

Attachment C

Submissions of
The Australian Workers' Union,
Greater South Australian Branch

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The Role of the Senate

1.1 The role of the senate is to operate as the “State’s House” and as a house of review.

1.2 Since the *engineers case* the role of the senate has become exceptionally significant.

The States possess reserve, accordingly should the states wish to protect an area of legislative control from the Commonwealth parliament the appropriate protection would be the senate.

1.3 However, as a matter of history the senate has never acted in the role of ‘state’s house’, rather (due ostensibly to the election system for the senate) it has been a house of minority parties and accordingly acted as a house of review.

1.4 This is not the correct role for the senate (although it is not a role necessarily in contrast to its ordained role.) rather the senate should protect the interests of the states as representatives of those respective states. If the states claim that an area of legislative control is being removed by hostile means, the Senate should reflect on the impact that this will have on State – Federal relations.

1.5 With a Constitution which promotes parliamentary sovereignty over individual or communal rights, it is also important to exercise the review mechanisms.

1.6 Having now established the role of the Senate clearly. The current IR reform has two main problems:

1.6.1 It is in itself draconian, in that it interferes with collective bargaining and is replete with conferral of power onto the executive.

1.6.2 It is a removal of a legislative power held by the state governments since federation.

Problems with the new reform

- 2.1 The government has recently sought to paint any opposition to its new reforms as rhetoric which will stop Australia from moving forward economically. The government has recently hatched a multi-million dollar media campaign against any opposition at tax payer expense. It goes without saying that these tax payer dollars would have been better spent helping the Australian economy through aiding tax reform or the skills crisis which began almost a decade ago.
- 2.2 It is important to isolate problems with the reform, these fall into three categories:
- 2.3 First, the removal of Award safety nets, will ultimately affect those unable to protect themselves. This is particularly disastrous considering the growth of employees in casual positions who are particularly vulnerable to being underpaid or overworked.
- 2.4 Second the removal of trade union power, undermines the ability to collectively bargain. Collective bargaining being a fundamental right which is maintained across all western economies.
- 2.5 Third the removal of remedies for unfair employment practices increases the likelihood of unfair employment practices and health problems at work.
- 2.6 Over the course of the history of Australia employees and employers interests have been balanced with that of the national interest. Factors such as the award safety net and the ability of employees to bargain in good faith has given them the opportunity to improve the standard of living in Australia. The presence of an independent commission to adjudicate disputes has allowed the arguments of employers to be heard. It is not rhetoric to seek to have safeguards which protect the basic rights of employees. It is not rhetoric to seek to have a balanced approach to the Australian economy.

The Removal of a Safety Net

- 3.1 A decent job paying a fair amount of remuneration is the best possible method of preventing poverty and giving Australians the best possible chance at a better life.
- 3.2 Currently most employees in Australia are covered by an industrial instrument. These are either Awards or Enterprise Agreements. These instruments outline the minimum package that an employee can receive.
- 3.3 It has been argued that the current system creates too much inflexibility, and that a party who employs someone has to go under an amazingly difficult task to determine their terms and conditions.
- 3.4 It has been said that someone must turn to the Award, determine whether it is a state or federal Award, then turn to see whether there is an enterprise agreement, and whether it is state or federal enterprise agreement, and then see whether they are under an AWA.
- 3.5 This has been said to be a complicated exercise, it is not a complicated exercise, it is rhetoric, the sentence could be rephrased more truthfully as “someone must determine what instrument covers their employees and then apply that instrument.”
- 3.6 In any event a professional business should have professional advisors, both accounting, financial planning and legal, if this is too complicated for the industrial legal advisors they should leave the jurisdiction.
- 3.7 More importantly, business ease is never a factor to determine public policy over business confidence. Employees can never be seen simply as units of labour that can be whipped into more efficient and productive means. Employees are humans who consist of flesh and blood and cannot be manipulated like machines. The view that employees can be made more efficient and productive by taking away

their basic rights to a fair wage and employment protections is tantamount to viewing humans as mechanical robots or tally markets on a production graph.

3.8 Leaving aside the “supposed benefits” of removing safety nets, what the law intends to do is to remove “safety nets”. It will do this in three different ways;

- (i) The limitation of Award matters, and the creation of the Australian Fair Pay Commission
- (ii) The removal of State Award coverage over employees
- (iii) The removal of the No Disadvantage Test.

3.9 It is important to recognise that the people who rely on this safety net are not in the position to bargain, a safety net or a minimum wage is to protect those who cannot protect themselves.

3.10 The Australian Fair Pay Commission’s criteria does not refer to inflation. Money has no innate value, it is valued at how much it can be exchanged for in terms of assets and how much interest it can receive if loaned.

3.11 Accordingly if a person receives a pay increase below the Consumer Price Index they have actually been given a pay cut.

3.12 Accordingly, although wages are paid in dollars, they reflect buying power, and are ultimately used to consume.

3.13 As we live in a consumer economy, with high debt levels, disposable income is in fact currently an economic positive.

3.14 Accordingly, by raising the amount of disposable income in the community, Unions have assisted a number of businesses as they have inadvertently increased consumer spending.

3.15 In any event, a wage which can provide for a “decent standard of living” is a requirement of a fair and equitable society.

- 3.16 The Award system allowed for this as it allowed both sides and all the information to be used in the decision making process.
- 3.17 Also one of the major achievements of the 1980's was the accord linking wages to inflation or better. As stated above the Australian Fair Pay Commission will not make decisions according to the Consumer Price Index. In the new system this will not be a factor.
- 3.18 This may not be considered a problem, when Australia has just come off a period of low inflation, nor may high inflation or "hyper inflation" seem likely considering our economic circumstances, yet should inflation increase (due to oil prices for example) the Australian Fair Pay Commission cannot look at the Consumer Price Index.
- 3.19 From an economic perspective this makes no sense and is a flaw which one can only assume is a deliberate attempt to reduce real wages.
- 3.20 The removal of the arbitration system, not only disempowers those who are directly interested in the process but its replacement does not contain the necessary statutory criteria to make a sensible decision.
- 3.21 Further the removal of State Awards has the same effect.
- 3.22 Of significance is the removal of the no disadvantage test. This test necessitated that the entire terms of a Australian Workplace Agreement or Enterprise Bargaining Agreement cannot make an employee worse off than what they were receiving under the Award.
- 3.23 Basically this means that previous to the new legislation you cannot contract out of the Award.
- 3.24 Now that you can contract out of the Award, you can say, "*I want to be disadvantaged from the safety net, please disadvantage me*".

- 3.25 The proposal that this is better for the economy and employees than the previous Award system which has enabled Australia record levels of economic growth in the past decade is pure nonsense.

The removal of collective bargaining

- 4.1 The right to collectively bargain is a *fundamental right at work* according to the International Labour Organisation; (note this is consistent with clause 18 of the US – Australia Free Trade Agreement)

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

- 4.2 ‘*Freedom of association and the effective recognition of the right to collective bargaining*’; requires three things:

- (i) Right to start negotiations.

- (ii) Right to reject employment offer.
- (iii) Right to be effectively represented by an organisation.
- (iv) Right to strike or take industrial action.

- 4.3 It goes without saying that the rights mean that one can do this without penalty.
- 4.4 It is the case that Australian Workplace Agreements do not allow for an employee to initiate collective bargaining.
- 4.5 This is because you cannot initiate collective bargaining throughout the life of the AWA.
- 4.6 For example take an employer with 12 employees, lets say that each employee takes an Australian Workplace Agreement at a different month, by the time that one employee's Australian Workplace Agreement is up for renegotiation (which is in theory the time that they could seek a collective agreement) the other 11 will be unable to negotiate as they will be bound by the Australian Workplace Agreement.
- 4.7 Therefore Australian Workplace Agreement's seriously restrict the right to bargain collectively.
- 4.8 Further the curtailment of Right Of Entry entitlements, seriously prohibits any union's ability to represent their members.
- 4.9 Further the provisions which move the union's to register under the Corporation head of power requires that union's amalgamate with their respective national union's.

Unfair employment practises

- 5.1 Dismissal at will should not be allowed back into employment law in Australia.
- 5.2 In a recent appraisal of the Australian Economy the OECD noted Australia consistently ranked as one of the countries with the least restrictive employment

protection legislation. The OECD went even further by recommending that disincentives to hiring should be kept as low as possible through policies which contain the cost of unfair dismissal procedures without abandoning social and economic benefits of employment protection.

5.3 The right not to be terminated unjustly, is the fundamental starting point for all rights in employment.

5.4 Additionally employees must be protected in situations where they are displaced when employers become insolvent. Employees must not be robbed of their entitlements in such situations.

5.5 The mechanism is as much the issue as the allowable law, the Federal Court of Australia is not an ideal mechanism for this. If it is the case that a decision requires judicial power based on Chapter III issues, then the parliament should make an unlawful dismissal court of Australia.

Other unfair employment practises exist, without the ability to rectify them in Awards or EBA's their needs to be another mechanism.