The Uniting Church in Australia
Synod of Victoria Justice and International Mission Unit
130 Little Collins St Melbourne 3000 Phone: 03 9251 5271 Fax: 03 9650 4490

12 April 2002

The Acting Secretary
Senate Employment, Workplace Relations and Education Legislation Committee

Dear Ms Blood,

I am writing on behalf of the Justice and International Mission Unit, Uniting Church in Australia, Synod of Victoria, to make a submission to the Senate Employment, Workplace Relations and Education Legislation Committee on the *Workplace Relations Amendment (Fair Dismissal) Bill 2002,* the *Workplace Relations Amendment (Genuine Bargaining) Bill 2002* and the *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002*.

The national Uniting Church in Australia has recognised the importance of basic labour rights and the legitimate role that trade unions and professional organisations play in the promotion and protection of these rights. In 1991 the National Assembly of Uniting Church representatives from throughout Australia resolved:

> *"That, recognising the importance of trade unions, professional associations, and employer organisations to overall democratic process in society, and acknowledging that in the present political, economic and industrial climate, trade unions are under serious threat:*
> *(a) the role of trade unions and professional associations play in protecting those who are weaker in society, and the need for people to stand together in solidarity against injustice be affirmed;*
> *(b) the need for Christians to express their discipleship in trade unions and professional associations as one way in which church and work life connect and influence each other be affirmed;*
> *(c) members of the Uniting Church be encouraged to join and be active in the trade union and/or professional association appropriate to their employment;*
> *(d) synods, Assembly agencies, and other Church bodies be requested to encourage employees to join and be active in an appropriate trade union and/or professional association."*

The Synod of Victoria is also a large employer and is a member of the Victorian Employers' Chamber of Commerce and Industry.

It is from this overall context that the following submission is made.

Workplace Relations Amendment (Fair Dismissal) Bill 2002
The Unit believes that this Bill should be rejected on the basis that it removes basic protections for employees and will be open to abuse by the small proportion of employers that are willing to act unethically.

As the Bill proposes that casuals with less than 12 months regular service will not count in the limit of 20 employees that allows for the exemption from unfair dismissal claims. An

unethical employer could abuse this by regularly dismissing casual staff before they have had 12 months service to avoid crossing the threshold of 20 employees.

The Unit is an active member of the Fairwear campaign to end exploitation in the textile, clothing and footwear industry. We are concerned that this Bill would encourage unethical employers in the clothing industry to pressure those that work for them to become 'contractors' rather than employees for the purposes of avoiding unfair dismissal applications.

While the Bill will not exempt employers from carrying out unlawful dismissals on discriminatory grounds, the Unit is concerned that the Bill will make it easier for unethical employers of less than 20 employees to dismiss employees on discriminatory grounds. The Bill will make it harder for employees dismissed on discriminatory grounds to seek recourse, as they will need to appeal to the Federal Court rather than the Industrial Relations Commission.

Workplace Relations Amendment (Genuine Bargaining) Bill 2002

The Unit is concerned that this Bill will restrict unions from pattern bargaining. Pattern bargaining would seem to be a legitimate exercise of right for trade unions to act "for the promotion and protection of … economic and social interests", as guaranteed in Article 8(1a) of the International Covenant on Economic and Social Rights. Pattern bargaining can have benefits for all parties and is currently the only means available to provide a 'pseudo industry agreement'. As noted in the Uniting*Care* NSW.ACT paper, *"Deregulation or reregulation? A position paper on the proposed changes to the Workplace Relations Act 1996",* of 9 August 1999 such agreements would reduce the cost of negotiation, reduce administrative and payroll costs, and take wages out of competition for business and staff. Industry agreements can offer the same benefit as awards in terms of providing for standard training and skill transfer between employers. At the moment pattern bargaining can contribute to the flexibility that employer associations seek with respect to an industry agreement.

The proposed Bill states that in determining if a union or employer is attempting to genuinely reach an agreement, the Commission **must** consider whether:

> *"(a) the first party's conduct shows an intention to reach agreement with persons in an industry who are, or could become, negotiating parties to another agreement with the first party, rather than reach agreement with just the one negotiating parties;"*

It would appear that this could be applied in any case where a union makes a similar claim on a number of companies. Thus, even though the union could be genuinely seeking to reach agreement with a particular employer, and is genuinely negotiating, the fact that the union also wants to reach agreement with the other companies on whom the claim has been made could be taken as the union not genuinely trying to reach agreement with the particular company.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002

The Unit is concerned that provisions in the Bill may promote an adversarial approach to industrial relations, cutting off some mechanisms that allow for disputes to be resolved.

The Unit notes that the Industrial Relations Commission has ordered very few secret ballots, but where it has these have generally been used to ascertain employee's attitudes to certain issues, rather than their views in relation to industrial action. It would appear the Industrial Relations Commission has taken the view that by using ballots to determine employees views

on various offers and proposals, rather than simply on industrial action, the dispute is more likely to be resolved. However, the *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002* would remove the power of the Commission to order ballots to determine the views of employees where a bargaining period has been initiated. The Unit believes this restricts the Commission's ability to resolve disputes.

The Bill would also remove the Commission's discretion under section 135(2B) to order a secret ballot in the case of unprotected industrial action. The change would appear to increase the need for an employer to resort to legal action in the case of unprotected industrial action, rather than encouraging the use of the Commission processes to resolve the dispute.

Thank you in advance for the Committee's consideration of these matters.

Yours sincerely,

Rev David Pargeter
Director
Justice and International Mission Unit
Uniting Church Centre
130 Little Collins St
Melbourne, Victoria, 3000
Phone: (03) 9251 5271
Fax: (03) 9650 4490
E-mail: david.pargeter@vic.uca.org.au