

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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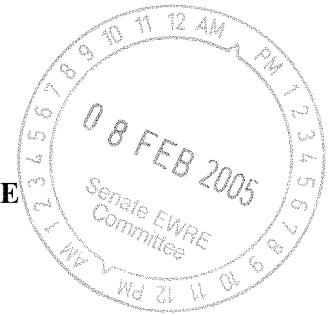
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SUBMISSION
BY
MEDIA ENTERTAINMENT AND ARTS ALLIANCE
TO THE
SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE
INQUIRY INTO THE PROVISIONS OF THE WORKPLACE RELATIONS
AMENDMENT (RIGHT OF ENTRY) BILL 2004



FEBRUARY 2005

The Media Entertainment and Arts Alliance

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

Summary

The Alliance considers that the Bill has not adequately considered the diverse range of employment arrangements that exist in Australian workplaces today and that some of the provisions contained in the Bill will not foster expeditious resolution of problems that may arise.

In short, the Bill contemplates a workplace where the workforce comprises full-time permanent employees. This is no longer the reality for a rapidly increasing percentage of Australian workers.

The Bill does not provide adequate protection for occupational health and safety.

The Bill assumes that the basic relationship between an employee's union and their employer is basically one of conflict. This is simply not the case in our industries, where access is often involved in a cooperative manner. Access reduces conflict.

Diversity of employment and engagement

Alliance members reflect the full diversity of possible employment arrangements: permanent or on-going full-time employment, fixed-term, and casual employment together with a plethora of non-standard arrangements. The use of labour hire is also increasing, particular in the live performance industry and in some sections of the film and television industry such as rigging. Members are often expected to accept employment away from home. An engagement may be for a period of time as short as one day with notification of employment received the night before day on which the work is to be undertaken.

Most Alliance members are not engaged in full time permanent employment.

Whereas once the majority of employment for journalists was full-time, freelance work has been steadily and inexorably increasing year by year.

Fulltime permanent employment for musicians is principally confined to the state orchestras and the Australian Opera Ballet Orchestra.

The only singers in Australia in full time employment are some of the principals and the chorus at Opera Australia. Even so, most engaged full time are not in permanent full time employment. Rather they, like their peers in the ballet, are engaged on contracts of up to twelve months' duration.

The only classical dancers in Australia in full-time employment are those with the Australian Ballet and even then they are contracted on yearly contracts. The same is true of the two or three contemporary dance companies that offer on-going employment. The Queensland Ballet and the West Australian Ballet, like the Queensland Opera and the South Australian Opera Companies, are stagione companies contracting artists seasonally.

Commercial live theatre productions contract cast for the run of the season – whether that is two weeks or 18 months will be dependent on box office and returns. Even in the case of long-running productions, typically the contract will be for the run of the season or one year whichever is the lesser. When productions tour interstate, cast and crew are increasingly stood down for the period between the production closing in one city and opening in another.

Whilst most major performance venues maintain a small core of full-time managerial staff and a core of technical staff, many are on annual contracts and the majority of technicians are engaged on short term contracts for a particular production.

Even in a major venue like the Sydney Opera House 45% of staff are casuals and of the permanent staff 13.5% are permanent part-time.

Television drama series, which offer the longest periods of work for both cast and crew members working in television, contract per series, which typically provides employment for 22 weeks of the year. Personnel are recontracted the following year if the series is renewed. In the case of lead cast,

they will be on option and must remain available to the production until such time as a decision to proceed to a further series is made.

Employment in the television commercials sector provides short term engagements that typically range from two days to two weeks, and for on-set crew and cast for between one and three days.

On feature films, whilst some crew members may be engaged for as long as six to eight months, on Australian productions, the engagement is more typically eight to ten weeks. For many “casual” crew the engagement might be for one day or for two or three days over a number of weeks. For the majority of the cast, the engagement will amount to less than five days often spread over the full period of filming, namely eight to ten weeks.

All of this means that a diverse workforce need to be able to develop access provisions that reflect the needs of each particular area of work and work relationship.

For all these reasons, the Alliance considers that provisions such as mandatory written notice with prescribed information being required at least 24 hours prior to union personnel visiting a workplace is neither practical nor in the best interests of employees or indeed often employers.

If an issue arises on a production that can impede a show opening or delay filming, waiting for 24 hours will not be in the interests of the employer seeking a speedy resolution to a problem, nor will it be in the interests of employees.

The provision that restricts access for recruitment purposes to once every six months assumes a reasonably stable workforce. However, this is not the case in the media and entertainment industries. For instance, in a theatre venue, the technicians and cast might be completely different even as often as every two months. Other sectors are even more volatile. For instance, a television commercial company will have different cast members on every commercial they produce and shoots for television commercials are typically one to three days.

Occupational health and safety

The media and entertainment industries confront particular occupational health and safety challenges not encountered by workforces or employers whose workplaces are stable.

Those working in the film and television industry are engaged in high risk activities – stunts, special effects, working with aircraft, on roads, in water, at heights, with animals, often in environmental and climatic extremes, and so on. The workplace can change on a daily basis and every production is likely to face a circumstance not previously encountered.

High risk activities such as special effects and stunts meant the industry developed a keen understanding of the risks of the more obviously dangerous aspects of production. Generally, safety standards in the high risk areas of the industry are good but there remains much room for improvement. The high risk areas can and have resulted in fatalities – since the late 1970s a handful of technicians have died in helicopter accidents and a handful in the execution of stunt and special effects sequences. Skin cancer has taken its toll as have road fatalities following excessive working hours or driving in unfamiliar terrain. Serious and permanent injuries have resulted from falls from heights. Construction department personnel have sustained injuries resulting from the use of equipment inappropriate for the purpose such as loss of fingers. Manual handling has resulted in permanent back injuries for people handling heavy equipment.

On the other hand, risk assessment of the less overtly dangerous aspects of production is far from adequate.

Film production companies often lease premises designed for other purposes on a short-term basis. It leads to problems that can range from inadequate lighting for persons in costume departments who are cutting and sewing, persons in construction departments working with medium density fibreboard without adequate extraction and ventilation in place to inappropriate seating being provided for persons

working on location with laptop computers. A recent example is a continuity person who sustained an injury to her spine resulting from years working for consecutive employers in a position where she was required to use her laptop computer without a seat or table/bench/desk, often a gutter being the only place she was able to work. Stoicism on the part of the individual and scant regard to her comfort resulted in an easily avoidable injury. The injury is such that she will need to retrain for another form of employment. In a freelance industry, the option for return to work with a pre-injury employer offering suitable duties is usually not a possibility.

While the major media companies in Australia have confronted occupational health and safety issues particularly in circumstances that pose obvious high risks, there is still much to be done and much to learn. Journalists, like those working in the film and television industry, are required to work in locations not previously experienced and additionally often in times of extreme stress. The Canberra fires were a good example of highly skilled people, aware of the risks of working in extreme fire conditions where avoiding becoming trapped is critical, who were nonetheless exposed to asbestos (from exploding houses), a risk not adequately considered at the outset.

Additional to inadequate risk assessment are cultural issues.

The entertainment and media industries are identified by an attitude that “the show must go on”. It leads to a “can-do” culture which, on the one hand, means Australia has cultural industries that produce world-class work but, on the other hand, means occupational health and safety and the well-being of employees can be subordinated in the interests of the final product. It has to be noted that this attitude is often shared by employees and employers. Entrenched work practices can be hard to overcome. And where employees are increasingly concerned about their occupational health and safety they can be perceived as whinging or needy.

Inadvertent breaches are often the result of employers not being aware of their obligations. Notwithstanding the fact that broad based occupational health and safety legislation has been in place in all jurisdictions since the mid 1980s, there remains a remarkably large number of, usually small or recently established, employers who are not aware of the detail of that legislation, their obligations and, in some instances, are unaware of the legislation itself.

For all these reasons, a bureaucratisation of the process as envisaged by the bill would get in the way of this, resulting in a more black letter approach to rights that would cut across the creativity essential to our industries.

A cooperative relationship

The Bill assumes that the relationship between unions and employers is necessarily a combative one. This is not the experience of the Alliance where often the union and an employer work collaboratively to overcome problems that are in the interests of both the employer and the employees to resolve expeditiously.

The Alliance represents a highly mobile membership, journalist, performers and technicians regularly travel around Australia as part of their employment and regularly accept employment interstate. Not only are Alliance members mobile, so are our employers.

The Alliance is not aware of any confusion, uncertainty or any abuse regarding right of entry between jurisdictions that would warrant the imposition of a single statutory scheme. The Alliance notes the Second Reading Speech asserts, “This uncertainty can leave employers vulnerable to abuse of unions’ statutory right to enter the workplace.”

Rather, this should be dealt with by allowing individual industries, or individual sectors, or individual employers work out the arrangements that best suit them, rather than having a one-size fits all approach imposed on them.

To have this imposed on them risks an increase in conflict and risks disturbing settled cooperative relationships.

Conclusion

As employment arrangements in Australia continue to change, as permanent part-time, freelance, and casual employment increase and as reliance on labour hire companies increases, the challenges that the Alliance has confronted for a century will become increasingly common across other industries.

The experience of the Alliance indicates that the best approach to access is to encourage cooperative relationships at the industry, sector or company level, not to impose a uniform model that is, itself, modelled on a declining form of work.