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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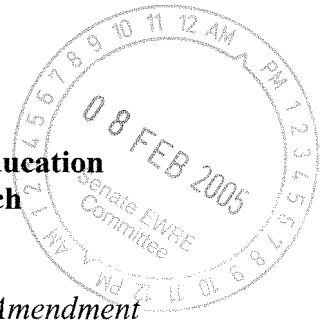


Workplace Relations Amendment (Right of Entry) Bill 2004

Submission to the Senate Employment, Workplace Relations and Education Committee from the CFMEU – FFPD – Victorian FFTS Branch

The Union makes the following submissions on the *Workplace Relations Amendment (Right of Entry) Bill 2004.*

Importance of union right of entry for the protection of workers rights

The right of entry of union officers and officials to workplaces is a recognised aspect of the Australian industrial relations system. It has long been accepted that Unions are needed in the workplace to ensure: (1) pay records are examined to ensure that workers are being properly paid; (2) unions access to workers to explain the benefits of Union membership and to inform workers of their legal entitlements; (3) to negotiate and represent workers. The Minister has stated in his second reading speech that the intention of this bill is to balance the right of entry powers of unions against the rights of employers and occupiers of premises to conduct their business without undue interference or harassment. It is the position of the FFTS that union right of entry is a non-issue for employers and that the current bill will create an unworkably restrictive regime. This will be to the advantage of employers and to the detriment of workers. Furthermore, in the case of Victoria the introduction of this bill will come at a time when unions need to be accessing workplaces to explain the advantages of the recent Common rule award rulings. Lastly, the bill contains provisions, which are inconsistent with the government self-proclaimed aim of freedom of choice and non-interference in Australia's workplace.

(1) Notice requirements

When it comes to policing workers entitlements it must be accepted that unions, not government, carries out this important function. While it is acknowledged that the Government has some inspectors to ensure industrials instruments are being observed, the work of union officials in this regard would dwarf the work of Inspectors. The provisions of the bill will make this important work of Unions unjustifiably difficult. This position is premises on the contents of sections 280M and 280P of the bill. These respective sections state:

"280M Right of entry to investigate breach

Right of entry for breach of Commonwealth industrials law etc.

(1) If a permit holder for a Commonwealth union suspects, ***on reasonable grounds****, that a breach has occurred, or is occurring, of:*

(a) this Act; or

(b) an award or a certified agreement or an order of the Commission under this Act, being an award, certified agreement or order that is binding on the permit holder's union;

then, for the purpose of investigating the suspected breach, the permit holder may, during working hours, enter premises if:

(c) work is being carried out on the premises by one or more employees who are members of the permit holder's union; and

(d) the suspected breach relates to, or affects, that work or any of those employees" **[emphasis added]**

However, this right of entry is subject to the following conditions being carried out:

"280P Limitation on rights-entry notice or exemption certificate

(1) Section 280M does not authorise entry to premises unless:

(a) the conditions in subsection (2) of this section are satisfied: or

(b) the conditions in subsection (3) of this section are satisfied.

(2) The conditions are:

(a) the permit holder gave an entry notice to the occupier of the premises at least 24 hour, but not more than 14 days, before the entry; and

(b) the entry notice specified section 280M as the section that authorises the entry; and

(c) the entry notice specifies particulars of the suspected breach or breaches; and

(d) the entry is on a day specified in the entry notice.

(3) The conditions are:

(a) the entry is on a day specified in an exemption certificate under section 280Q and the premises are the premises specified in the exemption certificate; and

(b) the permit holder gave a copy of the exemption certificate to the occupier of the premises not more than 14 days before the entry.

(4) Conduct after entry is not authorised by section 280N unless the conduct is for the purpose of investigating a suspected breach identified in the permit holder's authority documents."

When read together the impact of these two sections is to say that if an official of a union were to have reasonable grounds for believing that a breach of the Act, an award or a certified agreement has taken place that union official should provide the employer with at least 24 hours notice. The position of the FFTS is that this will allow bosses a 24-hour head start in which to conceal documentation or other sources of information from the Union. If a boss has nothing to hide why do they need 24 hours notice? The point that should not be lost on the Committee is that union officials are carrying out an extremely important function of checking the compliance of employers with their obligations under the law and the relevant industrial instruments. To perform this function properly, laws should not be enacted which seek to inhibit the ability of union officials to access workplaces.

It is noted that the Government is justifying this bill on the proviso that unions are abusing the right of entry and interfering with the running of businesses. However, the

FFFTS refutes this point. It does so on the basis that the current section 285A(3) of the *Workplace Relations Act* already allows for permits to be revoked. Having examined the annual report of the Australian Industrial Registrar it is not evident that many such applications have been made. Nonetheless, I propose that this may be a worthwhile point of research for the Committee, which may be better resourced to attain this information. If it was found that the number of applications is low it would beg the question as to why reform is needed to the Act through the proposed bill.

The 24 hour requirement could be removed from the bill as there is all ready enough safeguards within the proposed bill to make the this notice period unnecessary. Section 280V requires that the permit holder has the burden of proving that he/she acted on reasonable grounds when they suspect a breach had taken place. Furthermore section 280H states that:

> *(1) An authorised person, or a person prescribed by the regulation, may apply to the Industrial Registrar to take action under this section against a permit holder. The application must be made in accordance with the regulations."*
>
> *(2) On application made under the subsection (1), the Industrial Registrar may do any of the following in relation to one or more permits held by the permit holder:*
>
> *(a) revoke the permit (whether or not the permit is already suspended);*
> *(b) suspend the permit for a specified period;*
> *(c) impose conditions on the permit (whether or not the permit is already suspended.*
>
> *(3) In exercising powers under subsection (2), the Industrial Registrar must have regard to the matters specified in subsection 280F(2)*

Subsection 280F(2) includes seven prescribed reasons for the revocation of a permit along with the provision that the Industrial Registrar may revoke a permit on any other matter that he/she considers relevant.

Against the backdrop of these overly zealous regulation of permit holders the position of the FFTS is that any reasonable person would consider that the 24 hour notice period is unnecessary, as if a permit holder were to interfere or abuse the conditions of their permit, there is adequate redress for employers via the AIRC.

Common Rule Award

A similar situation arises in relation to the introduction within Victoria of Common Rule Awards. This event took place earlier this year so it is still the case that many employees are unsure of the new industrial instrument, which regulates their workplace. Furthermore they may very well not even be aware that a new structure exists. It is imperative that union officials in this situation are able to access workplaces, even ones where the union may not have members, to inform workers of their new entitlements . Under the regime proposed by the bill this would not be

possible as the permit holder would have to prove that they had a member in a particular workplace to step foot in that workplace. In effective this would mean that the bill is denying workers the opportunity to be informed of the rights under the new common rule system. Certainly, the bill allows for two meetings per year for the purposes of the union-recruiting members. However, the reality of the situation is that there will be many workers who are covered by the Award who will not be union members. Does this mean that they will be deprived from enjoying the benefits of award entitlements? The point is that with the introduction of the Common Rule Award system in Victoria this is the very time when Unions need to assisted in gaining access to workplaces to inform workers of the new award regime and the benefits which it holds for them. Instead, the bill will be curtailing the ability of a union official to enter a workplace to inform workers of the rights and to ensure that those rights are being protected.

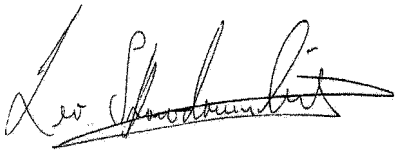
Non-interfere in agreement making

In the Workplace Relations Act at section 3(b) it states one of the principal objects of the Act is "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. However, the proposed bill is inconsistent with the objective in that at the proposed subsection 170LU(2B) makes it prohibits the certification of an agreement, which contains a right of entry provision.

If the Government is of the view that a certain statutory regime should be implemented with regards to right of entry that is the Government's prerogative. However, if an individual employer decides that he/she wishes to recognise the right of a union to enter their premises on a other terms then that should be the right of that individual employer. The approach taken by the Government on this issue smacks of paternalism in that it takes the view that employers either do not know what is best for them or that they need protecting from the influence of unions. Neither of these positions is tenable as any employer can read a proposed agreement, to determine what obligations they are placing on themselves. If an employer is happy to accept one particular right of entry provision then they should be able to agree. This would be the position consistent with the Act and consistent with the government policy on freedom of choice and non-interference.

Conclusion

In short the position of the FFTS Victorian Branch is that the bill must be rejected as it is driven by an ideological objection to unions rather than the reality of the Australian industrial landscape. The union would reiterate that right of entry is an important right for Australian workers who will suffer if this bill is adopted.



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