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LABOR COUNCIL OF NEW SOUTH WALES SUBMISSION TO THE SENATE EMPLOYMENT WORKPLACE RELATIONS AND EDUCATION COMMITTEE INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002

INTRODUCTION/BACKGROUND

The Labor Council of New South Wales ("the Labor Council") is opposed to the passage of the Workplace Relations Amendment (Termination of Employment) Bill 2002 for the following reasons:-

1. The NSW system is fair, equitable and comprehenisve and provides an efficient and effective means of dealing with unfair dismissals.

2. Any move to the federal system will result in a reduction of rights for particular classes of employees.

3. Australia's performance in employment protection legislation.

4. There appears to be no economic case for the proposed change.

The Minister for Employment and Workplace Relations, the Hon. Tony Abbott MP observed in his Second Reading Speech that this Bill is the *'same Bill that was laid aside on 28 June 2002 after Members of this House rejected Senate amendments'.* It is the view of the Labor Council that the Bill should again be rejected for the reasons outlined herein.

The ACTU hold a view that the Bill is directed towards the Federal Government's two key objectives in Industrial Relations reform;

1. to reduce the rights and entitlements of employees, particularly those who are employed in the most vulnerable positions in the labour market and;

2. to unfairly strengthen the bargaining position of employers in disputes with unions and union members.

The Labor Council supports the views of the ACTU outlined above.

THE NEW SOUTH WALES (NSW) SYSTEM

The NSW system, which covers approximately 45% of employees in NSW has been in existence for over 100 years and has a reputation amongst both employers and employees as being a fair and reliable system for the settlement of industrial disputes, including those relating to dismissal of employees. There is no justification for changing a system which has

operated well for more than 100 years and it is the submission of the Unions that the Federal Government has failed to identify any specific problems within the NSW system which justify the need for change to the system.

The Labor Council is concerned that the passage of the Bill would mark the start of the dismantling of State Industrial Relations jurisdictions. The Bill, if passed, will see the extension of the federal unfair dismissal provisions to cover employees who currently have access to State systems by extending the federal system to cover all employees of constitutional corporations, rather than only those covered under Federal Awards.

In particular, there seems to be no substantive argument as to why unfair dismissal provisions should be effectively removed from the NSW system, which would be the result if the Bill were passed. The NSW Commission is well resourced and its Members are experienced. The system in NSW allows for unfair dismissals to be dealt with expeditiously and fairly not only in Sydney but in regional areas of the State. Notwithstanding the view that the system has and remains operating well, users of the system in NSW are always seeking to improve the process with a view to benefitting all parties.

REDUCTION OF RIGHTS

The Bill contains several provisions which cause us alarm, including specific exemptions and allowances for small business, (i.e. businesses with less than 20 employees) including:-

- 6 months probation for employees (as opposed to 3 months for employees of all other businesses) – s170CE(5B)(a)
- maximum compensation (when the dismissal is found to have been unfair) halved to 3 months wages – s170CH(8A).

(REFER TO THE APPENDIX 1 OF THIS SUBMISSION)

There is concern amongst Unions in NSW that these provisions, if passed, would provide little or no protection for some of the most vulnerable members of the labour force, i.e. casual employees and employees of small business. It is conceivable they may result in some unscrupulous employers "thumbing their nose" at the Industrial Relations system and being allowed to get away with it.

Whilst the Federal Minister in his second reading speech claimed that without an exception, employers might be reluctant to hire casuals, the opposite is a concern for Unions. There is real concern amongst the Union movement that such provisions would encourage the hire of casual labour thus resulting in further destabilisation of the labour force.

During the course of debate on the Bill in Federal Parliament a number of matters were the subject of discussion including the assertion that the "more

stringent" provisions of legislation were, the more likely applications would result in failure.

On looking at the proposed Bill there are a number of provisions contained within it which could only be described as "stringent". These provisions include,

- A casual employee will be exempted from access to the jurisdiction unless he or she has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and the employee (but for the dismissal) had a reasonable expectation of continuing employment with the employer.
- Payment of a filing fee on filing of an unfair dismissal application.
- Penalties to apply to 'advisers' pursuing 'vexatious' claims.

If the Federal Government have a genuine concern with regard to costs to small business the concern would be better served by ensuring the mechanism for dealing with unfair dismissals in that sector was properly resourced and operated more quickly than is presently the case. We note the Industrial Relations Commission of NSW is presently reviewing its procedures relating to the operation of Section 84 Unfair Dismissals, with a veiw to expediting the finalisation of such matters. There is no reason why the Australian Industrial Relations Commission could not undertake a similar review.

Providing "special treatment" for small businesses will result in discrimination between employees of small and large businesses. This is totally unacceptable to the Unions. It is the position of the Unions that all employees must have the same rights and access to tribunals, regardless of the size of their employer.

AUSTRALIA'S PERFORMANCE IN EMPLOYMENT PROTECTION LEGISLATION

Another issue, which needs to be considered in the course of the Senate's inquiry, is how Australia compares with other OECD Countries in relation to termination of employment laws. The OECD has assessed on several occasions how Australia's Employment Protection Legislation (EPL) compares with that of other OECD countries.

It needs to be remembered that EPL is defined as covering a number of areas, including dismissal procedures, severance pay, notice requirements, remedies for unfair dismissal as well as restrictions pertaining to the use of temporary labour contracts.

Australia has consistently been assessed as one of the countries with the lowest performing EPL's in the OECD area.

Australia was ranked particularly low on procedural requirements and relatively low on legal requirements for notice periods and requirements for tenure-related severance pay in the case of individual dismissal.

In the 1994 OECD's JOBS STUDY, it was reported that the 'easy to dismiss' countries (of 21) were, in order, the United States of America, New Zealand, Canada and **Australia.** Further OECD studies conducted in 1999 again showed Australia to rank amongst the least performing OECD countries when it came to EPL.

Is this really how Australia wants to be viewed in terms of its protection of Australian workers from unfair treatment by employers?

It is the view of the Labor Council that all employees ought to be afforded the same basic rights, regardless of the size of their employer.

ECONOMIC IMPACT

The contention of the Federal Minister that changes as proposed by the Bill would result in job growth is disputed by Unions. No evidence of this fact has been provided. Should the changes as proposed be made, there will undoubtedly be an impact on the use of casual labour and a decrease in full time and permanent employment, having a negative impact on economic stability in the States. Recent surveys conducted have shown minimal concern by businesses about unfair dismissal legislation in NSW impacting on job creation.

The Federal Government claim the provisions relating to special treatment for operators of small business will have a positive effect on unemployment by reducing costs to small business associated with employment of staff. This claim is disputed by the Union movement. The claim made by the Federal Government was directly disputed during in the matter of *Hamzy v Tricon International Restaurants trading as KFC 2001 FCA 1589* wherein the Federal Court noted there had not been an investigation made of any relationship between unfair dismissal and employment growth and made the point that there was no evidence of any connection between unfair dismissal provisions and employment growth.

CONCLUSION

The Labor Council is of the belief that the Bill, if passed, will result in the manipulation of unfair dismissal legislation by some unscrupulous employers,

the inappropriate use of casual labour leading to a destabilisation in the labour force and pressure on Commonwealth-State relations.

We are not aware of any significant complaints in relation to either the operation of Section 84 of the New South Wales Industrial Realtions Act or the operation of the Commission itself. To our knowledge, the New South Wales Industrial Relations system, over many years, has proven itself to be a system that is respected by employers, employees and unions and it would be dangerous to jeopardise that system in any way.

Any attempt to introduce provisions such as those contained within the proposed Bill may have a considerable negative and irreparable effect on the New South Wales Industrial Relations System which has, to date, served both employers and employees well.

The Labor Council urges the Senate Committee to reject the Bill in its entirety.

MARK LENNON
ASSISTANT SECRETARY

Appendix 1

CURRENT PROVISIONS	PROPOSED PROVISIONS
3 months probation for all employees	6 months probation for employees of small businesses
Commission must consider whether warnings were given	Exclusion of consideration of whether a warning was given to employees of small businesses
Maximum compensation for all employees 6 months wages	Maximum compensation for employees of small businesses halved to 3 months
Casual employees employed on a regular and systematic basis have access	Casual employees barred from access unless employed on a regular and systematic basis for 12 months or more
No filing fee	Payment of a filing fee