John Carter
Secretary
Australian Senate
Senate Employment, Workplace Relations
and Education Committee
Parliament House
Canberra ACT 2600
fax: 02 6277 5706

12 April, 2002

Dear Mr Carter,

Please find attached the Australian Manufacturing Workers Union outline of submissions to the Workplace Relations Bills 2002 inquiry. As discussed and agreed with Margaret Blood of your office, the more detailed submissions will be provided to the Committee by no later than next Wednesday 17 April, 2002. The detailed submissions will include specific examples and evidence.

The outline of submissions attached deal with the following bills:

- Workplace Relations Amendment (Genuine Bargaining Bill) 2002;
- Workplace Relations Amendment (Fair Termination) Bill 2002;
- Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002;
- Workplace Relations Amendment (Prohibition of Compulsory Union fees) Bill 2002.

Overall it is the submission of the AMWU that all four bills should be rejected in their entirety because in some form or another the content of the bills have already been dealt with by the Committee on previous occasions and consequently rejected by the Senate on their merits. Although the bills in some respects have been amended their basic purposes and impact on workers have not. In addition there is no new compelling evidence to justify their passing through the Senate.

Why then are these bills being re-introduced? It is the AMWU's view that these bills merely represent an ideological attack by the Howard government to interfere in the industrial landscape to tip the balance further in favour of employers to the detriment of workers. They do this by seeking to restrict collective bargaining rights and undermine basic protections for job security. The Howard government in re-introducing these bills is revealing how out of touch with day to day industrial reality they are and also with community trends.

These bills represent the fourth attempt by the Howard government to push their ideological agenda in a quest to achieve their holy grail - "total de-regulation of the labour market".

The AMWU supports and relies on the submissions of the ACTU.

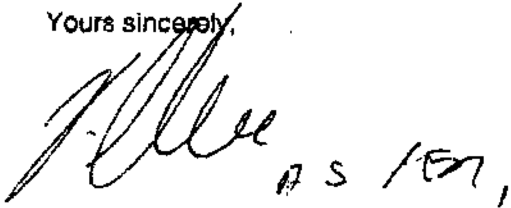
../I

WORKING FOR YOU

Australian Manufacturing
Workers' Union
Registered as AFMEPKIU
National Office
Level 4 133 Parramatta Rd
GRANVILLE NSW 2142
PO Box 160 Granville 2142
Telephone 02 9897 9133
Facsimile 02 9897 9274
amwu2@amwu.asn.au

We understand that the Senate Committee will be conducting a one day hearing in Melbourne on either 2 or 3 May. I would at this stage like to indicate our willingness to appear and explain our submissions further to the Committee. Myself and Dave Oliver, Assistant National Secretary are both available to do this on the dates proposed.

Yours sincerely,



Doug Cameron
National Secretary

attach.

RECEIVED TIME 12.APR. 17:43 PRINT TIME 12.APR. 17:46

AUSTRALIAN MANUFACTURING WORKERS UNION

Outline of Submissions

to the Senate Inquiry Into the Workplace Relations Bills 2002
Senate Employment, Workplace Relations and Education Committee

12 April, 2002

Outline of Submission to the Workplace Relations (Genuine Bargaining) Bill 2002

The Workplace Relations (Genuine Bargaining) Bill 2002 has been dealt with previously by the Senate on two occasions - in 1999 and 2000. On both occasions the bill has been considered on its merits and rejected. The current bill has been re-named and amendments have been made in the drafting process but essentially the bill has the same impact - that is to outlaw so called "pattern bargaining".

This bill represents a mere ideological attempt to interfere in the bargaining process in favour of employers and is out of touch with industrial reality where "pattern bargaining" is a strategy adopted by employers, union members and the Federal government itself. A true and accurate analysis of the current bargaining system would reveal that the strict isolated enterprise bargaining model that the Howard Government is advocating for unions and their members does not actually exist.

Since the bill was last rejected by the Senate in 2000 there has been no new compelling evidence that would justify the passing of the bill in 2002.

- The AI Group argued that armageddon would happen in respect of Campaign 2000 in Victoria. The Democrats said that although the 2000 bill was unnecessary they would monitor events to ensure there was no need for further amendments. Armageddon did not happen. In fact bargaining was conducted in a less time consuming, more efficient manner with hundreds of agreements being resolved in a relatively short time frame.
- There is no evidence that the AMWU and its' members did not "genuinely bargain" in Campaign 2001, where approximately 1000 agreements were negotiated as part of an industry wide campaign. The different agreement outcomes that were achieved in Campaign 2001 and specific examples of bargaining disputes will be highlighted.
- There is no evidence that as a result of the campaigns the levels of industrial action escalated beyond normal levels.
- Trends of employer and federal government "pattern bargaining" has continued. The examples that will be referred to include:
    - AI Group advice and instructions to members;
    - BHP steel products;
    - Qantas;
    - Electrolux;
    - Department of Defence;
    - DEWRSB advice to Government agencies on bargaining;

61 3 92305897
12.APR.2002 16:42 61 3 92305897 AMWU NAT MELB #3960 P.004

RECEIVED TIME 12.APR. 17:43 PRINT TIME 12.APR. 17:46

- Office of Employment Advocate template AWA's.

Despite amendments, the bill is still aimed at union bargaining strategies as stated in the second reading speech of Minister Abbott. It continues, like previous bills, to ignore the fact that "pattern bargaining" is a day to day reality for all parties involved in the bargaining system.

When rejecting the 2000 bill Senator Andrew Murray pointed out that the bill was "unbalanced" and didn't deal with the concerns that unions' had about how employers were using the Act. The real question that needs to be dealt with overall is "is enterprise bargaining really working in Australia in a balanced and fair way ?" The bill does not address this question.

The rationale behind the bill, as explained by Minister Abbott in his second reading speech to this bill, is apparently based on the decision of Justice Munro of the AIRC in *Australian Industry Group v.Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union & Ors* dealing with Campaign 2000 in Victoria. A reading of the decision would reveal that the bill in fact goes further than that decision in fettering the discretion of the Commission.

In his report to the Senate Committee in 2000 Senator Andrew Murray when considering the powers of the Commission to deal with disputes concluded that the powers were "substantial" however at the same time posed the question whether the powers of the Commission were "sufficient" to deal with what was being predicted at the time by the AI Group. Since that report, the decision referred to above was handed down. So despite the AI Group's doomsday predictions about the consequences of AMWU campaigns for employers, the Commission was still able to play a sufficient role in dealing with the campaign as evidenced by the above decision. So what evidence can the Howard government produce to justify fettering the discretion of the Commission to deal with disputes as they arise ?

The AMWU therefore re-emphasises its position that the powers currently available to employers under the Act are sufficient and that there is no current need to tip the balance further away from workers.

The bill also creates problems in that it ignores Australia's international obligations under international conventions to respect basic collective bargaining rights. The Howard government in seeking to re-introduce the bill is again showing total disregard for its obligations under international law. The ILO Committee of Experts on the last occasion condemned the attack on collective bargaining rights which is being ignored by the Howard government as evidenced by the re-introduction of this Bill. Nothing has changed since that time.

Outline of Submission to the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002

The AMWU supports and adopts the ACTU submission to this Committee in relation to the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) bill 2002. In addition, the AMWU makes the following submissions outlined below.

Once again the Howard government is choosing to ignore both its own policies and reflects how out of touch with the industrial landscape they are by attempting to override a concept that has been considered and endorsed by the AIRC and courts. The concept of bargaining agents fees is consistent with the Howard governments philosophy of user pays and "mutual obligation". More importantly, as discussed in the ACTU submission, the law with respect to the legality of including bargaining services fees in certified agreements **is presently unresolved.** At the time of writing the matter is yet to be heard by the Full Federal Court in the appeal of Merkel J's decision in *Electrolux Home Products Pty Ltd v Australian Workers' Union.* [2001] FCA 1600 (14 November 2001). This bill is an attempt to interfere in this legal process and override the court.

61 3 92305897
12.APR.2002 16:42 61 3 92305897 AMWU NAT MELB #3960 P.005

RECEIVED TIME 12.APR. 17:43 PRINT TIME 12.APR. 17:45

As was noted by the Labor and Democrat Senators when rejecting the previous bill before the Senate : **bargaining services fees cannot be equated with compulsory unionism.** Bargaining services fees are simply a solution to the problem of some workers taking the benefits of union negotiated outcomes without contributing to the costs of those negotiations.

The bill represents an attempt by the government to further restrict what can and can't be included in a certified agreement. Australian workers are in no need of any further restrictions on what can be the subject of negotiated (or arbitrated) industrial instruments.

Outline of Submission to the Workplace Relations Amendment (Fair Termination) Bill 2002

The AMWU opposes the introduction of the Workplace Relations Amendment (Fair Termination) Bill 2002. In addition to lending its full support to the ACTU's submission in relation to this Bill, the AMWU would like to make the following comments.

Whilst the community at large is recognising the need to protect casual workers, the bill clearly shows that this out of touch Government is seeking to take away their rights in anyway possible. The Government has not provided any substantial evidence in support of this bill particularly where it claims that fair and reasonable working conditions for casual employees disadvantages employers which in turn hinders employment growth. Indeed in the *Hamzy* decision the judge noted the lack of evidence in this regard. It would therefore appear that this bill is nothing more than ideologically driven and if passed would simply serve to disadvantage the one million plus casual workers.

Major players in the industrial relations arena, i.e. unions, employers and industrial tribunals alike, have also been realising for some time now that casual employees are in many ways disadvantaged. As a result there has been a general acceptance within the industrial relations arena for the need to align the rights and entitlements of casual employees with those currently available to permanent employees. The Courts and Industrial Tribunals have therefore been re-regulating casual employment acknowledging the hardship and lack of protections that the majority of casual workers in Australia endure. The *Hamzy* decision which this bill seeks to override, is a good example of how the courts have attempted to afford casuals more protections. This bill goes against these trends and ignores the need for basic protections of casual workers.

The AMWU has been working hard to address the issue of the increased protection of casual workers - the most disadvantaged workers in the workforce. The AMWU has run several cases in the AIRC and has succeeded in increasing the leave loading and also introducing provisions to prevent the abuse of casual workers from being employed on a long term regular basis.

In its submission the AMWU will outline the evidence submitted to the AIRC in the case to vary the Metal, Engineering & Associated Industries Award to insert a casuals clause. The evidence will include a summary of the evidence submitted of casuals workers, who in the case, provided to the Commission the facts relating to their employment situation. These facts included the precarious and insecure nature of their employment and inability to secure basic rights such as access to finance and training.

All employees whether casual or permanent should have the right to be treated fairly and in an equal manner and employers should have the obligation to treat employees fairly and equally. Employers have a choice on how they treat their employees. Responsible employers small or large should therefore have nothing to fear from providing casuals with access to unfair dismissal provisions. However if this bill is introduced it will simply give employers a green light to treat an already marginalised but growing section of the work force, unfairly and in a discriminatory manner.

61 3 92305887
12.APR.2002 16:43 61 3 92305887 AMWU NAT NEWS #3963 P.006

RECEIVED TIME 12.APR. 17:43 PRINT TIME 12.APR. 17:46

Outline of Submission to the Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002

The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 brings to the Parliament the third attempt in recent times to legislate to require that a secret ballot of employees precede lawful industrial action carried on in pursuit of an industrial agreement. The bill follows up on similar provisions contained in the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999 and Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000 (2000 Bill).

At the outset, the debate over the essential features of the bill have been played out before. Submissions on the earlier bills dealt with the concepts that are embodied in the bill. The bill does what its predecessors sought, namely, extinguish the concept of "protected" industrial action under the Workplace Relations Act 1996, except where the desire by employees to take the action has been verified in a secret ballot. It also fails to remove the cumbersome and onerous requirements that were present in the 2000 bill.

Once again the Howard government is out of touch with industrial reality. In introducing this bill it is choosing to deliberately ignore the democratic decision making processes which involve union members deciding on whether they will take industrial action or not. The bill patronises workers. It suggests that they cannot think for themselves over and above the prospect of the mythical "union boss" dictating to them what to do. There is no compelling evidence to justify why a formal ballot process.

The bill has nothing in it to commend. The theme that supports the bill runs contrary to logic and evidence; its only apparent purpose is that it acts as a measure to frustrate workers and their unions in negotiating agreements by placing an administrative and costly burden on unions. It will merely work to impose unnecessary delays in the bargaining process.

The bill also places a cost burden on the taxpayer and employees that does not currently exist.

To lay down onerous and cumbersome procedures for one side to follow in the bargaining processes prior to taking industrial action, but to leave a relatively free rein to the other side is unfair and unjust. When an employer takes industrial action by locking out its' workers in a bargaining dispute will they be required to conduct a secret ballot say of shareholders ? No, there is no such onerous requirement on an employer.

The bill also attempts to alter the current notice requirements for protected action. There is no compelling evidence why these changes are required. This again is merely an attempt to frustrate the ability of workers to effectively have recourse to protected industrial action.

....

61 3 92305897

12.APR.2002 16:44 61 3 92305897 AMWU NAT MELB #3960 P.007