

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

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

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4 February 2005

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

By e-mail: [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)

Dear Mr Carter

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
COMMITTEE – INQUIRY INTO THE PROVISIONS OF THE WORKPLACE  
RELATIONS AMENDMENT (RIGHT OF ENTRY) BILL 2004**

LHMU, (the Liquor, Hospitality and Miscellaneous Union), thanks the Senate Employment, Workplace Relations and Education Committee for the opportunity to contribute to discussion around proposed changes relating to Union Right of Entry.

LHMU fully supports the more detailed submission lodged with the Committee by the ACTU but would additionally like to address issues particularly pertinent to the large, and growing, service sector workforce.

LHMU is committed, as we would expect the Committee to be, to every Australian worker being able to freely and without undue effort, exercise their right of freedom to associate if they so choose. Furthermore, LHMU is committed to, and would again assume a similarly supportive position of Committee members, for the pursuit of genuinely democratic union structures in the workplace.

We believe that both could be at risk if limits to organiser access are pursued without a more detailed understanding of the needs of a large and growing section of the Australian workforce – the service sector.

We wish to raise two concerns in this submission and via personal testimonies at the Committee's hearing stage.

**1. If freedom of association is a genuine goal then workers must have the right to a process that provides for proper consideration of joining, or not joining, the union – and that generally means discussing the matter freely in the workplace with a union organiser.**

We believe the Committee needs to look very hard at what the intentions of its proposed Right of Entry provisions are, particularly in relation to the proposed number of times a workplace can be visited by an organiser and proposed restrictions on locations where workers and organisers can meet.

If the Committee genuinely believes in every Australian workers right to have the opportunity to choose whether they wish to join a union or not then it would seem appropriate to ensure workers have reasonable access to union organisers to firstly hear about the local union and then to have the opportunity to discuss joining and, if inclined, to join.

A restriction of just one organiser visit per 6 month period would make this basic right unattainable when you look at the large and increasing number of Australians that change jobs every year, that enter the labour market as new entrants each year, who work part time, who work shiftwork, who are employed as casual or fixed term, who work in large workplaces or move around to different workplaces.

**2. Similarly, if the election of local union representatives and the creation of well informed, democratic and responsive workplace unionism is a goal then artificially constrained visits by organisers will make the establishment and maintenance of such democratic organisation virtually impossible, particularly in high turnover sectors.**

But let's look first at why our changing labour market could result in these proposed right of entry restrictions having unintended consequences for both workplace democracy and individual freedoms.

**LHMU members represent the many different faces of today's labour market**

LHMU members work in a diverse range of industries and occupations:

- cleaners clean offices, schools, hospitals and hotels,
- security officers guard properties and people,
- care workers attend the young, frail, aged, ill and disabled,
- hospitality workers operate across the leisure, entertainment and tourist sectors, and
- manufacturing workers produce bread, beverages, building products and other goods.

**We believe the proposed restrictions on right of entry will severely impede many of these workers access to a union organiser.**

LHMU asks each Committee member to stop for a moment and imagine yourself in the following situations:

1. You work evening shift in the banquets section of a large 4 star hotel
2. You are a 17 year old starting your first job in child care
3. You are employed as a casual in an aged care facility
4. You are a new immigrant just started working in the cleaning industry
5. You work as a support worker in a large metropolitan hospital

These are typical worker profiles of LHMU members.

**A typical working day for many...**

- In our industries labour turnover means that around 40% of the workforce have either changed jobs or newly entered the labour market in the preceding 12 months.
- Our industries are often 7 day a week, 24 hour operation.
- Our industries are highly casualised and while many are small and scattered (eg childcare) many others are amongst the largest single site workplaces in the country (casinos and hospitals) employing thousands of workers.

The question we pose to you is this - how is it physically possible for an organiser who can only visit once in six months to find and meet:

- The 23% of workers who start a new job each year (or in the case of industries like hospitality the 43% of new starters)?
- The 14% of the general workforce (or in the case of industries like health 32%, hospitality 31%, or in security and cleaning - the majority of workers) who work shiftwork and therefore probably don't even work the day or time the organiser visits.
- The 30% of part time workers in the general workforce or again, the majority of workers who work in our many service industries, who may not work the day or time of the organiser's single visit?
- The 2.4 million workers who work in workplaces with more than 100 employees whom the organiser simply wouldn't be able to find or access?

## **The challenge of meeting with service sector workers**

In many workplaces, one quarter of the workforce will be different to when the organiser visited last time, if restricted to the 6 monthly visit.

*In an aged care workplace of 120 people how can an organiser physically find and meet with 40 people in one visit – particularly given shift patterns, break differences, days off, and the disbursed physical layout of the home?*

*How can an organiser cover 3 shifts of workers in one visit and how can they access workers with different part time arrangements (eg the high incidence of Monday to Friday workers as opposed to the weekend workers) with just one visit?*

*And what of workers on rotating shifts – even if the organiser makes one of their visits a day shift and one an evening shift in the course of a year, there are no guarantees this will coincide with the working patterns of these workers.*

*How does the organiser find the 23 education support workers working in a large 1000 pupil primary school located across a large geographic site, or the hospital gardener on the one hand or the Sterilising unit staff member on the other with one single visit to a large hospital.*

And these problems of access are multiplied many fold when access is unrealistically restricted to often special locations in large sites.

## **Is the Committee committed to providing service sector workers an accessible, realistic and fear-free environment to talk privately with an organiser?**

In large sites it is rare to find a single common meeting point. Take the hospital just mentioned. The workers won't necessarily use the same canteen or gathering points.

When they are part time they often don't have a break in their shift allowing for anytime to socialise or leave their work position.

The other major impediment to workers feeling free to meet with a union organiser on site when access is unreasonably constrained is fear.

*Imagine again you are that 17 year old child care worker. You've heard the union organiser is visiting later today but if you want to meet them you have to meet with them in the room opposite the Directors office. If the young workers is at all nervous about being seen to 'seek out the union' there is no way they would meet with the organiser in this situation.*

*Or what of the casino worker, a casual with no guaranteed shifts, would you meet with a visiting organiser to talk when you have to do this at a designated 'union table' in the lunchroom that just happens to be away from where workers normally lunch and next to the table where supervisors have their own lunch?*

## **A discussion about union membership is an opportunity for a worker to exercise a basic human right - not a time pressured sales opportunity**

Let us assume for a moment that an organiser does meet with a worker or group of workers on their six monthly visit.

*What is to happen if a worker asks for the organiser to provide more information on a matter?*

*Or what if the worker wants time to consider what the organiser has raised?*

*What if the worker has never had any experience of unionism before – they might not be comfortable joining on the spot.*

Are these workers not entitled to a follow-up visit? Do they have to wait another 6 months to continue their conversation?

Surely it is not the intention of the Committee to create an environment where workers feel pressured to make decisions on the spot when in fact their preference may be to explore the issue of unionism in a more considered way?

## **Restricted access will limit the development of local democratic structures and representation**

What if the organiser's job is to help workers organise a democratic structure in their workplace through the election of a delegate?

This is rarely achieved through one single visit.

It takes time for the members to think through the type of representation and organisation they might want. Very often workers who consider standing for delegate roles want to discuss the role and responsibilities with the organiser, fellow workers and/or family before formally nominating. The process should have an opportunity for people to nominate and then for an election to be had and then for members to meet with the successful delegate and organiser to talk through their local representative role.

This process, if conducted in a responsible and democratic way, cannot be completed in one single visit. In high turnover workplaces it will need repeating constantly if workers are to maintain local representation.

## **Will these changes restrict workers freedom to associate?**

How many Australian workers will miss the opportunity to join a union each year if right of entry is restricted? That is a very real question the Committee must address.

You would be hard pressed to find in the sectors LHMU covers a single workplace which works 9 to 5 Monday to Friday, where all workers are at work at the same time, and all have their break in the one spot simultaneously. This is an increasingly aberrant view of the Australian workplace.

If there is an accepted view that all Australian workers, regardless of their location in the labour market, should have fair and reasonable access to information about the prevailing union and an opportunity to pursue membership, and elect democratic local structures, then how can this be facilitated for the millions of workers who work in the high turnover, shiftwork environment of medium and large sized employers in our burgeoning service sector?

We are talking about many of the most vulnerable in Australia's workforce - often low houred, often casual, often from Non English Speaking Backgrounds and often either the youngest or the oldest in the workforce.

We would ask the Committee to consider the many real life scenarios we raise in our submission.

The question we ask the Committee to genuinely consider is this:

***Is this legislation about an organisers right to enter a premises or is it much more fundamentally about ensuring a workers right to freely, in an informed and unpressured environment, exercise their right to freedom of association should they so choose?***

***And for those 1.8 million workers that have to date chosen membership, shouldn't they have the right to assistance from an organiser in developing and maintaining locally elected democratic structures to provide them with information, support and representation?***

We are concerned that the principle might be hindered by the mechanism.

We seek from you the following:

- Can you guarantee that any worker who wishes to meet with an organiser will be able to do so in the course of their normal shift and within a reasonable period?
- If you restrict organiser access to just two visits a year how many workers will physically never be in the workplace when the organiser visits?
- If you unduly restrict the location in which organisers and workers can meet do you accept that this will further limit workers access to the exercise of freedom of choice in this matter?

When you consider that our organisers visit hundreds of workplaces every week and you consider the dearth of disputes in our industries relating to frequency of workplace visits or our delegate development work it seems unclear as to the aim of these aspects of the proposed legislation.

In conclusion we would urge the Committee to consider first and foremost the rights of workers:

- the right to freely and in an informed and unpressured way, find out about and ultimately join a union should they so choose, and
- the right to build local democratic structures to ensure local representation and to provide a connection to the rest of the union organisation.

**The Committee runs the very real risk of jeopardising Australian workers right to freedom of association, and to democratic local representation, by imposing onerous restrictions on organiser right of entry that simply does not fit the work profile of so many workers today.**

As mentioned previously, LHMU looks forward to providing further personal testament on these matters when the Committee hearings takes place.

Please contact National Industrial Officer, Neal Swancott, in relation to this submission on (02) 8204 7216, or by email: [neal@lhmua.org.au](mailto:neal@lhmua.org.au).

A hard copy of this submission has also been mailed to the Committee.

Yours sincerely,

**JEFF LAWRENCE  
NATIONAL SECRETARY**