SENATE EMPLOYMENT WORKPLACE RELATIONS SMALL BUSINESS & EDUCATION LEGISLATION COMMITTEE

INQUIRY INTO

THE WORKPLACE RELATIONS AMENDMENT (SECRET BALLOTS FOR PROTECTED ACTION) BILL 2002

SUBMISSION BY

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WORKPLACE RELATIONS AMENDMENT
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The SDA is totally opposed to this Bill.

The explanatory memorandum attached to the Bill explains its purpose: "this will ensure the protected industrial action is not used as a substitute for genuine discussions during a bargaining period and to ensure that the final decision to take industrial action is made by the employees directly concerned."

The SDA has no objection in principle to encouraging active participation of workers in the negotiation process. We believe the current system already does this.

The SDA does not take industrial action without full consultation with relevant members. Quite clearly the government is concerned to ensure a 'grass roots' level involvement in any decision taken in relation to protected industrial action. However the current process already allows this.

With the introduction of any new legislation the government should ensure that it is even handed. If the government is serious with this proposed amendment then it should, in order to maintain a balanced position require that employers are also subject to the same secret ballot provisions required of workers.

There have been numerous examples where employers have been prepared to take protected industrial action in the form of lock out of workers. Some of these lock outs have been of extensive duration, example, O'Connors Meatworks in Victoria and Joy Manufacturing in NSW.

Where an employer is a corporation or partnership, then there should be an absolute obligation on the employer to test, through a democratic process, the views of its constituent stake holders to see whether or not they support the taking of protected industrial action against employees.

This is one of the areas where, if it is good enough to impose a condition on workers, then its good enough to impose exactly the same condition on employers.

It would appear that the Government believes that Chief Executive Officers of major corporations which may have large shareholders can effectively be a law unto themselves and be the decision maker for and on behalf of their constituents. It would appear that the Government takes the view that shareholders of corporations have no right to have a say in relation to such serious issues as the taking of protected industrial action by a corporation against its workers.

If the Government is concerned to promote democratic processes in relation to the taking of protected industrial action and to ensure that the taking of protected industrial action is not used as a substitute for genuine discussions during the bargaining period, then it would appear that placing the same secret ballot obligations on employers as will be placed on employees would encourage employers to genuinely try to reach agreement on a matter in dispute, and thus promote discussions in the bargaining period between the employer and the employees and their representatives.

We note that pre-strike ballots are available upon request now under current Section 136 of the Act.

Under current Section 135 the Commission may order a ballot.

As such further legislation is unnecessary.

It is of concern that the discretion of the Commission to order a secret ballot under Section 135(2B) in cases of unprotected industrial action is removed. In our view this encourages employers to respond to such action in a legalistic manner, thus further promoting the antagonistic, litigious framework the government seems intent on promoting.

The amendments place unnecessary cumbersome legalistic impediments into the process.

Given that the Bill is structured as a one sided piece of legislation, the Senate is urged to reject the Bill in its entirely. Until such time as there is equality of obligation on employers and employees in relation to the taking of protected industrial action, we would urge the Senate to reject such politically partisan legislation as is this Bill.

The Bill is unnecessary and will further weaken the important elements of co-operation and conciliation. It should be rejected.