Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004

Submission no: 5

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Submitter: Mr Charlie Donnelly
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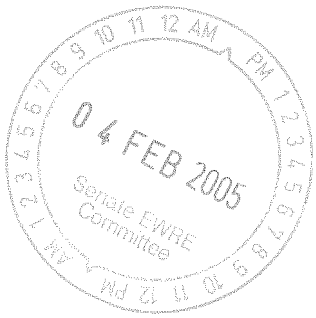
National Union of Workers



AP

Ref: B4/05

3 February 2005

Mr John Carter
Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Carter,

Re: Submission into the Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004

Please find enclosed the submission of the National Union of Workers into the Senate Committee's Inquiry into the provisions of the Workplace Relations (Right of Entry) Bill 2004.

The submission includes two affidavits sworn by NUW officials, Ms Madeleine Fox and Mr Sam Roberts, which are also enclosed. Although electronic copies of the submission and affidavits have been forwarded to you, we have sent the enclosed originals to ensure that the Senate Committee has the sworn affidavits before it.

In the event that the Senate Committee conducts any hearings in Melbourne, we advise that both Ms Fox and Mr Roberts are available to be witnesses.

Should you require any further information please contact the undersigned.

Yours faithfully,

CHARLIE DONNELLY
GENERAL SECRETARY

Encl.

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NATIONAL UNION OF WORKERS

SUBMISSION

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the provisions of the *Workplace Relations Amendment (Right of Entry) Bill 2004*

February 2005

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General Secretary

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INTRODUCTION

1. The National Union of Workers ('NUW') endorses and adopts the submissions made to this inquiry by the ACTU.

2. The NUW opposes the Bill and urges the Committee to recommend that it not be passed.

FURTHER RESTRICTIONS ON RIGHT OF ENTRY WOULD BE AN UNNECESSARY RESTRICTION ON BARGAINING

3. The Bill seeks to impose further regulations on Union right of entry at workplaces. One effect of this is that bargaining will be restricted at the workplace with the Bill placing limitations on the subject matters that industrial parties (the employer, the union and the employees) can have included in a certified agreement. The Bill seeks to impose a restriction on the Australian Industrial Relations Commission ('the Commission') and the industrial parties by preventing the Commission from certifying agreements that contain a right of entry clause, notwithstanding that the right of entry clause has been agreed to by the industrial parties.

4. This proposed restriction on the Commission seeks to ignore history. In *Federated Clothing Trades of the Commonwealth of Australia v Archer and Others* (1919) 27 CLR 207, the High Court held that a claim by a union concerning right of entry created an industrial dispute (Higgins J held that the claim pertained to the relations of employers and employees) and could be included in a federal award. While elements of the judgement in *Archer* concerning other claims by the union have been the subject of later judicial criticism, the judgement in relation to the right of entry claim has not. Until the implementation of the *Workplace Relations Act 1996* (Cth) ('WR Act'), it was well recognised that the Commission had the jurisdiction to include right of entry provisions in both federal awards and agreements, with right of entry seen as vital to the enforcement of industrial instruments.

5. The NUW is party to hundreds of federally certified agreements with employers that have been made pursuant to the WR Act. In the vast majority of agreements that the NUW is respondent to, the NUW has been able to negotiate a 'right of entry' clause as follows:

> *An authorised Union representative is entitled to enter at all reasonable times upon the premises and to interview any employee, but not so as to interfere unreasonably with the employer's business.*

6. It is the NUW's experience that although this clause provides for better union right of entry provisions than the WR Act (for example, there is no 24 hour notice requirement) this issue is not a contentious industrial issue when agreements are negotiated. In most instances, employers are willing to negotiate an agreement which contains such a right of entry clause as there is recognition that right of entry by an authorised union official facilitates the making and the protection of the bargain between the industrial parties, which is expressed in the form of a collective agreement.

7. The negotiation of a right of entry provision in agreements is consistent with the objects of the WR Act which seeks to promote an industrial relations system whereby bargaining takes place at the workplace level to meet the individual needs of each workplace. However, the Bill is contrary to workplace bargaining in that it seeks to restrict the rights of the industrial parties (the employer, the union and the employees) in relation to what they can agree to include in an agreement. On the one hand the WR Act promotes the primacy of workplace bargaining and workplace agreements whilst on the other hand, the Bill seeks to place further regulation on what can and cannot be included in agreements by providing that the Commission cannot certify agreements containing right of entry clauses. Such an approach is inconsistent with the stated objectives of the Government to leave matters at the workplace to be addressed as much as possible by the industrial parties at the workplace.

FREEDOM OF ASSOCIATION – RESTRICTIONS ON RIGHT OF ENTRY AN IMPEDIMENT ON ORGANISING WORKERS

8. The proposed restrictions on right entry will act as an impediment to unions organising workers and are also contrary to ILO conventions on Freedom of Association and the Right to Organise.

9. There is a strong and established industrial relations culture in Australia in relation to the role of union organisers. The job of the union organiser is defined by visiting work sites, solving issues at the workplace, enforcing industrial instruments and negotiating agreements. It is important for good workplace practice and industrial democracy that unions are not further restrained, as the Bill seeks to do, in relation to right of entry provisions. It is well understood and indeed expected by both employers and employees that union officials will regularly visit workplace to facilitate and protect the agreement bargained between the industrial parties. An example of this is resolving disputes over wages and conditions at the workplace level rather than escalating disputes to the Commission. If the right of union officials to access the workplace is restricted, such as limitations on the number of visits to a workplace or limitations on accessing employees, the culturally accepted and understood role played by union organisers in Australia will be curtailed. This will impede the resolution of issues at the workplace in an orderly manner and likely lead to increased and unnecessary disputation.

10. Another consequence of curtailing access of union officials to the workplace and hence employees, is the impediment on the right of unions to meet and recruit members. This is contrary to the principle of freedom of association. It is the experience of the NUW that union right of entry is crucial to enabling employees to exercise their right to join unions and to be represented by them. NUW officials have visited new workplaces where there are no union members with employees indicating that they want to join the NUW but are reluctant to do so because of concerns that they will be victimised by their employer.

11. In order to allay serious employee concerns of victimisation or reprisals by the employer if they join a union, it is the NUW's experience that more than two visits per year to the site for recruitment purposes is required. There is no cogent reason for the Bill specifying two visits versus three hundred and sixty-five visits. With

many employers having large disparate workplaces, shift work arrangements in place, or a high level of casual workers, more than two visits per year are required just to make contact with all employees. The practical reality is that it usually takes more than two visits per year to a workplace in order to recruit and organise workers and to ascertain what issues are present at the workplace. In order to fully protect the right of workers to freedom of association, union officials need to operate at a minimum under the right of entry provision provided currently by the WR Act.

12. It is also the experience of the NUW that the location of discussions with employees is a crucial factor which influences what employees will discuss with the NUW. For example, employees are reluctant to attend a meeting with the NUW and voice workplace concerns if the meeting is located in a room next to the manager's office and the manager can see them entering the meeting. Employees spend their meal breaks inside the lunchroom and it is important that discussions with employees take place in a venue, such as the lunchroom, which is familiar to employees and where employees feel comfortable. If unions are restricted in their access to employees then the principle of freedom of association is meaningless as employees will be afraid of exercising their right to join a union.

13. The attached affidavits of two NUW officials, Ms Madeleine Fox and Mr Sam Roberts, attest to the difficulties identified above.

IF IT AIN'T BROKE DON'T FIX IT – NO EVIDENCE THAT RIGHT OF ENTRY IS A WIDESPREAD INDUSTRIAL ISSUE

14. Approximately sixty-five NUW officials hold right of entry permits under the WR Act. These officials understand their obligations under the WR Act and act responsibly when visiting workplaces. A practical example of how this works is the Victorian Branch of the NUW. Thirty-six NUW officials in Victoria hold right of entry permits. These officials:
    - visit in excess of 1000 workplaces per year (the workplaces visited operate across a number of industries and range from warehouses to poultry processing plants to food manufacturing to tyre manufacturing operations and include workplaces not party to certified agreements);
    - have mainly harmonious dealings with employers;
    - are very rarely involved in disputes concerning issues associated with right of entry; and
    - have had no proceedings for revocation of right of entry permits brought against them by employers.

15. It is the NUW's submission, based on our experience in utilising right of entry provisions under the WR Act and those negotiated in agreements, that no case for change to the current right of entry regime has been made out by the Government.

16. It is also important to consider that whilst allegations of abuse of right of entry provisions have been made in relation to the building industry, there has been no evidence of widespread problems concerning right of entry in other industries.

CONCLUSION

17. The Government, and in particular the Prime Minister, Mr Howard, have stated that they do not mind workers joining unions. Contrary to this stated position, the Bill will make it harder for workers to join unions and will create impediments on the way unions organise workers as well as restricting what the industrial parties can bargain in agreements. The NUW submits that this is at odds with the principles publicly enunciated by the Government.

18. The Bill is an unnecessary piece of proposed legislation with no cogent and consistent reasoning to underpin it. In that light, the Bill can only be interpreted as an unwarranted attack on workers and their right to collective representation through a union. Accordingly, this Committee should remind the Government that workers will be worse off if the Bill is passed and on that basis should not be passed by the parliament.