ACCI SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION COMMITTEE

INQUIRY INTO THE PROVISIONS OF THE:

WORKPLACE RELATIONS AMENDMENT (AWARD SIMPLIFICATION) BILL 2002

WORKPLACE RELATIONS AMENDMENT (BETTER BARGAINING) BILL 2003

WORKPLACE RELATIONS AMENDMENT (CHOICE IN AWARD COVERAGE) BILL 2004

WORKPLACE RELATIONS AMENDMENT (SIMPLIFYING AGREEMENT-MAKING) BILL 2004

APRIL 2004

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ACCI

- The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak council of business associations.

- ACCI is Australia's largest and most representative business organisation.

  - Through our membership, ACCI represents over 350,000 businesses nationwide, including:

    - Australia's top 100 companies.

    - Over 55,000 medium sized enterprises employing 20 to 100 people.

    - Over 280,000 smaller enterprises employing less than 20 people.

- Businesses within the ACCI member network employ over 4 million working Australians.

- ACCI members are employer organisations in all States and Territories and all major sectors of Australian industry.

- Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. Each ACCI member is a representative body for small employers and sole traders, as well as medium and larger businesses.

- Each ACCI member organisation, through its network of businesses, identifies the policy, operational and regulatory concerns and priorities of its members and plans united action. Through this process, business policies are developed and strategies for change are implemented.

- ACCI members actively participate in developing national policy on a collective and individual basis.

- As individual business organisations in their own right, ACCI members also independently develop business policy within their own sector or jurisdiction.

ACCI Members and the Proposed Amendments

- The four bills being considered by the Committee address:

  a) Award making and dispute settlement

  b) The scope and content of federal awards.

  c) Scope for agreement making and approval.

- These are matters directly affecting many thousands of Australian employers on an ongoing basis, including those of covered by awards of the Australian Industrial Relations Commission, and those involved in the bargaining process.

- The proposals also directly affect ACCI member organisations and the advice and representation these member organisations provide to individual employers on, for example, logs of claims, award making, award obligations, bargaining, agreement making and agreement approval.

- The proposed amendments will directly affect matters upon which ACCI members are directly involved on a daily basis. This submission reflects the feedback of those who use the system on a day to day basis.

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WR Amendment (Award Simplification) Bill 2002

Introduction

1. The *Award Simplification Bill* would amend the current allowable matters provisions regulating the subject matter of federal awards.

2. ACCI strongly supports the allowable matters concept for the operation of federal awards. The articulation of accepted award content in s.89A of the *Workplace Relations Act 1996*, and the simplification of federal awards from 1997 onwards, has considerably improved the operation of the federal award system.

3. Awards have in part, been rendered more comprehensible, accurate, consistent and suited to industry circumstances. The matters regulated by awards have been rendered more consistent with contemporary community expectations and with the function of awards as a safety net underpinning employment. Awards have been manifestly improved as instruments of regulation by simplification and refinement to allowable award matters.

4. Consistent with the objects of the *Workplace Relations Act 1996* and the contemporary role of awards as a safety net. The current Bill proposes further refinement of the content of awards. This is entirely consistent with ACCI policy. Despite gains to date, awards of the AIRC continue to be unduly prescriptive, inappropriately detailed and (in substantial part) unsuited to their contemporary role. The proposed measures which seek to further refine award content towards a genuine safety net are supported by ACCI.

5. There is also an experiential or 'learning' element to the proposed refinement of allowable matters. The articulation of allowable matters in s.89A(2) of the *Workplace Relations Act 1996* was a major change to the system in 1997. Despite working well, and facilitating the substantial simplification of awards, it was never ACCI's understanding that this regulation would operate without ongoing amendment to reflect evolving experience with fundamental changes of regulation and policy. To continue to acquit the role accorded to it by Parliament, it is vital that there be periodic ongoing adjustments to the *Workplace Relations Act 1996*, and in particular to provisions such as s.89A(2). As ACCI has repeatedly pointed out, the *Workplace Relations Act 1996* is not in a form which is perfect, inviolate or beyond amendment – rather no interested party should rest on their laurels, and the Act should be subject to ongoing refinement and improvement to reflect ongoing experiences and lessons.

How the Committee Should Consider this Bill

6. ACCI firmly supports the passage of the proposed amendments as advanced. That is, as a package of measures that should be given effect to which will qualitatively improve the operation of the award system and the workplace relations system as a whole.

7. ACCI has examined each of the amendment proposals and, aside from our qualifications on long service leave as an allowable matter, can see no reason for any to not be acceded to by the Parliament.

8. This said, if the Committee / Parliament were to reach a differing view on particular matters, this is not in ACCI's submission, grounds to not seek to give effect to those other propositions which can be supported. In the absence of agreement to the passage of the amendments as a whole, and to the extent that they do not rely on other particular amendments for their operation, ACCI would support the passage of those particular reforms which the Committee can endorse.

Section 89A(2)(a) – Classifications and Skill Based Career Paths

9. ACCI strongly supports increasing workforce skills and career paths. However, a safety net award system does not need to regulate skill based career paths on an industry wide or economy wide basis.

10. ACCI supports the removal of "skill based career paths" from the allowable award matters. These are inherently, and due to their very nature, matters which are appropriately dealt with through the training system, and to the extent that they interrelate to wages or working conditions, they are matters that should be addressed at the enterprise or workplace level, within the clear frameworks established through reforms to national education and training policy.

11. ACCI understands that the majority of workplaces in which such approaches are actively pursued already do so using a workplace rather than industry or award level focus. Those skill based career paths which have been implemented appear to be a direct function of workplace development and implementation.

12. Such workplaces are understood to generally seek to embody their particular training and skills approach to classifications through certified agreements or AWAs. Thus, there is already substantial workplace determination of these issues, and the current status of "skill based career paths" as an allowable award matter is not being used to implement changes within enterprises or to foster particular skills development. It appears that it is simply unnecessary for this to remain an award matter and that it is already being progressed through bargaining rather than awards.

13. It should be noted that:

    a. Awards are to operate as a safety net under the *Workplace Relations Act 1996*. Simpler and more straightforward classification structures would be more consistent with this.

b. Any change in this area will not render award classification structures nugatory. There will still be classifications in awards, including multiple wages points and scope for employee progression. ACCI can see no basis in this proposal for there to be any marooning of employees or threat to existing capacities to progress.

c. Skills reforms and education and training reforms continue apace without reference to the existing capacity for award making in this area. Unions and employers will remain actively involved in these processes regardless of the extent to which these matters may be included in awards.

d. ACCI understands there has been little change to classification structures in recent years in major federal awards.

National Training Wage Award

14. A number of ACCI members are respondents to the *National Training Wage Award* of the AIRC which is a dedicated instrument providing minimum wage arrangements to underpin training in Australia.

15. ACCI continues to strongly support this award and its function of providing a proper wages safety net for trainees.

16. ACCI does not understand the proposed amendment to s.89A(2)(a) to affect the *National Training Wage Award.*

Section 89A(2)(d) – Bonuses

17. It is appropriate that bonuses be deleted as an award matter. Bonuses are inherently and necessarily matters specific to individual businesses and individual employees' productivity and performance, which are best addressed at the enterprise level.

18. As a matter of logic, the notion of a bonus above ordinary award pay is not consistent with awards operating as a safety net. A safety net does not extend to remuneration contingent upon specific levels of performance above the ordinary or anticipated. A safety net, by definition operates without a requirement for additional performance, throughput or quality which merits the payment of a bonus.

19. Bonuses and performance payments are clearly matters which are being addressed by employers and employees in workplaces by agreement (including certified agreements and AWAs). One of the key areas of productivity pursued through agreement making is the encouragement, incentive and reward of additional productivity, throughput, quality etc. It is not necessary that this also be part of award making.

Section 89A(2)(f) – Long Service Leave

20. ACCI supports the principle that dual regulation of minimum long service leave (LSL) standards by both parliaments and industrial tribunals is undesirable.

Ideally, LSL standards should ,be set by either parliament or industrial tribunals – not both. However, given that LSL is currently an allowable matter, and given that some standards have been set by the AIRC , an unqualified removal of LSL as an allowable matter is not supported.

21. ACCI supports Long LSL arrangements operating without additional cost to employers. Any transition from federal to State LSL will only be merited if there is no additional cost impost upon employers. The Bill should be amended to provide for that outcome.

Section 89A(2)(g) – Forms of Leave

22. The proposed amendments would:

    a. Remove cultural and like forms of leave from allowability under s.89A(2)(g).

    b. Ensure cultural leave is specifically allowable through its own subject line in an amended s.89A(2).

    c. Ensure that "like forms of leave" are appropriately linked to cultural leave, and not available to extrapolate leave concepts more generally.

23. Ensuring 'like forms of leave' is properly tied to an extrapolation of cultural leave would cause no detriment to employees. The Commission has already found that this provision was only rendered sensible in regard to the remainder of existing s.89A(2)(g).[1]

24. There would be no change to the Commission's capacity to include in awards provisions relating to: personal/carer's leave, including sick leave, family leave, bereavement leave, and compassionate leave.

Section 89A(2)(i) – Public Holidays

25. The proposed new provision would restrict the Commission's power to regulate public holidays in awards to those prevailing in the community. This is necessary to, as the explanatory memoranda state, ensure that awards "*could not include as additional public holidays additional days which may be or may have been treated as 'extra' public holidays in a particular industry*".

26. In an era where union membership in the private sector has fallen below 20% and in which by far the majority of private sector workplaces see no employees chose to join trade unions, it is not appropriate that there be additional provision for union picnic days.

27. Such additional days off reflect very archaic thinking, and a bygone era. If specific unions continue to believe they are relevant, they should hold them on weekends, encourage coordination of RDOs or annual leave, or pursue them through bargaining.

[1] Dec 1455/98 M Print Q9399, 23 December 1998

28. Union picnic days also reflect levels of industry specific entitlement which are inconsistent with awards operating a genuine safety net. Public holidays are a community matter. It is not appropriate that there be additional industry specific provision, bar where this is agreed by employers, employees and unions.

Section 89A(2)(j) – Allowances

29. Existing s.89A(2)(j) renders allowable for inclusion in federal awards, "allowances". This is without additional definition, and leaves the Commission at large to determine what should and should not be included in awards.

30. It is proposed that this be replaced with a proper and more guiding definition of the type of matters which are properly treated as allowances under awards. The proposed s.89A(j) will from the point of amendment forward, ensure that the traditional understanding of what is properly an award allowance is embodied in the allowable award matters.

31. This is proper and consistent with any realistic assessment of what is legitimately an award allowance. The amendment will preclude actions from unions to include matters in awards under the banner of an allowance which are not properly characterised on that basis. It will finally determine that the non-allowable cannot be rendered allowable by via a contrived nexus to a financial amount or "allowance".

Section 89A(2)(m) – Redundancy Pay

32. ACCI supports:

    a. Award redundancy pay only being applied in circumstances in which an employee's employment has been terminated at the initiative of the employer on the grounds of operational requirements, and not as part of the ordinary or customary turnover of labour. Such a definition of redundancy pay was agreed to by employers and unions in the recent Redundancy Test Case, as follows:

       > ***Redundancy*** *occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.*

       This will now be included in federal awards of the AIRC.

    b. Not allowing awards to seek to affect the capacity of an employer to determine the number or identity of persons whose employment is to be terminated for operational requirements.

33. The proposed amendment to s.89A(2)(m) appears consistent with this position.

Section 89A(2)(n) – Notice of termination

34. ACCI supports the deletion of notice of termination from the list of allowable award matters.

35. Minimum requirements on notice of termination at the initiative of the employer are set out in Part VIA of the *Workplace Relations Act 1996*.

    a. This has comprehensive national application and there is no requirement for additional notice pay to be included in awards.

    b. An employer not providing proper notice, or not making an appropriate payment in lieu of notice, faces clear penalties and capacities for employee redress. Further award based regulation is not necessary.

36. Some State workplace legislation also additionally sets out identical minimum notice, further obviating any need for additional award address of this issue.

37. To be clear – there is only a single notice standard in Australia (which is set out in Part VIA of the *Workplace Relations Act 1996*):

> **170CM Employer to give notice of termination**
>
> (1) Subject to subsection (8), an employer must not terminate an employee's employment unless:
>
> (a) the employee has been given the required period of notice (see subsections (2) and (3)); or
>
> (b) the employee has been paid the required amount of compensation instead of notice (see subsections (4) and (5)); or
>
> (c) the employee is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue the employment of the employee concerned during the required period of notice (see subsection (7)).
>
> (2) The required period of notice is to be worked out as follows:
>
> (a) first work out the period of notice using the table at the end of this subsection; and
>
> (b) then increase the period of notice by 1 week if the employee:
>
> (i) is over 45 years old; and
>
> (ii) has completed at least 2 years of continuous service with the employer.

Employee's period of continuous service with the employer	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

> (3) For the purposes of subsection (2), the regulations may prescribe events or other matters that must be disregarded, or must in prescribed circumstances be disregarded, in ascertaining a period of continuous service.

(4) The required amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

(5) That total must be worked out on the basis of:

(a) the employee's ordinary hours of work (even if they are not standard hours); and

(b) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

(c) any other amounts payable under the employee's contract of employment.

(6) The regulations may make provision for or in relation to amounts that are taken to be payable under a contract of employment for the purposes of paragraph (5)(c) in relation to an employee whose remuneration before the termination was determined wholly or partly on the basis of commission or piece rates.

(7) Without limiting the generality of the reference to serious misconduct in paragraph (1)(c), the regulations may identify:

(a) particular conduct; or

(b) conduct in particular circumstances;

that falls within that reference.

(8) The regulations may exclude from the operation of this section terminations of employment occurring in specified circumstances that relate to the succession, assignment or transmission of the business of the employer concerned.

38. It is simply not necessary to additionally retain this as an allowable award matter.

Section 89A(2)(q) – Jury Service

39. It is appropriate that jury service be deleted as an allowable award matter.

40. Employees' obligations as citizens and the obligations of their employers, are comprehensively set by State and Territory legislation.

41. Only a minority of awards of the Commission actually address jury service. ACCI understands that:

a. Existing award jury service provisions are not stand alone provisions. They do not comprehensively deal with this issue.

b. Existing award jury service provisions must be read in conjunction with State and Territory justice legislation.

c. Existing award jury service provisions cannot either add to or detract from the State regulation of jury service.

42. Again, there appears to be little or no reason for federal awards to address jury leave at all. Many federal awards work on this basis (are silent on jury service) and were in this form well prior to simplification. There appears to be no reason

or justification as to why all federal awards could not operate this basis on an ongoing basis.

Section 89A(2)(sa) and (t) – Bonuses for Outworkers

43. It is appropriate that outworkers in the clothing industry who are paid in accordance with payment by results systems do not lose access to that mode of remuneration.

44. There is clearly an exceptional circumstance in regard to these outworkers which justifies a particular treatment in awards and a differing treatment of bonuses.

Section 89A(3) – Minimum Rates Awards

45. It is highly appropriate that there be an additional focus in the *Workplace Relations Act 1996* on awards operating as genuine minima and as a genuine safety net.

46. There is a very real apprehension that awards are operating (and some decisions) are operating at an over safety net level, which carries with it the prospect of discouraging agreement making and the prospect of further productivity and economic improvement.

47. Australia faces a workplace relations challenge in 2004, comparable or exceeding that of the mid 1980s and mid 1990s. Having partially decentralised and moved into bargaining for some but not all enterprises, the challenge is now to:

    a. Secure further gains in productivity, and unlock further gains in efficiency.

    b. Ensure more employees and employers in enterprises have access to bargaining and agreement making.

48. The proposed additional clarification of the role of the safety net will contribute to meeting this challenge.

Section 89A(3) and (4) – Non-Allowable Matters

49. ACCI welcomes the proposal for additional clarification of non-allowable matters. The matters listed in proposed subsection 89A(3A) are clearly matters for enterprise determination and resolution between employers and employees. They are not properly part of an award safety net which is a genuine minima which serves to encourage bargaining and workplace determination.

Section 89A(6) – Incidental and Essential Matters

50. ACCI welcomes the proposal for additional clarification of matters incidental to the list of allowable matters.

51. The proposed link to matters being not only incidental, but essential to the operation of specific provisions, appears a very valid approach.

52. Without such an additional clarification, the concept of "incidental" may be determined unduly widely, and rely only on some tenuous nexus being contrived to an allowable matter. ACCI has a clear apprehension that it may be used into the future to depart from the clear intention of Parliament in regard to which matters are required for the proper operation of an award safety net.

Section 89A(6A) – Machinery Provisions

53. This is supported consistent with the submission regarding a proper concept of matters being incidental and essential for the operation of awards.

Section 89A(8) – S.113A and 143(1C) Provisions

54. ACCI supports the inclusion in awards of:

    a. Appropriate enterprise flexibility provisions (s.113A), although not as any substitute for awards operating as a proper minimum safety net as provided for under the Act.

    b. Award provisions reflecting the qualitative standards set out in s.143(1C) of the *Workplace Relations Act 1996*.

Section 120A(4) Exceptional Matters Orders

55. Exceptional matters orders exceed the prescribed content of awards of the Commission which the Parliament has determined are appropriate. Where there are to be departures from the clear will of Parliament, it is appropriate that these only be able to be determined by a Full Bench of the Commission rather than by individual members.

Conclusion

56. The reasons for the referral of this Bill to the Committee were:

    a. The effect of reducing the award safety net.

    b. Importance of award safety net

    c. Process involved in further award simplification, including resources required.

    d. Effect of reverting federal award provisions and reverting to state laws.

Reducing the Award Safety Net

57. It would be highly simplistic and unrepresentative to assess this Bill as simply seeking to reduce the award safety net. The preceding analysis and a proper understanding of the content of the Bill do not lead to such a conclusion.

58. This said, it should be noted that:

a. Various of the proposed deletions from the allowable matters are accompanied by the re-insertion of replacement allowable matters (e.g. cultural leave – it would be disingenuous to in any way describe this as a deleted allowable matter or a reduction in the award safety net).

b. Other deleted allowable matters will see a direct reversion to State and territory legislation. Whilst it is true that there may be some movement out of award regulation, it is not the case that there will be losses.

59. ACCI disagrees with the premise of this frame of analysis. The Bill is not so black and white in its intention or proposed operation, it demands a more complex consideration than proposed in this query as framed.

Importance of the Award Safety Net

60. The safety net, both award and statutory, is in no way threatened or diminished by the proposals under consideration. The substantive and operative provisions of awards will remain in place without amendment. This is particularly the case for the key areas of regulation affecting employers and employees on a day to day basis – hours, rates of pay, leave etc.

61. ACCI cannot see how this bill in any way raises consideration of the importance of the award safety net – the safety net remains in place, it retains its role unaltered by these amendments. Its importance after the passage of these amendments will be the same as its importance prior to their passage.

62. This said, as a wider issue, all involved in the system should recognise and appreciate that the day to day importance of the award safety net should be reducing over time as:

a. More enterprises enter agreements, and no longer work with reference to awards.

b. More enterprises observe terms and conditions of employment in excess of the award safety net.

63. It appears to ACCI that one of the goals of the system should be an ongoing diminution in the day to day importance of awards for more employers and employees.

Further simplification

64. Some further variation of individual federal awards will be required in the wake of any changes to the allowable award matters in s.89A(2). This will be true whether parliament adds to them, removes some, or makes other changes or variations.

65. All parties to awards of the AIRC should have a commitment to those awards, including principally the union parties that initiated the award coverage in the first place. A federal award requires ongoing variation for a wide range of

matters – additional simplification would be consistent with this ongoing process. Awards require a commitment of the parties to them to their ongoing variation and maintenance – particularly from the union party which seeks and prosecutes the award.

66. Awards are regularly varied, including for safety net wage increases and to give effect to test case decisions. This provides ample opportunity to pursue and consider additional simplification in the ordinary course of award variation.

67. In addition:

a. Awards are already simplified, and a qualitatively superior instruments of regulation to those which preceded the *Workplace Relations Act 1996*.

b. Any variations to awards through further simplification will be far easier and less complex exercises than they would have been in the past.

c. There is also simply far less simplification inherent in the proposed amendments than was undertaken in the wake of the 1996 changes. Award parties will have far less to do in the wake of amendments than in the late 1990s.

d. Orders need not be complex and hearings need not be protracted.

68. There is no reason to conclude that there would be substantial additional costs or inconvenience to parties from facilitating further merited simplification of awards through an ongoing evolution of the allowable award matters in s.89A(2) of the *Workplace Relations Act 1996*.

Reverting to State laws

69. ACCI can see no impact nor detriment from the proposed reversion to State arrangements, whilst they exist.

70. The safety net of employment conditions would in fact become clearer and more consistent, potentially aiding compliance and understanding of obligations at the workplace and individual level.

Conclusion

71. Award reform was kicked off by parties and the Commission in the mid to late 1980s with the evolution of various reforming wage fixation principles which created substantial reform to awards. This was progressed through a statutory system of award improvement under the former *Industrial Relations Act 1988*.

72. More fundamental reform of Australian awards occurred in 1996 with the passage of the *Workplace Relations and Other Legislation Amendment Act 1996* (WROLA Act).

73. This was clearly an ongoing process. At no stage did the parties, the Commission, or the government rest on their laurels. Rather, they had the foresight to recognise that awards required continuous improvement an the courage to pursue those improvements.

74. In this context, award simplification under the *Workplace Relations Act 1996* should properly be viewed as an evolutionary rather than revolutionary change to the system. It reflected and built on the previous work of s.150A reviews[2] and other preceding award reforms.

75. Award simplification is an incomplete process. There is similarly no reason to conclude in 2004 that the work of simplification is concluded, nor that awards of the AIRC are now perfect. Awards remain unduly detailed, prescriptive and unsuited to their fundamental purpose under the contemporary *Workplace Relations Act 1996*.

76. The goal set for the award system as outlined by Prime Minister Keating in 1993 is still yet to be achieved:

> *Let me describe the model of industrial relations we are working towards.*
>
> *It is a model which places primary emphasis on bargaining at the workplace level within a framework of minimum standards provided by arbitral tribunals.*
>
> *It is a model under which compulsorily arbitrated awards and arbitrated wage increases would be there only as a safety net.*
>
> *The safety net would not be intended to prescribe the actual conditions of work of most employees, but only to catch those unable to make workplace agreements with employers.*
>
> *Over time the safety net would inevitably become simpler. We would have fewer awards with fewer clauses.*
>
> *For most employees and most businesses, wages and conditions of work would be determined by agreements worked out by the employer, the employees and their union.*
>
> *These agreements would predominately be based on improving the productive performance of enterprises, because both employers and employees are coming to understand that only productivity improvements can guarantee sustainable real wage increases.*
>
> *We would have an Industrial Relations Commission which helped employers and employees reach enterprise bargains, which kept the safety net in good repair, which advised the*

[2] Under s.150A of the former *Industrial Relations Act 1988.*

Government and the parties of emerging difficulties and possible improvements, but which would rarely have to use its compulsory arbitral powers. Instead, parties would be expected to bargain in good faith.

We would have sufficient harmony between State and federal industrial relations systems to ensure that they all head in the same direction and used the same general rules.

That is the goal we are working towards." (Speech to Institute of Company Directors, Melbourne, 21 April 1993)

77. Industrial and political will is again needed to not rest on our laurels and to again take up the challenge of further improving the awards Australians work under in their workplaces. Passage of the *Workplace Relations Amendment (Award Simplification) Bill* will deliver the further very real gains needed in these workplaces.

WR Amendment (Better Bargaining) Bill 2003

Introduction

78. ACCI previously supported passage of the *Workplace Relations Amendment (Genuine Bargaining) Bill 2002*, including Schedule 2 of that Bill which also addressed some of the matters raised in this Bill (e.g. the cooling off and suspension of bargaining periods in appropriate circumstances).

79. This was consistent with ACCI's ongoing support for appropriate reforms to the bargaining system. ACCI continues to support improvements to the bargaining system, and on this basis supports passage of the *Better Bargaining Bill.*

Schedule 1 – Industrial Action and Lockouts Prior to Agreement Expiration

80. ACCI strongly supports the capacity of employers, employees and unions to make binding agreements, which can comprehensively deal with matters potentially in dispute between parties, and which can preclude further protected action during the life of the agreement. Put simply, employers in particular need to be able under the system to do a deal and have that deal deliver a period of industrial peace following the fractiousness of the negotiation period.

81. The proposed amendments to s.170MN(1) of the *Workplace Relations Act 1996* will ensure that there is not scope for ambiguity in regard to additional claims during the life of agreements registered by the Commission.

82. There is no legitimate basis for industrial action to be available during the life of agreements entered into in good faith, particularly where that action is in pursuit of new or additional claims which were not pursued in the first instance.

83. Employers commit themselves in agreements to particular labour cost settings, particular flexibilities for employees, and to only seek the operational and productivity gains contained in the agreement. They effectively, based on their research, analysis and projections, commit themselves to a labour contract with their staff (and often their unions) for a given period. Employers are entitled to expect the same in return from employees and unions. If a deal is done, it should stick without an opportunity to be revisited through additional claims.

Why This Is An Issue – *Emwest*

84. These amendments arise following the Federal Court's decision in *Emwest Products Pty Ltd v Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union* [2002] FCA 61 (6 February 2002).

85. ACCI extensively examined the Emwest decision, and the wider issue of the evolving right to strike in Australia in an *ACCI Review* article in July 2002 (Attachment A).

86. The apparent state of the law in regard to the right to strike in the wake of *Emwest* is not acceptable and is not consistent with the fundamental aims and purposes of the *Workplace Relations Act 1996*.

87. The law in the wake of *Emwest* is also inconsistent with the development of the right to strike in Australia from the early 1990s. The right to strike does not legitimately extend to the life of agreements, but is confined to the period of agreement negotiation and renegotiation.

88. It is entirely appropriate and legitimate that parliament seek to address the consequences of the *Emwest* decision through amendments to the *Workplace Relations Act 1996*. The amendments proposed in the *Better Bargaining Bill* appear a very sound and appropriate approach to meeting the challenge posed by the *Emwest* decision.

Parties Do Not Have to Close Agreements If They Don't Want To

89. It appears to ACCI that if it were the express intention of employers and unions that there be scope for additional claims and additional industrial action, this would be possible after the passage of the proposed amendments.

90. If a union successfully included a term in a certified agreement (for example) preserving rights to reopen specific matters in specific circumstances, this would appear to be able to be reconciled with the amendment to s.170MN.

Constitutional Considerations

91. It is also appropriate to recall the constitutional foundations of the entire *Workplace Relations Act 1996.* Section 51(xxxv) of the Constitution empowers the Commonwealth Parliament to make laws in relation to

> *(xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:*

92. The very foundations of the Act, and of Australia's workplace relations system lie in preventing and settling industrial disputation. It is therefore entirely appropriate, if not essential, that the *Workplace Relations Act 1996*, made in direct reflection of s.51(xxxv) of the Constitution, empower employers and employees to agree to the making of genuinely binding agreements which preclude further industrial disputation.

Conclusion

93. ACCI cannot see how there is any loss to employees or unions in this proposal. Rather, these amendments are about providing additional ongoing operational confidence to those who make a deal / agree to an agreement.

94. The decision in *Emwest* is not satisfactory and is inconsistent with a bargaining system which delivers genuine and sustainable gains for both employers and employees.

95. These amendments essentially reflect the importance of honour to the bargaining system, and of parties staying committed to the terms of agreements they have formally committed themselves to.

Schedule 2 - Cooling Off and Suspension of Bargaining Periods

96. ACCI previously supported passage of the *Workplace Relations Amendment (Genuine Bargaining) Bill 2002*, including Schedule 2 of that Bill which also addressed some of the matters raised in this Bill (e.g. the cooling off and suspension of bargaining periods in appropriate circumstances).

97. ACCI continues to strongly support empowering the Australian Industrial Relations Commission to, where it determines on the merits of the matters before it, order cooling off periods and the suspension of protected action.

Cooling Off

98. Empowering cooling off orders would considerably aid the capacity of the AIRC to prevent and settle disputation. There are many examples of disputes reaching a point where this additional option may have aided resolution without damage to all parties concerned and the wider community. On this basis, ACCI continues our strong support for cooling off mechanisms in the *Workplace Relations Act 1996*, as advanced in support of previous legislative proposals.

Suspension of Bargaining Periods

99. Proposed s.170MWC would allow the AIRC to suspend a bargaining period where it determined it was appropriate, and where it determined that there was significant harm being caused.

100. The proposed provision would empower rather than compel the AIRC in making the judgement required. The Commission would retain the power to determine the legitimate scope for industrial action, the legitimate scope for detriment for any party, and where boundaries had been (or would be) exceeded.

101. Importantly, the Commission would not be able to act on just any set of circumstances or on each instance in which protected action, for example, threatened some detriment to an employer. The harm to be addressed would need to be significant (s.170MWC(1)(c)) and would need to be able to be linked to the considerations listed in proposed s.170MWC(2)(c).

102. This appears to ACCI to be a balanced proposition, which empowers the AIRC to make a judgement in the interests of the community and the parties concerned. ACCI can see no detriment or imbalance in the proposed approach.

Schedule 3 – Claims Not Pertaining To Employment Relationship

103. ACCI strongly supports the *Workplace Relations Act 1996* providing that statutory protected action not be available in relation to matters that do not pertain to the employment relationship.

104. It is not appropriate either unions or employers be able to enjoy statutory protection of industrial action for non-employment based matters, under:

a. An employment based statute (the *Workplace Relations Act 1996*).

b. Through an employment based tribunal (the AIRC).

c. Based on the employment relationship.

105. ACCI cannot see any policy rationale for maintaining scope for industrial action in pursuit of non-industrial claims, which:

a. Cannot, as a matter of both constitutional construction and the terms of the *Workplace Relations Act 1996*, be included in an award of the AIRC.

b. Cannot be included in an agreement improved by the AIRC.

Schedules 4 and 5– Protected Action

106. The focus of the *Workplace Relations Act 1996*, and of bargaining reforms from the early 1990s, has been on enterprise/workplace level bargaining. This is not industry bargaining or multi-employer bargaining, but a genuine focus on the workplace, and on bargaining based on:

a. Circumstances and challenges for individual enterprises.

b. Interpersonal working relationships at the workplace level.

107. The proposed amendment to s.170ML(6) (Schedule 4 of the *Better Bargaining Bill*) is entirely consistent with the purposes of the system, and in particular with the focus at the enterprise level. It is manifestly not appropriate that industrial action be able to be pursued against multiple entities, where the end point of the protected action process is an inescapably enterprise focussed outcome (an agreement certified for the enterprise level).

108. Similarly, it is appropriate that protected action only be available where it is action taken solely in pursuit of a specific agreement by those who it is proposed will be subject to that agreement (proposed amendments to s.170MM, Schedule 5 of the *Better Bargaining Bill*).

109. To not give effect to the proposed amendment would be to legitimise industrial action at odds with the purpose of the *Workplace Relations Act 1996* and Section 51(xxxv) of the Constitution.

110. To not give effect to these amendments would be to accept and legitimise a level of industrial action (and the exacerbation and spreading of industrial action) which is fundamentally inconsistent with the prevention and minimisation of industrial disputation.

Conclusion

111. The reasons for the referral of this Bill to the Committee were:

a. Effect on bargaining capacity of employees and unions.

b. Effect on capacity of AIRC to assist parties to settle disputes.

c. Particular effect on caring professions names in Minister's second reading speech.

d. Effect on capacity of negotiating parties to decide the appropriate parameters of their bargaining.

Bargaining Capacity

112. ACCI can see no reason to conclude that the legitimate capacities of employers, employees or unions are in any way diminished by the proposed amendments.

113. The workplace relations system has never accepted that all means, fair or foul, may legitimately be employed with the protection of the law in pursuit of an industrial claim, nor that all claims are inherently legitimate and able to be included in agreements.

114. There have consistently been limits on the access Parliament has granted to bargaining under the Act, and on bargaining and disputation generally. In a sense, this is one of the key functions of any employment regulation system, to set the legitimate limits of bargaining and control/minimise the negative outcomes of disputation.

115. ACCI can see no basis to conclude that there is any diminution to the legitimate bargaining capacities of any party in the proposed amendments.

116. In this regard, ACCI notes that each of the proposals would affect employer lock outs equally to their effects on employee strikes. There is no privileging of the bargaining capacities of any party over another in these proposals.

AIRC Capacity to Assist In Dispute Settlement

117. The amendments proposed in the *Better Bargaining Bill* will enhance the capacity of the AIRC to assist in dispute settlement.

118. The capacity of the AIRC to settle disputes will be vastly improved by clearer boundaries regarding what is and what is not legitimately the subject of protected disputation under the *Workplace Relations Act 1996*.

119. The Commission will also have new tools to assist in dispute settlement, including new capacities to order cooling off and the suspension of bargaining periods.

Caring Professions

120. In relation to additional scope for dispute settlement / suspension of bargaining periods, the Minister for Employment and Workplace Relations states in his second reading speech:

> *This bill also seeks to address the harm that some industrial action causes third parties. Industrial action by negotiating parties can impact upon, or aim to harm, third parties who are not directly involved in the dispute—for example the clients of health, community services and education systems and other businesses.*

121. ACCI can see no basis not to allow the AIRC to take into account the impact of proposed or ongoing industrial action on the clients identified in the Minister's speech.

122. This said, the published reasons for referral appears to have turned the Minister's point around and focussed on employees in these industries. There are some unique considerations for employees in these industries, including:

a. A high prevalence of pattern bargaining.

b. Bargaining being significantly determined by State and Commonwealth government funding.

c. Somewhat higher recourse to award rather than agreement based employment in some areas.

123. It should however be noted that there is no privileging of one set of interests above another proposed in the amendments. Whilst fully supporting the Minister's concerns, ACCI equally highlights the importance of commercial and operational harm through industrial action against commercial enterprises more generally.

124. ACCI strongly supports a further empowerment of the AIRC to properly consider and balance the range of interests and considerations arising in any negotiation which comes before it. This is what the proposed amendments in the *Better Bargaining Bill* would deliver.

Effect on Negotiating Parties

125. ACCI understands many of the proposed amendments to empower the AIRC to further consider and balance the interests which come before it regarding bargaining.

126. Some of the key effects on negotiating parties which ACCI foresees include:

a. Greater capacity to enter agreements confident in their uninterrupted operation across the formally agreed period.

b. Greater clarity in negotiations (and enforceability) through a clear understanding of what can and cannot be included in agreements.

c. Benefits to industries through greater operational clarity and continuity.

d. An additional focus at the enterprise level.

127. These are real qualitative benefits for both employers and employees. They favour passage of the amendments.

Conclusion

128. The time has come for the passage of these amendments. They are balanced, considered and will deliver a superior bargaining system consistent with the systemic goals/aims the parliament has already determined for the workplace relations system.

129. A failure to pass these amendments would perpetuate fundamental imbalances in the existing *Workplace Relations Act 1996*, principally in the wake of Federal Court decisions such as those in *Emwest* and *Electrolux*.

130. The Committee should recommend that the Senate pass the *Better Bargaining Bill* with expedition.

WR Amendment (Choice in Award Coverage) Bill 2004

Introduction

131. The *Choice of Award Coverage Bill* seeks to make a range of amendments to the *Workplace Relations Act 1996* concerning the making of new awards, and the roping in of additional respondents to existing awards.

132. In particular, the amendments would address:

a. The period which should be allowed for respondents to address claims in pursuit of new award coverage.

b. Notice supplied of any hearings for the making of new awards, to those who may be covered by the new award.

c. Ensuring that awards (and award claims) cannot extend to matters which are not able to be included in awards under the *Workplace Relations Act 1996*. This includes:

i) Claims that would contravene the freedom of association provisions of the *Workplace Relations Act 1996* (Part XA).

ii) Claims that extend to objectionable provisions under the freedom of association provisions of the *Workplace Relations Act 1996*.

iii) Claims that do not pertain to the relationship between employers and employees, which cannot as a matter of both constitutional construction and the *Workplace Relations Act 1996*, be included under any award made in settlement of the dispute.

d. The making of awards covering smaller businesses and the unique considerations involved.

Operation of the proposed amendments

133. Proposed s.101A of the *Workplace Relations Act 1996* would modify the existing provisions in relation to the formal finding of industrial disputes. Such dispute findings are the formal step initiating the jurisdiction of the AIRC and precede the making of federal awards (and the roping-in of additional award respondents to existing federal awards).

134. Having found the existence of an industrial dispute under existing s.101 of the *Workplace Relations Act 1996*, the AIRC then makes an award in settlement of that dispute. It is on this basis that various unions[3] issue logs of claims to employers. These are the first step in the initiation of federal award making in Australia.

[3] Registered organisations of employees under the *Workplace Relations Act 1996*. It is possible for organisations of employers to initiate award making, but this has been very rare.

135. The amendments would guide the Commission in when it should make findings of dispute after the service of logs of claims (that is, make the essential first finding preceding the making of an award).

136. It would also in effect, ensure that unions serving logs of claims met the standards in the amendments, and ensure that the legal demands that they serve of employers are consistent with the law, and properly reflect the mutuality of interests involved.

What Employers Face

137. Logs of claims are documents specifically created to be served on employers.

138. Attachments B and C are logs of claims served on employers in the warehousing and retail industries.

139. Logs of claims are very long and complex documents. They have been crafted to navigate 90+ years of legal precedent, and detailed constitutional findings by the High Court.

140. Logs of claims are also, to ordinary business person or employee, utterly unrealistic in what is claimed. Attachments B and C confirm this.

141. It is worth pausing at this point to consider the impacts of logs of claims in workplaces.

    a. Small business people are busy running businesses, paying the bills and struggling to pay wages.

    b. They then receive a written, legalistic letter of claim from a union, which has never attended their workplace, and has to their knowledge no membership amongst their employees.

    c. This claim is for wages perhaps three or four times what they are paying, for leave , and for absurd things like months and months off work, fully employer funded vehicles, one's birthday off work etc.

142. Smaller employers often react to logs of claims in three completely understandable ways:

    a. They simply discard the log as outlandish and unreasonable. The result is that they are roped into an award without representation or consideration of their business.

    b. They simply discard the log on the basis that they know none of their employees are union members. The result is that they are roped into an award without representation or consideration of their business.

    c. They panic and seek advice. Only in these circumstances can they be properly advised in relation to the log of claims and award making process.

143. ACCI strongly supports measures which will render award making more transparent to employers, particularly smaller employers, and in particular which will render logs of claims more comprehensible and sensible to the people who receive them in the mail.

144. Whilst not the principle purpose of the *Choice in Award Coverage Bill,* the Bill will render logs of claims more sensible in key areas.

145. In particular, it will ensure that the logs of claims which employers receive do not contain claims which can create ambiguity in regard to what employers may (or will feel they are legally compelled) to do. In particular, logs of claims would not contain claims which cannot be given effect to in awards.

Reciprocal Duties of the System to Respondents / The Regulated

146. Proposed s.101A(b) would provide that there be at least 28 days between the service of any log of claims and any union notifying a dispute to the Commission under s.99 of the *Workplace Relations Act 1996*.

147. Proposed s.101A(c) would provide that there be at least 28 days notice to employers of the time and place of the hearing of dispute finding hearings.

148. Both proposals are strongly supported by ACCI. The workplace relations system owes a reciprocal duty to all who must comply with it to properly support and encourage compliance.

a. Appropriate notice of pending significant changes in employment obligations is entirely consistent with the system properly supporting and encouraging compliance. It would enshrine a superior balance of considerations for applicants and respondents than that in the present *Workplace Relations Act 1996*.

b. Appropriate opportunities to respond to union claims is also consistent with a system properly supporting and encouraging compliance.

States other than NSW and Victoria

149. Particular issues arise for employers in WA, SA, Tasmania and Queensland. Given that dispute findings inherently require consideration of claims against employers in multiple states and the organisation of the Commission, there can be situations in which claims against employers in these States are listed for hearing in Sydney or Melbourne.

150. This has been redressed through various more recent appointments and through greater use of video conferencing (although this is not allowed in all cases).

151. However, the remoteness of some employers from the unions serving the logs, and from the locus of hearing is a real and ongoing issue. Greater notice between the service of a log and nay hearing would assist these employers.

Natural and Procedural Justice

152. Employers have a clear and century old right to object to the finding of a dispute following the service of a log of claims, and to the making of a new award. This is the rationale of the dispute finding hearing under s.101 of the *Workplace Relations Act 1996*. It is not simply an automatic matter that a log of claims generates a federal award. If it were, the whole dispute finding exercise, Division 2 of Part VI of the *Workplace Relations Act 1996*, and the proposed amendments would not be required.

153. Opposing logs of claims, and opposing findings of dispute in whole or in part is a complex matter and relies on an assessment of complex legal issues and an assessment of complex matters of fact (for example understanding the service of the log of claims, its endorsement under the union rules etc).

154. Anything less than 28 days notice of a hearing would not allow employers a practical opportunity:

    a. To determine whether there are any grounds to make any objection to a dispute finding.

    b. To instruct their representatives to pursue an objection on their behalf.

    c. To prepare a case in objection to a dispute finding.

155. This has very real consequences for the extent to which employers are accorded natural justice in the making of dispute findings. There is scope for very real detriment to employers in addressing such claims where less than 28 days notice is provided.

156. There is clearly an additional challenge for those seeking to object to a dispute finding from regional or rural Australia.

157. There is also a practical challenge for organisations of employers (ACCI members). ACCI members, even where they are parties to awards, are not as of right notified of the service of logs of claims, nor are they necessarily provided with the lists of employers unions have served documentation on. Often, the body which will ultimately represent the bulk of employers in any dispute finding hearing will only become aware of a roping in or award making exercise when one of the potentially affected employers contacts them. This if often very shortly before the hearing. Service of documentation with 28 days notice as proposed in the amendments appears to offer scope to significantly improve this process.

Getting it Right

158. Award respondency creates massive financial, labour cost and regulatory obligations upon Australian businesses. It is important that it only be applied where it is right and merited.

159. ACCI members are regularly required to review the award respondency of individual employers (and sometimes of registered organisations themselves) to determine obligations and check compliance.

160. These reviews regularly turn up fundamental errors in the respondency of particular employers to particular awards, including:

a. Errors in relation to the proper identification of companies.

b. Errors in name and address details.

c. Inclusion of employers who do not fit within the industry, occupational or functional scope of the award proposed to be made / extended following a dispute finding.

161. A more realistic period of time for respondents and their representatives to assess logs of claims would allow a better opportunity to address these errors before the finding of disputes and the making of awards.

Urgency No Longer Required

162. It is important that there be a correct understanding of the balance of interests here. There is no justification in the system for award making and award extension to proceed with indecent haste.

163. This is in fact the consideration before the Senate. In rejecting the proposal for a balance of interests and eminently reasonable 28 day periods for dispute consideration and settlement, the Parliament would be determining that it is essential that there continue to be a process of indecent and potentially prejudicial haste in dispute finding and the consideration of logs of claims, and that this outweighs the need for balance and proper consideration.

164. There have previously been some arguments advanced by unions in favour of very rapid access to dispute findings, and accelerated entry into federal awards. These focussed in particular on union attempts to flee into federal coverage from State systems in which there had been substantial reforms. This included in particular union actions during the early to mid 1990s in Victoria and Western Australia.

165. A number of points should be noted in regard to this:

a. The urgency which unions argued was required in these situations is no longer 'required':

i) Unions had the opportunity under the former *Industrial Relations Act 1988* in particular to flee State systems and move into federal awards. Many took this up in major industries. In simple terms, where unions felt the need to make urgent change, they have already made it.

ii) Western Australian arrangements were amended during 2001/2002, including in particular the abolition of WA Workplace Agreements, and the introduction of award rather than statutory minimum conditions of employment for agreement making. – There is no longer any policy basis for unions to claim that they need very urgent award making.

iii) Victorian arrangements are shortly to be amended by the *Workplace Relations Amendment (Improved Protection For Victorian Workers) Act 2003*.[4] Federal awards are to be applied common rule in that State, obviating any arguments that urgent making of federal awards is required.

iv) More generally, federal awards have been available to unions for over 9 decades. There is a wide web of federal awards covering occupations and industries equivalent to those covered by trade unions. There is also a wide web of state awards. It is not sustainable to attempt to justify undue haste in award coverage on the basis of awards not yet covering particular occupations. Given the existing breadth of the safety net, new awards should be able to be made on a reasonable timetable.

b. It should also be recalled that the *Workplace Relations Act 1996* continues to provide for the urgent making of interim awards where required (Section 111(1D). The Commission can still act with expedition where merited and make urgent awards. This of course properly remains the exception rather than the rule in award making and roping in.

Freedom of Association – Objectionable Provisions

166. ACCI strongly supports the amendments (proposed s.101A(d)(i) and (ii)) which will ensure that logs of claims are rendered more comprehensible and consistent with the wider workplace relations system.

167. It is completely unsatisfactory that employers may be served with formal legal documents, that will be accepted as legitimate and able to be processed by the AIRC, which would require of the employer actions which are legally objectionable and directly prohibited under law (under the very Act under which logs are served and awards are made).

168. Objectionable provisions (under s.298Z(5)) are those which would convene the freedom of association provisions of the *Workplace Relations Act 1996*. These include:

a. Logs of claims seeking discriminatory preference to individuals on the basis of their membership of trade unions (a manifest offence against freedom of association provisions).

[4] No.137 of 2003.

b. Logs of claims seeking the payment of bargaining services fees (specifically accepted by the Parliament as objectionable in the passage of the *Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Act 2003*[5].

169. The Committee is invited to consider the extent to which a log of claims sends messages to employers about what can legitimately be required under the *Workplace Relations Act 1996*. It is not appropriate that any log of claims be able to give the misleading message to employers that particular conduct is either required or permitted when such conduct is specifically prohibited under the *Workplace Relations Act 1996*.

170. It is not appropriate that unions be able to serve misleading and objectionable documents, nor that the Commission be able to find disputes exist, in regard to matters which this Parliament has otherwise determined to be illegal and prohibited, not only as a matter of public policy, but as matters of fundamental individual rights and freedoms (the freedom to associate and not associate under Part XA of the *Workplace Relations Act 1996*).

Matters Outside the Employment Relationship

171. ACCI strongly supports the amendment (proposed s.101A(d)(iii)) which seeks to ensure that logs of claims can only address matters which the Commission actually has the power to include in awards.

172. Firstly, it should be recalled that the extent to which a particular claim, or regulatory proposition can be included in a federal award is a constitutional matter, and relies on a set of high court precedent based on s.51(xxxv) of the Constitution.

173. This concern arises in the instant term in relation to a crossover between objectionable provisions in terms of freedom of association, and provisions which do not relate to the employment relationship. However there are a myriad of other matters which could potentially be included in logs of claims which cannot validly be included in awards of the Commission.

174. In addition, to the extent matters not pertaining to the employment relationship are included in logs of claims, they should not then be included in dispute findings. The Commission is not empowered to find a dispute exists in relation to matters outside of employment, and thereby should never proceed to consideration of such matters for inclusion in awards.

175. This is presently the case, and the Commission should already be declining to find disputes exist in relation to parts of logs of claims which come before it which do not pertain to the relationship between employers and employees.

176. This is a recipe for the Commission cherry picking logs of claims brought before it, and for further confusion and costs in addressing logs of claims.

[5] No.20 of 2003.

177. Proposed s.101A(d)(iii) would preclude such confusion. It provides incentives for unions to only serve claims on employers and only being claims to the Commission, which can actually legally give rise to new award provisions. This would ensure the Commission is not required to cherry pick logs of claims to settle disputes.

Small Business

178. In essence, proposed s.101B of the *Workplace Relations Act 1996* would ensure that unions could only extend federal award coverage to smaller enterprises where they had members in those enterprises, and following a decent opportunity for smaller employers to be heard.

179. This is precisely the form of mutuality and reciprocal consideration of small businesses which ACCI strongly supports. The system should be adjusted to take greater account of the circumstances of users, and in particular of respondents to federal employment regulation / awards.

Nexus to Union Membership

180. Proposed s.101B(3) provides that the Commission would not be able to include a small employer in a new dispute finding unless there is union membership with in the small business.

181. That is, there would only be scope to extend federal award coverage to a small business where that is what employees want.

182. This appears to ACCI to be an eminently defensible proposition, and entirely consistent with the existing *Workplace Relations Act 1996* which the Parliament has crafted over many decades.

183. The objects of the *Workplace Relations Act 1996* include:

> *3(b) ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level;*
>
> *3(c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act;*

184. How can primary responsibility for the employment relationship rest with employers and employees at their workplace, if an outside party, with no endorsement or imprimatur from either party and which may never have even visited the workplace, can fundamentally change this relationship?

185. How can an employer and his/her employee(s) chose the most appropriate form of agreement for their circumstances if an outside party, with no endorsement or imprimatur from either party and which may never have even visited the workplace, can override this choice and render it nugatory by means of pursuing a federal award?

186. It is also valid to consider this proposition from a differing perspective. What generalised right should any organisation validly have to shift the industrial coverage and obligations of the parties to an employment relationship, where it has no linkage to either party and has no endorsement from either parties for the proposed shift into federal coverage.

An Opportunity to Make Submissions to the Commission

187. Proposed s.101B(4) provides that smaller employers who notify an interest (s.101B(2)), will be given an opportunity to provide written comments on any proposed award within a specified period.

188. This appears to ACCI to be an exercise in improving procedural and natural justice. It seeks to make clearer to small employers a process which is often far from clear to experienced industrial practitioners and lawyers.

189. Such an opportunity to be heard must provide the Commission with superior information upon which to determine ongoing award respondency. It is likely to allow members of the Commission to be better informed about proposed respondency, the impact of award making on enterprises, and most importantly, the preferences of employers and employees to be covered by awards.

190. Smaller employers will also be able to more properly inform the Commission of prevailing employment arrangements within their enterprises, and of the preferences of both the employer and employees concerned (there may for example be State or federal agreements of which the union was not aware in initiating a log of claims).

    a. The Commission need not simply take the employer's word for these things. It may be appropriate for example for the Commission to seek the views of employees directly in the wake of correspondence from the employer.

191. It also appears to allow more smaller employers more scope to take advice and seek representation. This is not only consistent with the objects of the system and the statutory schema, but it is again going to lead to: superior award making, a reduction in errors in award coverage, and outcomes which are more sensitive to the impact of particular awards in particular enterprises.

Conclusion

192. The published reasons for the referral of this Bill to the Committee were:

    a. Importance of award safety net

    b. Effect of restricting the award safety net

    c. Inconsistency of this Bill with Government's approach in the Workplace Relations Amendment (Improved Conditions for Victorian Workers) Bill.

Importance of the Award Safety Net

193. The safety net, both award and statutory, is in no way threatened or diminished by the proposals under consideration. The substantive and operative provisions of awards will remain in place without amendment. This is particularly the case for the key areas of regulation for employers and employees – hours, rates of pay, leave etc.

194. ACCI cannot see how this bill in any way raises consideration of the importance of the award safety net – the safety net remains in place, it retains its role unaltered by these amendments. It importance after the passage of these amendments will be the as its importance prior to their passage.

195. This said, as a wider issue, all involved in the system should recognise and appreciate that the day to day importance of the award safety net should reduce over time as:

    a. More enterprises enter agreements, and no longer work with reference to awards.

    b. More enterprises observe terms and conditions of employment in excess of the award safety net.

196. It appears to ACCI that one of the goals of the system should be an ongoing diminution in the day to day importance of awards for more employers and employees.

Effect of restricting the award safety net

197. ACCI can see no way in which the *Choice of Award Coverage Bill* restricts the award safety net

    a. New federal awards will still be able to be made without a diminution of the matters covered.

    b. There is no actual restriction on the award safety net by ensuring awards only contain matters which they are legally and constitutionally able to regulate.

    c. Employers will still able to be roped into federal awards where merited and supported by the employees to be affected.

    d. Restricting the scope of logs of claims to exclude objectionable matters and other matters not able to be included in an award in no way restricts the scope of awards themselves.

Link to Amendments For Victorian Employees

198. It is not clear what the Committee is to have reference to in considering this issue. The supposed inconsistency is not clear to ACCI. The Victorian system, a single system, is a contrast to the dual system in other States. By its nature the Victorian system should alleviates the need for respondency – with or without passage of this Bill.

199. Unique provisions will guide the Commission in declaring awards common rule in the State of Victoria. This is a completely separate exercise from dispute finding and award making in other States.

200. Perhaps the only inconsistency in the proposal with the Victorian provisions of the *Workplace Relations Act 1996* lies in appropriate notice to employers of new regulatory provisions. The Victorian amendments provide for a 12 month transitional period for the introduction of substantial new financial imposts.

201. The *Choice of Award Coverage Bill* seeks to provide a much more limited period for employers to comprehend and make the transition to, new regulatory obligations. If anything, proper consideration of the Victorian amendments compels longer periods for adjustment and transition to federal award coverage than are proposed in the *Choice of Award Coverage Bill*.

WR Amendment (Simplifying Agreement-making) Bill 2004

202. The explanatory memorandum to the *Simplifying Agreement Making Bill* outlines the amendments proposed, as follows:

For AWAs, the Bill will:

a. provide for AWAs to take effect on the date of signing or, if later, the date specified in the AWA as the commencing day, or, in the case of a new employee, the date the employment commences;

b. permit employees to sign AWAs at any time after receiving a copy of the information statement prepared by the Employment Advocate and an explanation of the effect of the agreement;

c. permit an employee party to an AWA to withdraw consent within a cooling-off period;

d. remove the provisions relating to offering AWAs in the same terms to comparable employees;

e. simplify the approval process by consolidating the existing assessment of filing requirements and approval requirements into a one step approval process;

f. allow the Employment Advocate to revoke an approval or refusal of an AWA, extension agreement, variation agreement or termination agreement (this power does not extend to approval or refusal decisions taken by the Commission); and

g. allow an employee, or the Employment Advocate on behalf of an employee, to recover a shortfall in entitlements in specified circumstances where an AWA or related agreement:

   i) ceases to have effect;

   ii) is approved with an employer action or undertakings; or

   iii) was void.

In relation to certified agreements, the Bill will:

h. provide that, in cases where an application to certify, extend, vary or terminate a certified agreement is considered by the Commission, no formal hearing should be held unless it is necessary in the circumstances (although allowing employees and other defined persons to request that the Commission conduct a hearing);

i. remove the entitlement of employee organisations to prevent the extension, variation or termination of section 170LK agreements, while still retaining a role for such organisations where requested by a member;

j. allow the Commission to certify an agreement, notwithstanding that the agreement was varied during the employee consideration period without the consideration period being recommenced, if the Commission is satisfied that no employee who would be covered by the agreement suffered detriment as a result of the non-recommencement.

AWAs

203. The AWA proposals in the *Simplifying Agreement-making Bill* closely reflect various proposals previously considered by the Parliament, including in the *Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000*.

204. ACCI has consistently supported these amendments and continues to do so.

205. The amendments address a number of the settings established at the time AWAs were first inserted into the system (1996). In 1996, these may have appeared to some parties to be essential provisions for operation of the system.

206. However, we now have some years of experience with the making and formation of AWAs, and in particular with the work of the Office of the Employment Advocate in ensuring fair process and protecting fair outcomes.

207. We have the benefit of the experience of Australian's entering AWAs on over 458,000 separate occasions.

208. ACCI considers that the high level of statutory control over process initially adopted in 1996 can legitimately be revisited, in particular through amendments such as those contained in the *Simplifying Agreement-making Bill.*

209. There appears to ACCI to be no policy or practical basis to not make the changes proposed in the Bill.

Certified Agreements – No requirement for formal hearing

210. ACCI Workplace Relations policy supports the evolution of the system through a process in which agreements can be approved without a formal hearing of the Commission.

211. The Commission already processes multiple agreements (often dozens) in single settings. Despite being conducted in open "court", certification already operates akin to a purely administrative process on many occasions.

212. The Commission should, as a current step in an evolutionary process of policy and procedural refinement, be empowered to determine whether or not a hearing is required for the passage of any particular agreement. Under the

proposed s.170LVA, it is the Commission which will determine whether a hearing is required. Under the proposed amendments, at all times, it will be the Commission which will determine the utility and merits of a hearing being convened.

213. In addition, various named individuals and groups can seek a hearing (s.170LVA(1)(b)). This includes rights for individuals and unions to demand a hearing for the certification of an agreement.

214. In relation to an agreement made without the necessary involvement of a union (a s.170LK agreement), unions will have a right to seek a hearing to the extent it has initiated an involvement in that agreement (s.170LVA(1)(iv)).

215. Where there is any doubt, a hearing will be held for the certification of an agreement (proposed s.170LVA(1)(a)).

216. There are therefore substantial safeguards in the proposed approach. ACCI can see no endangerment to the interests of any party in the proposed amendments.

217. The proposed amendments in regard to formal hearings for agreement making appear a cautious and evolutionary step. ACCI believes that the parties to the system are mature and capable enough to take this step as proposed in the Bill.

Certified Agreements – Certification Despite Variation During Consideration

218. It is not appropriate that a union have an effective veto over the variation of a certified agreement, where this variation is supported by a majority of employees to be covered by the agreement (and to be covered by the variation).

219. The proposed new provisions would ensure that unions have a voice in regard to the variation and extension of certified agreements only to the extent they have membership amongst those to be covered by the agreement, and are requested to put a particular position.

220. This is an entirely merited and appropriate approach. Unions should enjoy a role in bargaining only to the extent they are empowered to do so by the employees to be covered by any agreement. ACCI can see no basis on which it would be appropriate that unions have an ongoing veto over the will of parties in the workplace (for that is the consequence of not giving effect to this proposed amendment).

Conclusion

221. The reasons for the referral of this Bill to the Committee were:

a. Why a party to an agreement should not be involved in its variation?

b. Practical implications of AWA's operating from the time of signing, particular if the AWA is not approved.

c. Correct processes for agreement approval and any evidence of problems with these processes.

Parties to Agreements and Their Variation (Variation and extension of s.170LK agreements)

222. This appears to have been included in the reasons for referral, based on a consideration of the rights of unions in the variation, extension and termination of agreements made under s.170LK of the *Workplace Relations Act 1996*.

223. So, why should a union party to a s.170LK agreement not be involved in its variation?

a. A union never becomes a party principal to a s.170LK agreement. These remain agreements between employers and employees. Unions may (under s.170M(3)) gain the status of a notified party, which chooses to have its name attached to an agreement after its passage (and thereby to be bound by the agreement).

b. A union bound by a s.170LK agreement under s.170M(3) was not involved in the passage of the certified agreement. The union's formal endorsement was not for example, required for the passage of the s.170LK agreement. There is no basis to conclude that the union should gain an automatic right of participation in the variation or revisiting of an agreement it did not shape in the first instance.

c. There are clear safeguards for unions. Where a union successfully attracts support in an enterprise in the wake of the making of a s.170LK agreement, it should have the capacity to influence the voting of individual employees. Where a union enjoys genuine workplace support, an employer initiated vote to vary an agreement without union involvement should fail.

d. To not give effect to the proposed amendment would enshrine a union right of veto over the wishes of employees and employers in workplaces. For example, 100% of employees and their employer could agree to vary a particular agreement (and this variation would meet the non-disadvantage test in the *Workplace Relations Act 1996*), and a union (which may have few or no-members) would have a right to stop this variation going ahead. This is absurd and unbalanced.

Date of Effect for AWAs

224. This concern is comprehensively dealt with in the proposed amendments (proposed s.170VX). Where an AWA is not approved, there will clearly be a basis for rapid and unambiguous restitution.

225. The Employment Advocate will be empowered to act on employees behalf to seek to redress any shortfalls which may arise.

226. In regard to non-approval of AWA and any restitution to employees, the Committee should consider the process proposed and not treat this as a basis not to reform AWA entry processes.

Agreement Approval Processes

227. Consistent with the preceding, ACCI considers that correct AWA and Certified Agreement approval processes are not set in stone, and are not limited to those established in 1996.

228. Correct proposals for the approval of agreements are at all times those which properly balance, based on prevailing contemporary circumstances, the need for agreements to meet appropriate tests with the need for expedition and minimum interference in agreement making.

229. The proposed in the *Simplifying Agreement-Making Bill* reflects an appropriate way forward in relation to the approval of both AWAs and Certified Agreements. It is an appropriate step in what must be an ongoing process of reform.

Conclusion

230. ACCI calls on the Committee to recommend that the Senate pass these amendments with expedition.

231.

Attachment A – The Right to Strike

ACCI Review, July 2002

Attachment B – Example of a Log of Claims - I

NATIONAL UNION OF WORKERS

1. Incidence of Claims

These claims shall be binding upon:-

(a) any organization of employers in receipt of these claims and on its members in respect of such members employment of employees who are members or who are eligible for membership of the Union; and

(b) any employer in receipt of these claims in respect of the employment of employees who are members or who are eligible for membership of the Union; and

(c) any employee of such employer who is eligible for membership of the Union whether a member of the Union or not; and

(d) the Union.

2. Area Covered by the Claims

These claims shall apply throughout Australia.

3. Weekly Wage Rates

(a) The minimum weekly wage for an employee who is classified at the base classification for the type of work carried out by the employee and who is employed for the number of hours prescribed by clause 10 of this log of claims shall be:-

(i)	on commencement of employment	$1,000.00
(ii)	after 3 months of service	$1,200.00
(iii)	after 6 months of service	$1,500.00
(iv)	after 12 months of service	$2,000.00

The weekly payment specified in (i), (ii), (iii) and (iv) above shall be for all purposes of these logs of claims.

(b) Employees employed in classifications above the base classification for the type of work performed by the employee shall, in addition to the weekly wage rates specified in clause 1(a), receive a further 20% of the base classification weekly wage rate for every classification level at which they are classified above the base rate.

4. Extra Payments

In addition to all other payments an amount of $100.00 shall be paid per week for duties of a special nature requiring additional knowledge and/or additional skills and/or experience.

5. Site and/or Established Allowance

In addition to all other payments, an amount of $100.00 per week shall be paid in lieu of site and/or establishment allowances to compensate for disabilities in connection with various sites and establishments in various parts of Australia and its Territories.

6. District and Divisional Allowances

(a) In addition to all other payments, an amount of $100.00 per week shall be paid to all employees to compensate for climatic conditions, work performed in remote areas, isolation and similar disabilities in remote areas of Australia.

(b) In addition to all other payments, an employer shall pay all costs incurred by an employee and family travelling first class to a capital city of the employees choice and return. An employer shall not be responsible for costs incurred more than once in any calendar year.

7. Industry Allowance

In addition to all other payments, an amount of $100.00 per week shall be paid to all employees to compensate for all obnoxious, hot, cold and dirty work performed.

8. Service and Retirement Allowance

At the completion of each year of service, employees shall receive a service and retirement allowance of $25.00 per week.

9. Special Rates

In addition to all other payments, an amount of $100.00 per week shall be paid to employees who are required to, in any manner, supervise the duties and/or functions of any other employee.

10. Hours of Work

The ordinary hours of work for all employees shall not exceed 32 hours in any one week, to be worked in the case of day workers, between the hours of 8.00 a.m. and 4.00 p.m. Monday to Friday. Work shall not be performed on more than four days in any one week.

11. Shift Work

(a) Double the ordinary rate (including additional payments) shall be paid for all shift workers performed Monday to Friday inclusive up to a maximum of 32 hours per week.

(b) All shift work in excess of 32 hours per week shall be paid at double the usual rate for shift work.

(c) All shift work performed on Saturdays, Sundays, Public Holidays or the employee's Rostered Day Off shall be paid at the rate of treble the rate paid to shift workers for Monday to Friday work (with a minimum payment of six hours).

An additional day's leave shall be credited to an employee's entitlement on each occasion work is performed on Saturday, Sunday, Public Holidays or the employee's Rostered Day off.

Shift workers who are rostered off on a public holiday shall be paid for such a day at the rate they would have been paid if they have been at work.

(d) All shift workers shall be entitled to a meal break of not less than 30 minutes per shift, which shall be counted as and paid for as time worked.

12. Mixed Functions

Where an employee is required in any week to perform functions other than the usual function of his/her classification, he/she shall be paid for the whole week as if employed on the function (s) which involve(s) the highest rate of wages.

13. Overtime

Any employee required to attend the place of employment before or after the normal working hours on any day Monday to Friday inclusive, shall be paid double time and one-half the employee's normal rate including all additional payments. The working of overtime shall be at the option of the employee.

14. Holiday, Saturday and Sunday Work and Work on a Rostered Day Off (Day Workers)

All work performed by employees on Saturdays, Sundays, Public Holidays or Rostered Days Off, shall be paid at the rate of double time and one-half in addition to the ordinary weekly rate of pay with a minimum payment for six hours work. In addition, employees shall be entitled to a day off on full pay for each occasion work is performed on a Saturday, Sunday, Public Holiday or Rostered Day off.

15. Meal Breaks

No employee shall be required to work for more than three hours without a break or a meal of one hour, which shall count as time worked.

16. Meal Allowance

An employee who performs duties prior to his or her normal starting time or after the normal finishing time or on Saturdays, Sundays, Public Holidays or Rostered Days Off, shall be paid a meal allowance of $30.00 for each meal.

17. Annual Leave

(a) In any one calendar year, all employees shall receive seven weeks paid annual leave, such leave shall be paid at the rate the employees would have received if at work, plus an additional eight weeks normal pay as loading. Each employee required to work for more than one month after annual leave has become due shall be paid penalty rates at the rate of double time until such time as the employee is released from duty for the purpose of taking leave.

(b) Where employment is terminated for any reason, the employee shall receive all accrued annual leave entitlements including the loading.

18. Public Holidays

The following holidays or the days on which such holidays are observed, shall be observed and allowed to all employees without any deduction being made from the weekly pay:-

New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Easter Tuesday, Anzac Day, Labour Day, 1st May, Queen's Birthday, Show Day, Cup Day, Hobart Regatta Day, NSW August Bank Holiday, 11 November, Christmas Day, Boxing Day or Proclamation Day, 27-31 December inclusive, Union Picnic Day, Anniversary of the employee's birth plus any other statutory, gazetted or proclaimed holiday or any holiday applying under State Awards applying in the locality where the employee is working.

Any holiday falling on a Saturday or Sunday or the employee's Rostered Day Off, shall be observed on the next succeeding working weekday.

19. Sick Leave

Any employee who is unable to attend for work due to illness, injury, elective surgery, optical or dental work, shall not suffer any reduction in normal wages. Where an employee falls ill on any paid leave of absence, an additional period of paid leave shall be allowed to the employee equivalent to the period of illness. An employee shall be paid sick pay for any illness occurring during unpaid leave and additional unpaid leave shall be allowed to the employee if required.

20. Rest Periods

Subject to clause 10, all employees shall be allowed a rest period of 10 minutes during each two hours of duty. Such time to be counted as time worked.

21. Travelling and Living Away from Home Allowance

(a) The employer shall pay to each employee, all costs (including motor vehicle maintenance) incurred in travelling to and from the work place and the employees home.

(b) Any employee who in the course of normal employment is required to reside away from the normal place of abode, shall be paid $200.00 for each day the employee is away from such abode.

(c) Any employee who in the normal course of employment is required to reside away from the normal place of abode shall receive a spending allowance of $200.00 per day.

22. Attendance at Hospital, Etc.

An employee suffering injury through an accident arising out of or in the course of his or her employment (not being an injury in respect of which he or she is entitled to workers' compensation) necessitating his or her attendance during working hours on a doctor, chemist or trained nurse, or at a hospital, shall not suffer any deduction from his or her pay for the time so occupied on the day of the accident and shall be reimbursed by the employer for all expenses reasonably incurred in connection with such attendance. For the purpose of this clause, the term "working hours" shall include the period in which the employee was engaged in overtime.

23. Bereavement Leave

Upon the death, whether in Australia or elsewhere, of an employee's wife, husband, defacto wife, defacto husband, mother, father, uncle, aunt, nephew, niece, step-father, step-mother, or any other person who stands or stood in loco parentis to him or her, child or step-child, ward or former ward, or such a relative of his or her spouse, or defacto spouse, shall be allowed leave with pay for 10 working days in respect of each bereavement, such leave to be counted as service for all purposes. In addition, leave without pay shall be granted after the 10 days paid leave have been availed of, such leave to count as service for all purposes.

24. Compassionate Leave

When an employee who does not attend for work due to necessary absence in connection with his or her child, parents or illness of a close relative and whom the employee is physically looking after or because a person specified in sub-clause (a) above "Bereavement Leave" of this log, is dying or is reasonably anticipated to be dying shall suffer no deduction of pay including shift penalty rates on account of such non attendance.

When an employee's or employer's property has been damaged through flood, fire or other natural disaster and the circumstances are such that he or she is unable to attend for work or it is reasonable that he or she absent himself or herself from work on account thereof, he or she shall be paid for the time of his or her non attendance at work as though he or she had been at work.

An employee shall be entitled to leave with pay for a period of 20 working days where there is a reasonable pressing domestic necessity, such leave to count as service for all purposes. The employee shall be entitled to additional leave of absence without pay, to count as service for all purposes, for the period during which such necessity exists.

25. Court Attendance

An employee who is required to take part in court proceedings shall be paid by the employer, the difference between the amount he receives for attending the court proceedings and the amount the employee would have received had the employee been at work. Provided that an employee on shift work shall not be required to report for work until the shift next following the completion of the court proceedings.

26. Blood Donors

Employees shall be entitled to leave without loss of pay for the purpose of donating blood.

27. Clothing

Employees shall be supplied with clothing, including boots and overalls and any other protective clothing required, for the job free of charge. Types of clothing to be issued shall be left to local arrangements between the union and the employer having regard to local conditions.

28. Contract of Employment

(a) Except as provided for in sub-clause (c) of this clause, all employment shall be permanent. No notice of termination of employment shall be given to any employee by the employer without prior consent to the union, and no such notice shall be given whilst he employee is on annual leave, sick leave, bereavement leave, compassionate leave, long service leave, maternity leave, paternity leave, adoption leave or any other paid leave, or on leave of absence without pay, or is in receipt of workers' compensation payments.

(b) In the event that an employer terminates the employment of an employee in a manner contrary to that required by sub-clause (a), the employer shall immediately re-instate the said employee. The period between when the employee was terminated and re-instated, shall be deemed to be service for all purposes.

(c) The employer shall agree to the insertion of an award requirement that the employer shall not terminate the employment of an employee without the consent of the Union.

(d) In addition to the provisions of sub-clause(a) a minimum of six months notice shall be given of intended termination of employment to the affected employee by the employer.

The employer shall assist the employee in obtaining alternative employment by such means as leave on full pay in order to seek alternative employment or to undertake retraining, and shall maintain the income on termination of the employee at the equivalent of current rates and shall meet the additional costs incurred where the employee moves elsewhere to obtain employment.

(e) Casual workers may be employed by agreement with the union. Where such agreement is reached, casuals shall be paid double the hourly rate (inclusive of all additional payments) for the class of work being undertaken for all work up to 30 hours per week. Overtime rate (i.e. triple the ordinary casual rate) shall be paid for all work performed by casuals in excess of 30 hours per week, and work on Saturdays, Sundays and Public Holidays shall be paid for at four times the ordinary casual rate.

Casual employees shall be paid for a minimum of six hours work at casual rates on any occasion when instructed to report for work. All other conditions of employment contained in this log of claims shall apply to casual workers, in addition to the provision of this sub-clause.

(f) All employees shall be entitled to engage in any form of industrial disputation whether by strike, imposition of bans, limitations or any other means, in support of matters contained within this log of claims. Any such action shall be deemed so as not to constitute a breach of either contractual or award provisions, nor shall any such industrial disputation give rise to any common law claim for either injuctory relief or damages on behalf of the employer affected.

29. Payment of Wages

Wages, including current overtime, meal money and other prescribed payments, shall be paid in cash no later than Thursday in each week in the employer's time. Where a public holiday falls on a Thursday or Friday or the employee's Rostered Day Off, wages shall be paid on the preceding Tuesday or Wednesday respectively. An employer shall not keep more than one day's pay in hand.

The pay envelope shall be clearly marked with the following details:-

- date of payment;
- period covered by payment;
- rate of wages;
- number of hours covered by the payment:
  - (a) at ordinary time
  - (b) at overtime rates;
- additional payments included;
- gross wages payable;
- amount and nature of each deduction;
- nett amount payable.

All monies due to an employee who leaves the employment of the employer shall be paid in full on the day of termination of employment.

30. Motor Allowance

An employee required to use his or her own vehicle in the course of his or her employment shall be paid $5.00 per kilometre for every journey made or $5.00 per week standing charge for all weeks including periods of absence whichever is the greater.

In the event of an accident whilst the employee is using his or her vehicle in the course of work, the employer will pay any costs arising from the said accident.

31. Right of Entry

Any properly accredited officer of the National Union of Workers shall have the right to enter an employer's business premises at any time for the purpose of interviewing employees, conducting meetings with employees on the employer's premises, inspecting the premises and making full investigation into any matter relating to wages and conditions of employment.

The employer shall provide the union official facilities for interviewing employees and conducting meetings and shall make available, all relevant books and records and provide all such assistance and information as the official requires.

32. No Reduction in Wages or Conditions

Nothing in the award shall in itself operate to reduce the rate of pay or conditions of employment of any classification in existence of the commencing date of the award, or of any employee employed prior to the commencing date of this award.

33. Preference of Employment

Absolute preference of employment shall be given to financial members of the National Union of Workers in all matters relating to employment, including in matters of engagement, promotion, retention in employment and the taking of annual leave.

34. Full Time Union Delegates

Union delegates shall be allowed thirty hours per week on full pay to attend union business.

35. Washing Time

All employees shall be allowed twenty minutes washing time before all rest pauses and meal breaks and prior to knock-off time. Such washing time shall count as and be paid for as time worked.

36. Parking of Vehicles

Employers shall provide adequate protected parking facilities for employees' vehicles at the place of employment. All time required to park vehicles shall count as and be paid for as time worked.

37. Workers' Compensation

An employee who is entitled to compensation for total or partial incapacity under any Workers' Compensation Act, however titled, shall be paid the difference between the weekly amount of compensation payable under the relevant Act and the total weekly wage he or she would have earned had he or she been at work. Such payment shall continue for the duration of the incapacity.

38. Retirement Fund/Superannuation

The employer shall become a Participating or Contributing Employer within the meaning of the Trust Deed and Rules of the Labour Union Co-operative Retirement Fund or such other Fund as approved by the Union or the employees and shall make a weekly contribution of thirty percentum (30%) of wages to the relevant Fund in respect of each employee who becomes a member of the Fund.

39. Life Assurance

The employer shall obtain and keep current a life assurance policy on behalf of each employee, which would return the beneficiaries in case of death of the employee, or the employee in case of injury, the equivalent of twenty (20) years income at the rate the employee would have earned had he or she continued at work. On retirement or termination of employment, the said policy would be transferable to the employee, at no cost to the employee.

40. Trade Union Education

Financial members of the National Union of Workers shall be granted leave of absence to attend Trade Union Education Courses conducted under the auspices of the Trade Union Training Authority, the Australian Council of Trade Unions, the National Union of Workers Union or any other branch of the Trade Union Movement.

Employees absent on such courses shall be paid at the rate they would normally been paid if at work, and such absence shall count as service with the employer for all purposes.

41. Amenities

The employer shall provide and maintain such amenities as will secure the safety, health, welfare of employees and these shall include the following:

Seating accommodation, heating in winter, airconditioning in summer, dining room with tables and chairs, cutlery and crockery, refrigerated drinking water, boiling water at meal times and during rest pauses, wash hand basis, hot and cold showers, soap, towels, change rooms, individual full-length lockers.

42. Child Minding Facilities

The employer, in consultation with the Union, shall provide suitable child minding facilities under the direction of a trained mothercraft nurse of infant welfare sister for the care of the pre-school children of employees during working hours or a 25% loading upon ordinary time earnings to workers with pre-school children in lieu of the provision of the above services.

43. English Classes

All employers who employ workers whose native language is other than English shall provide English language and numeracy courses or allow such employees leave to attend English language and numeracy courses, and all time lost shall count as and be paid for as time worked. Any expenses associated with language training shall be borne by the employer.

44. Telephone Rentals

Where an employee is required, for the purpose of his or her employment to be able to be contacted by telephone, all expenses associated with the installation and rental of the employee's telephone shall be met by the employer.

45. Maternity/Paternity/Adoption Leave

An employee shall be entitled to paid leave of absence for up to 24 months on each occasion of the birth of a child of the employee or the adoption or fostering of a child by the employee.

Provided that in the case of a female employee whose child miscarries, is stillborn or dies after birth, she shall be entitled to sufficient paid leave as is, in the option of her medical advisor, sufficient to restore her mental and physical health.

The employee shall be paid during any such absences at the rate of pay he/she would have received if he/she had been at work. In addition, further leave without pay shall be granted on request to the employee. All leave under this clause shall count as service for all purposes.

46. Health Insurance

The employer shall meet, on behalf of the employee, all costs of insurance for hospital, medical and dental treatment for the employee and his or her family.

47. Notice Boards

A lockable glass fronted notice board, in accordance with the requirements of the union delegate, shall be provided for his or her use.

48. First Aid

A doctor and/or an occupational health nurse shall be on duty or reasonably and promptly accessible at all premises where members of the union are employed to render medical assistance and advice to employees as necessary.

49. Forklift

The costs of other licences, including lost time associated with obtaining a certificate of competency to drive a forklift, shall be met by the employer. The annual costs including lost time of all licences and/or certificates required by the employee shall be met by the employer.

50. Long Service Leave

Each employee shall be allowed 7 weeks leave on full pay after 5 years service in the industry with pro rata after 5 years.

51. Paid Stop Work Meetings

Each employee shall be allowed one days leave per month to attend a meeting called by a duly accredited officer of the Union to discuss terms and conditions of employment, such leave shall count as and be paid for as time worked.

52. Exhibition of Award

An up-to-date copy of the Award shall be prominently displayed at all places where employees are working.

53. Property Damage

The employer shall replace at no cost to the employee any of the employee's property lost, stolen or damaged at the work place.

54. Hot/Cold Work

All work shall cease where the temperature at the work place exceeds 35 degrees celsius or falls below 5 degrees celsius. Employees shall be paid at the rate they would have earned had work continued.

55. Lifting Weights

No employee shall be required to lift weights of more than 10 kg.without mechanical assistance.

56. Injury

In addition to any entitlement, the employee may have under the Workers' Compensation Act, an employee suffering the loss or partial loss of any part of the body through accident occurring at work or whilst travelling to or from work, shall be paid a lump sum equivalent to 10 times his or her current annual rate of pay.

57. Lump Sum on Termination

An employee who leaves the employment of the employer for any reason shall be paid a lump sum equivalent to 10 weeks pay at current rates for each year of service or part thereof in the industry plus all accrued entitlements such as sick leave, annual leave (plus loading) and pro-rata long service leave (plus loading).

58. Information

On request, the employer shall provide the Union full information on the activities of the enterprise including on such matters as investment, technological change, levels of employment, profitability, financial data including details of the employer's past activities and any proposed future changes and implications for and effects on the health and safety of employees of any past, present and/or proposed work practices, including machinery and processes used and substances to which employees are or have been or are likely to be exposed.

59. Industrial Democracy

The employer shall, in consultation with the Union and the employees develop effective methods of promoting, developing and continuing industrial democracy in the work place.

60. Staffing

The level of staffing of the employer's enterprise shall be decided in consultation with the Union. No reduction in the number of employees employed shall occur during the life of the Award.

61. Non-Discrimination

An employee shall not be discriminated against or injured in his/her employment on the grounds of that person's sex, sexual preference, race, colour, nationality, religion, age, physical characteristics, membership of a political party or political opinion provided that this condition of employment shall not operate to reduce any rights the employee may have had under the relevant Commonwealth or State Anti-Discrimination or Equal Opportunity Legislation, however titled.

62. Equal Opportunity

Equal Opportunity shall be afforded to all persons for engagement and promotion to higher paid work.

63. Affirmative Action

Where deemed appropriate by the Union, the employer will co-operate in initiating and continuing affirmative action programme designed to advance the position of women and other disadvantaged groups in the work place.

64. No Sexual Harassment

The employer shall take positive steps to ensure that no employee is subjected to sexual harassment of any kind whatsoever in the work place.

65. Occupational Health and Safety

Health and Safety Representatives elected at each work place by members of the National Union of Workers shall be allowed up to 30 hours per week on full pay to attend matters pertaining to the health and safety of employees at the work place concerned, or to attend any relevant training programmes or seminars, etc. conducted by or for the National Union of Workers, the Trade Union Training Authority, the Australian Council of Trade Unions or any other branch of the Trade Union Movement, any government department or authority or recognized educational institution. Such leave shall count as service with the employer for all purposes.

The employer shall, in consultation with the Union and employees concerned, develop effective methods of promoting and improving health and safety at the work place, including the establishment of a safety committee at each work place with an equal number of members nominated by the employer and elected by members of the Union to be chaired by an elected Health and Safety Representative.

The Safety Committee shall meet at least weekly during ordinary working hours without loss of pay to its members and shall, interalia, identify actual and potential risks to the health and safety of employees and develop methods by which these can be eliminated.

Time spent by employees on matters concerning occupational health and safety shall count as time worked.

The employer shall implement all recommendations of the Safety Committee and provide the necessary information for its effective operation including detailed records of accidents, injuries and damage to health of employees, and details of all processes, products and substances to which employees are exposed. Weekly medical checks by a suitably qualified medical practitioner shall be provided to all employees during ordinary working hours in the employer's time.

66. Vocational Study Leave

Each employee shall be allowed ten hours per week to attend vocational training at a course satisfactory to the Union and all expenditure incurred by the employee relating to attendance at the vocational training shall be reimbursed by the employer.

67. Termination and Reinstatement

Notwithstanding any other claim contained within this log or elsewhere:

(a) an employer shall not dismiss an employee without the written permission of the Union (whether or not such dismissal takes place before the making of any Award or Agreement made in settlement of this log of claims).

(b) In any case where an employer purports to dismiss an employee contrary to subclause 69(a) above, the employer shall reinstate that employee forthwith (whether or not such dismissal takes place before the making of any Award or Agreement made in settlement of this log of claims).

68. Out of Wage Deductions

Upon request by the Union or by an employee, employers shall pay an amount as requested out of an employees wages to any source as requested.

69. Transport

Where an employee starts or finishes work or starts or ceases working overtime at a time when his usual means of transport is not available or where an employee ceases work after 6.00 p.m., the employer shall provide transport free of charge to convey the employee from or to his home or lodging as the case may be.

70. Annual Additional Payment

The employer shall pay each of his employees ten weeks pay by way of a bonus in the second last week of December of each year.

71. Classification Committee

In each establishment there shall be a classification committee which shall consist of two persons nominated by the Union and two persons nominated by the employer concerned. The Committee shall regularly review the grading or classification of each position.

72. Company Vacancies

Any position becoming vacant within the employer's establishment shall be advertised on company and Union notice boards, showing job specifications and wage rates. Any Union employee shall have the right to make application for the position so advertised.

73. Employee Reports

Whenever reports are made to the employer regarding any Union employee, such employee shall be entitled to see the report and to comment on or record his disagreement with such report.

No employee shall be injured in his employment by reason of a charge or complaint in any way until he has been given reasonable opportunity to answer same.

74. Pushing or Pulling Heavy Weights

An employee who in the course of his duties is required to push or pull any weights over more than 10 kg. shall be paid, in addition to other remunerations, $20.00 per hour or part thereof whilst so employed.

75. Closure of Plant

Notwithstanding anything herein before claimed on individual termination of employment, in the event of closure or partial closure of an employers business or premises, the employer shall not terminate the employment of an employee for reasons covered elsewhere in this log for a period of two (2) years to take effect from the date upon which this log is received by the employer.

All employers shall, subject to this clause, or unless the employee otherwise agrees be continued in employment by the company in the same city, town or locality without reduction in salary or demotion in grade or classification.

76. Non English Speaking Employees

An employer shall engage an interpreter in the appropriate language for each language group employed by the employer.

77. Provision of Motor Vehicle and Airconditioning and Allowance

Each employee shall be provided with a fully maintained and airconditioned company car. The employer shall pay all costs associated with the insurance, maintenance and up-keep of this car. In the event such airconditioning is not provided, an additional allowance shall be paid to the employee of $50.00 per week.

78. Absence from Duty

No deduction from an employee's wages may be made for any absence from duty for which the employee cannot reasonably be held responsible.

79. Expenses

All expenses incurred in the discharge of an employees duties shall be paid by the employer. Such expenses, without limiting the generality of foregoing, shall include entertainment, parking fees, first class accommodation approved by the Union, meals, morning and afternoon tea, laundry expenses, first class rail tickets and first class airline tickets. Such expenses as could reasonably be anticipated by the employer shall be paid in advance of their incursion.

80. Relocation

The employer shall pay all costs associated with an employee's relocation from one area to another as a consequence of the relocation of an employee's place of employment. Such costs shall include but not be limited to costs associated with buying and selling of the employees house and costs associated with relocating members of the employees family and their property.

81. Certificate of Service

Upon termination of employment, the employer shall provide to an employee a statement specifying the period of employment and the nature of duties performed by the employee.

82. Stock and Samples

An employee shall not be held liable for any loss or damage of samples or stock unless it is proven that they have acted unlawfully.

Attachment C – Example of a Log of Claims - II

RETAIL EMPLOYEES

ACCI Membership

STATE/TERRITORY ASSOCIATIONS

ACT and Region Chamber of Commerce and Industry

Australian Business Ltd

Business SA

Chamber of Commerce and Industry Western Australia

Commerce Queensland

Employers' First ™

Northern Territory Chamber of Commerce and Industry

State Chamber of Commerce (New South Wales)

Tasmanian Chamber of Commerce and Industry

Victorian Employers' Chamber of Commerce and Industry

NATIONAL INDUSTRY ASSOCIATIONS

Agribusiness Employers' Federation

Australasian Soft Drink Association

Australian Consumer and Specialty Products Association

Australian Entertainment Industry Association

Australian Hotels Association

Australian International Airlines Operations Group

Australian Mines and Metals Association

Australian Paint Manufacturers' Federation Inc.

Australian Retailers Association

Housing Industry Association

Investment and Financial Services Association

Insurance Council of Australia

Master Builders Australia

Master Plumbers and Mechanical Services Association Australia

National Electrical Communications Association

National Retail Association Limited

Oil Industry Industrial Association

Pharmacy Guild of Australia

Plastics and Chemicals Industries Association

Printing Industries Association of Australia

Restaurant and Catering Australia

Victorian Automobile Chamber of Commerce