process and detail, and efficiency and productivity.

7. In its argument to the AIRC for the retention of the tally the AMIEU repeatedly emphasised the important safety net factor that Appendix 3 provided for piecework employees. The AMIEU was insistent that the timework provisions in the award would not be an adequate safety net for employees working on incentive schemes. In its decision the AIRC said that "*... does not establish that the Appendix 3 tally provisions operate as a safety net in any but the most technical sense*." [¶92]

8. In the background paper on the Federal Meat Industry Decision ('the FMID') prepared by the AIRC it was further noted that the Full Bench found that the tally provisions of the FMIPA rarely operated without modification and that there was "*clear evidence of a systemic inadequacy*". It concluded there were a number of reasons for the decline in use of the provisions including that they:
   - were not "*user friendly*",
   - lacked the flexibility to meet the variety of work methods employed in the various plants covered by the award, and

- appeared to be seriously out of date. [¶ 94, 98]

9. The Full Bench also found that the tally provisions:
   - did not operate as properly fixed minimum rates of pay as required under subitem 51(4) of the Workplace Relations and Other Legislation Amendment Act 1996 (the WROLA Act);
   - did not appear to encourage the making of agreements between employers and employees at the workplace or enterprise level, and
   - did not comply with the award simplification requirements outlined in subitems 51(6) and 51(7) of the WROLA Act. [¶ 96,100,102-106]

10. The Full Bench stated that:

    "*By contrast, a simplified award provision could provide a clear and simple safety net as a basis for agreement at the enterprise level on additional terms appropriate to the particular operation concerned. In the circumstances, we are satisfied that the award should be varied to provide for a safety net provision of that kind*". [¶ 101]

11. The Full Bench decided that in deleting Appendix 3 it was necessary to substitute a replacement in order that there was a safety net in addition to the timework rates contained in the FMIPA.

    "Against that background, we are satisfied that it is appropriate that provision be made in the award for the operation of an incentive payment system as an alternative to the time work system. The system that is alternative to the standard award time work provisions should be defined with precision. The limits within that system displaces award provisions that might otherwise apply will need to be declared and readily ascertainable. If that is not done, neither time work system provisions or the incentive payment system provisions will be adequately enforceable. We can find no good reason to confine production or work measured for purposes of rates of pay under an incentive system to "tallies" specifically or generally." [¶ 120]

Why Tallies Should Remain an Allowable Award Matter

12. The Full Bench's Decision was in relation to tallies in the FMIPA, though the Decision will have application to other awards containing tallies. However the Full Bench was conscious of the need to retain award protection for employees working on piece rate systems.

    "*On the other hand, in our view, <u>it is essential that the terms and conditions of any incentive payment system to operate in place of the</u>*

standard time work payment system be documented, authenticated and readily ascertainable. It is necessary that a clear award duty be imposed on the employer to record the terms and conditions of the incentive payment system in writing, and to note the time and wages record in a manner that ensures the relevant terms and conditions are ascertainable and the application of them examinable upon inspection. The proposal made by the AMIEU/ACTU as subclause 16.8, suitably modified, should for that purpose be merged with the measure proposed as subclause 16.3 by the NMA. Those measures are also necessary to ensure that employees have an opportunity to understand, or can readily ascertain, the terms of the incentive payment system, and are able to monitor accrual of entitlements under it." [¶ 120] (AMIEU added underlining)

13. In the submission of the AMIEU for the AIRC to properly implement its decision it needs to retain the power to monitor the operation of tally systems and if necessary to review and conciliate on particular systems as they operate in a workplace.

14. Under s89A of the Act AIRC involvement is normally limited to allowable award matters only. For the following purposes, an industrial dispute is taken to include only matters covered by subsections (2) and (3) The relevant sections of the Act are:

    89A(1) *(a) dealing with an industrial dispute by arbitration*
    (b) preventing or settling an industrial dispute by making an award or order
    (c) maintaining the settlement of an industrial dispute by varying an award or order.

    89A(2) *Allowable award matters For the purposes of subsection (1) the matters are as follows:*
    (d) piece rates, tallies and bonuses,

15. In reaching its decision to abolish Appendix 3 the AIRC noted the concern of the AMIEU (especially as to an adequate safety net and/or employers moving to timework during negotiations on incentive systems) of employer's to impose the employer's option. Even though the AIRC decided that awards generally provide that the system of work is a matter for the employer in this instance the AIRC reserved the right to review how this discretion is exercised. For this purpose the AMIEU submits that tallies need to remain an alowable matter to avoid any confusion over the

power of the AIRC to properly review tally systems as the AIRC has undertaken in the Federal Meat Industry Decision.

> "*On balance, we are disposed against including provision for automatic reception of incentive payment arrangements in operation at the time of deletion of Appendix 3. Provisionally, we adopt that view as an extension of our belief that, subject to compliance with the award requirements as to minimum entitlements, it should be up to the employer to decide whether employees are engaged on an incentive system or a time work basis. Awards generally provide that the system of work is a matter for the employer. AMIEU/ACTU is concerned that employers will misuse that prerogative to the disadvantage of employees. In this context we note some evidence of employers moving from tally systems to time work in the context of negotiations on tallies or taking other strategic action such as, slowing down the chain speed or not putting up stock and putting downward pressure on earnings. On the other hand incentive schemes operate on an agreed basis throughout the industry. There are strong indications that properly designed tally systems can be of mutual benefit increasing both production and remuneration. We encourage a continuation of a cooperative approach at the enterprise level. In cases where agreement is not possible, however, the employer should have the discretion to implement the system of work considered most appropriate. The manner in which the discretion is exercised will be a matter for consideration in any review of the operation of the new provisions. However, we shall hear the parties further on the issue before making our determination on the point final*." [¶120] (AMIEU added underlining)

16. The AMIEU submits that the Bill's removal of tallies as an allowable award matter undermines the integrity of the decision reached by the AIRC and could prevent the AIRC from properly reviewing the effects of the FMID as to fairness to employees.

> *We do not overlook that the Act supplies a basis for differentiating between "pay rates" and "tallies". Paragraph 89A(2)(c) refers to "rates of pay generally"; paragraph 89A(2)(d) refers to "piece rates, tallies and bonuses". It is arguable that the differential expression for purposes of restricting the Commission's jurisdiction to make an award, connotes an exclusion of "tallies" from the expression "rates of pay". If that be so, subsection 89A(3), which limits the Commission to making a "Minimum rates award" might need to be qualified in application to awards about piece rates, tallies and bonuses. We do*

not consider that we should read the reference to minimum rates of pay in subitem 51(4), or a minimum rates award to exclude tallies. Tallies are a scheme of payment for a distinctive mode of performing work. In our view the tally provisions in Appendix 3, and in the AMH Townsville Award are in form and substance sufficiently similar in kind to provision for rates of pay for the tests in subitem 51(4) to be applied. [¶89] (AMIEU added underlining)

17. In its decision the AIRC has indicated that s89A(c) may not be broad enough to include reference to tallies as part of rates of pay generally. To remove tallies as an allowable matter would expose the AIRC to the possibility that the AIRC cannot implement the Federal Meat Industry Decision as the AIRC envisaged.

Current Situation

18. Since the AMIEU's submission regarding the Workplace Relations Amendment (More Jobs, Better Pay) Bill 2000 the AIRC has nearly completed the examination of the FMIPA. The parties were before the AIRC to put submissions on the final Order on Wednesday 23 August 2000.

19. The Full Bench had issued a Statement which included the Award provision ("Clause 16") (ATTACHMENT ONE) to replace the tally system. The outstanding matters the Commission sought the parties' views on were:
    a no reduction clause,
    definition of timework provisions,
    incentive work during overtime.

20. Incentive Schemes Facilitative Clause - Clause 16:
    - replaces Appendix III and clause 26 of the FMIPA. That is the tally system tables of production, job classifications, staffing levels etc,
    - provides that where a processor wishes to operate an incentive system remuneration must be at least 20% above the timework rate of pay, depending upon the employee classification, (¶16.7)
    - gives the employer the election to introduce an incentive system (whether based on inputs or outputs) as an alternative to timework (¶16.1),
    - provides that the terms and conditions of any incentive payment system be:

- fully explained to employees, (¶16.3.2)
    - be recorded in writing, (¶16.3.3)
    - allows employees to be able to calculate their entitlements as they earn them, (¶16.3.3)
    - be made available to employees in a written form, and to the Union if an employee so requests, (¶16.3.4)
    - all payments be fully recorded in a time and wages book. (¶16.4)

21. The employer or the majority of employees is entitled to terminate an incentive payment system on two months notice. (¶16.9) Clause 16.5 deals with disputes about an incentive system. This allows for the AIRC to conciliate but not arbitrate.

22. Clause 16.13.1 defines an incentive payment as a "system of payment whereby the rate or quantum of wages is calculated for each day, shift or week, by direct reference to the amount of work performed by the employee, either individually or as a member of a team".

23. In the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee report on the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 the Coalition Senators' recommended that tallies and bonuses be removed as an allowable award matter.

24. The Coalition Senator's report referred to the Department of Employment, Workplace Relations and Small Business' ('the Department') submission that tallies were based on inputs, piece rates were based on outputs and that bonuses were often unrelated to production. This portrayal corresponds to the description of tallies in the Productivity Commission report *Work Arrangements in the Australian Meat Processing Industry (October 1998)* at pages XXI and XXII.

25. The inference is that use of tallies involves an emphasis on "inputs" which do not promote efficiency in unit production, improvements in product quality and harmonious industrial relations.

26. This analysis is undermined by the fact that many employers choose to use the tally system even where alternatives are available. For instance Australia Meat Holdings (AMH), Australia's largest meat processor utilises units of tally in establishing balanced teams for the slaughtering and boning of beef. This ensures work is properly distributed as the sides of meat

move down the processing chain. This is despite the fact that AMH has certified agreements which pay bonuses based on level of production ie outputs. To make academic distinctions between tallies and piece-rates simply ignores the reality of the meat processing industry.

> *We should mention, however, that the criticisms made of the tally system by Dr Heilbron, which we have earlier summarised, do not deter employers from using tally systems based on different job values, tally levels and penalty payments from those found in Appendix 3. This is implicitly recognised in NMA's submission that it has proved extremely difficult to amend the existing tally values. This leads us to conclude that tally systems do not always have an adverse effect on productivity. Furthermore, the Productivity Conimission's assessment of the effect of the tally system on labour productivity is expressed in very guarded tenns.* [Federal Meat Industry Decision ¶104]

27. Removing tallies and bonuses as allowable award matters will almost certainly lead to disputes as to what is a tally and what are piece rates. Far from reducing the level of industrial disputation this will only exacerbate industrial disharmony.

28. As mentioned earlier clause 16 allows an incentive system to be treated as if the terms of the incentive system were terms of the award. During the hearings before the Full Bench it was apparent that where the parties were operating tally/incentive systems that did not formally comply with the award the enforcement of that informal system was highly problematic. Employers were susceptible to action for underpayment of wages and employees could not ensure that they received over award payments. (ATTACHMENT TWO)

29. To remove tallies as an allowable matter would permit this problem to continue. It would in fact lessen the choice of incentive systems available to employers as they would be reluctant to use a system which does not have award status. As stated earlier some employers prefer to use tally systems.

30. Likewise employees would be unable to enforce claims for under payment of wages. While this is not be the case for incentive arrangements contained in certified agreements the evidence before the Commission showed not all employers chose to make certified agreements, preferring informal arrangements.

"*More generally, it is clear that many employers in the industry are using tally systems which are more beneficial to them than the provisions of the Appendix. In some cases the arrangements are found in certified agreements, in many others they are not.*" [Federal Meat Industry Decision 91 IR 414 @ ¶111]

31. Clause 16 will ensure proper recording of these arrangements and give the arrangement award standing.

32. At point 7.28 of the Coalition Senators' Committee Report they state that "*tally and bonus payments are more appropriately developed at the workplace or enterprise level*". The Union submits that this concern is met by the decision of the Full Bench and clause 16. Despite the Union's submission to the contrary the Commission restricted itself to dealing with disputes on the implementation of an incentive system by conciliation only.

33. In their submission on the dispute settling process the employers had strongly objected to the Commission been able to arbitrate on the implementation of an incentive scheme. The NMAA was concerned that to allow arbitration would be to impose an incentive system on the employer, ie not an incentive system derived at the workplace level. In the event the Commission has restricted itself to conciliation. The Coalition Senators' concern at ¶7.28 of the Committee report is no longer valid as clause 16 keeps the development and implementation of an incentive system to the workplace level.

34. Clause 16.7.1 provides a payment of 20% of the timework rate and a further 10% for a person employed on daily hire. Attachment 2 shows the wages levels resulting from these calculations. For a daily hire slaughterer/boner, working an incentive system the safety net rate is $607.87 per week. This is the most common job for a piece worker. It is the submission of the Union that this amount (approximately $31,600 per annum) as a base is hardly a barrier to an employer introducing an incentive system. If tallies were removed as an allowable award matter then the safety net amount is $514.35 (approximately $26,746 per annum). The Union submits that this would be grossly unfair for an employee working in a piece-rate system. (ATTACHMENT THREE)

35. An outstanding issue in the FMIPA is the so called no-reduction clause. This is the obligation placed on the AIRC by Item 51(5) of the Act that if the Commission varies the award under item 51(4) of the Act the

Commission, unless it is the public interest, must include provisions that overall entitlements to pay provided by the award are not reduced.

36. It was the submission of the employers that the provisions of clause 16 itself provides adequate protection and that it was in the public interest that the new award does not have a no-reduction clause. The Union proposed a no-reduction clause tied to payments and production as outlined by the deleted Appendix III. The Union accepts that the no-reduction commitment was only for current employees at the current FMIPA wage levels. If the Commission continues to anually adjust safety net pay levels in the order of $10 to $15 per week then after two to three years the rates contained in Appendix III would fall below the rates in clause 16 and the union proposes no-reduction clause would be redundant. As was stated earlier the Full Bench had yet to rule on this aspect of the proposed award.

Conclusion

37. The primary position of the AMIEU is that the powers of the AIRC should not be restricted by s89A. In the event that they are the AMIEU submits that s89A(2)(d) which enables tallies as an allowable award matter should be retained because:
    - the AIRC needs to be certain of its power in order to fully implement the Federal Meat Industry Decision, particulary to ensure that a Commission review of the implementation of the Decision will be possible.
    - statements from the Minister would indicate that the Minister believes that the policy objectives of the Minister have been met and therefore it would seem there is no good reason from the Minister's point of view to remove tallies as an allowable award matter, (ATTACHMENT FOUR)
    - use of tally systems is widespread in the meat processing industry, employers choose to operate tally systems,
    - as a matter of fairness for meat industry employees the AIRC has set a separate safety net for incentive systems as opposed to timework. To remove tallies as an allowable award matter may put into doubt the enforceability of the incentive systems safety net and cause confusion.

38. It should also be noted that the Commission hearings have been in relation to the FMIPA. There is one award each in South Australia and Victoria and seven awards in Queensland which have tally provisions. These awards have been listed before the AIRC for review according to the

provisions of the Act. These reviews will take place following the final order in the FMIPA. The Commission has placed the onus on the parties wishing to retain tally (almost certainly just the AMIEU) to demonstrate why the tallies should be retained for a particular award. The reviews are to be concluded in a much quicker time frame following the Federal Meat Industry Decision. The Federal Meat Industry Decision has been implemented without industrial disputation while allowing employees to put their case before the Commission. To remove tallies as an allowable matter now would be to junk the hard work carried out by the parties and the Commission and to deny tally employees the chance to a fair hearing.

Tally provisions in other awards

[149] *Whilst this is an application to vary the FMIP Award, the proceedings have been treated as a test case for meat industry tally provisions generally. As we noted earlier, applications have been made to amend the tally provisions in many other awards in the industry. The parties to nineteen other awards were given an opportunity to make submissions in this case. A large number of awards and agreements were tendered in the proceedings. Not all of these awards contain tally provisions that are identical with those in the FMIP Award. Some do and others contain provisions which are substantially the same. A number of our conclusions in this case about the provisions of Appendix 3 will apply equally to similar provisions in many other awards. However, we must qualify that observation in relation to some awards. We expect that our general findings would be widely applicable. Findings and conclusions based on the detailed provisions of the FMIP Award and its operation may need to be considered carefully against the detail of a particular award before being applied. Subject to that qualification, we would expect applications to vary those provisions to be dealt with in accordance with this decision, subject to some important reservations we now mention.*

[150] *We were told that some tally provisions have been updated and are not subject to the deficiencies identified in this application. Where it can be demonstrated that this has occurred and that the provisions are in active use, the case for deletion of the provisions might not be compelling, depending upon the circumstances overall. From the evidence in this case, however, we doubt whether prescriptive multiple or dual tally systems of the kind contained in Appendix 3 could ever be appropriate in an award applying to a range of different processing plants. The evidence has exposed the near impossibility of applying a prescriptive system to a range of different types of plants.*

That finding leads to the conclusion that the manner of operation of incentive systems is best left to negotiation at the employer or enterprise level, a course in harmony with the scheme of the Act. ***[151]*** *In any simplification proceedings concerning other federal awards in the industry a party which seeks to retain the tally provisions will bear the onus of demonstrating that those provisions do not include deficiencies of the type in Appendix 3, and that it is appropriate that the award contain a prescriptive tally system. Unless the Commission is satisfied on those two issues, the tally provisions are to be deleted and replaced by provisions dealing with incentive systems along the lines which we have provisionally determined in this case, and will finalise in due course.* [Federal Meat Industry Decision Print R9075]

39. The Union submits that the facilitative provisions contained in clause 16 satisfies the objections of the employers etc who want tallies removed as an allowable award matter. In the submission of the Union for the Parliament now remove tallies from awards would be counter productive, undermining the work already carried out by employers, the Union and the Commission. Most importantly it would greatly disadvantage employees, potentially reducing their income and bargaining strength for workers in struggling rural areas.

PICNIC DAY

40. The three main meat industry awards are:
    Federal Meat Industry Processing Award
    Federal Meat Industry Smallgoods Award
    Federal Meat Industry Retail & Wholesale Award
    These three awards cover New South Wales, Northern Territory, Queensland, South Australia and Victoria.

41. The public holidays contained in all three awards common to all these states are:

New Years Day	Australia Day	Good Friday
Easter Monday	Anzac Day	Sovereign's Birthday
Labour Day	Christmas Day	Boxing Day
Union Picnic Day		

    A total of ten public holidays.

42. In addition:

Queensland celebrates Exhibition Day (or equivalent),
Victoria celebrates Melbourne Cup Day (or equivalent).

A total of eleven public holidays for these two states.

43. Union Picnic Day is observed annually in:
New South Wales on the first Monday in November,
the Northern Territory on the last Monday in October,
Queensland on the last Monday in October,
South Australia on the first Monday in March,
Victoria on the third Wednesday in January.

44. In Print L4534 the AIRC found that as the safety net federal award employees were entitled to ten public holidays plus an additional state public holiday or Union Picnic Day. It is the submission of the Union that the removal of picnic day as an allowable award matter will lead to the three main meat industry awards no longer providing an adequate safety net in compliance with Print L4534.

45. The Union is not inflexible on when Picnic day is observed. The Union has made certified agreements which allow Picnic Day to be observed on other than the nominated day, either by agreement between an employee or a group of employees.

46. Two state branches of the Union run a function for Picnic Day. Attached are programs and articles for Picnic Day observed in Victoria and South Australia. (ATTACHMENT FIVE and ATTACHMENT SIX) In New South Wales and Queensland individual abattoirs organise their own functions. Examples of these are:
Stuart at Townsville,
Bindaree Beef at Inverell,
Wollondilly at Picton.

47. Many employers are happy to sponsor individual events or donate prizes. Picnic Day also allows shed committees to work together engendering a spirit of co-operation.

48. The Union submits that to remove picnic days as an allowable matter would undermine the safety net of the award.