

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Provisions of the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004

Submission no: 10

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Submitter: Mr Julius Roe
Acting National Secretary

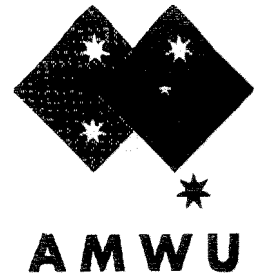
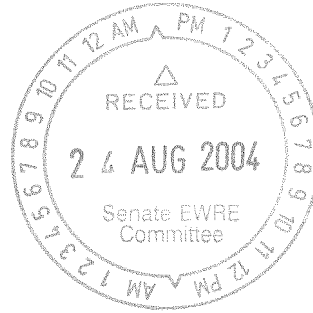
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24 August 2004

Mr John Carter
The Secretary
Senate Employment, Workplace Relations
and Education References & Legislation Committee
Parliament House
CANBERRA ACT 2600

By fax: (02) 6277 5706

Dear Mr Carter,

**INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT
(PROTECTING SMALL BUSINESS EMPLOYMENT) BILL 2004**

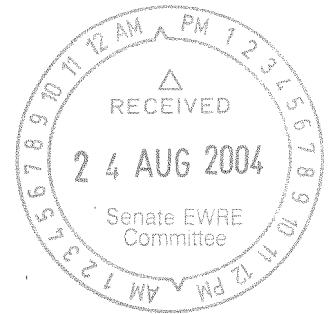
I refer to the inquiry by the Senate Employment, Workplace Relations and Education Committee (the Committee) into the provisions of the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004.

Please find attached the Australian Manufacturing Workers' Union's (the AMWU) submission to the inquiry.

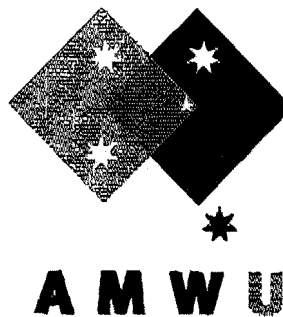
Yours faithfully,

Julius Roe
Acting National Secretary
Australian Manufacturing Workers' Union

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AUSTRALIAN MANUFACTURING WORKERS' UNION



**SUBMISSION TO THE SENATE INQUIRY INTO
WORKPLACE RELATIONS AMENDMENT (PROTECTING SMALL
BUSINESS EMPLOYMENT) BILL 2004**

AUGUST 2004

Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make submissions to the inquiry by the Senate Employment, Workplace Relations and Education Committee (the Committee) into the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004 (the PSBE Bill).
2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 145,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry. The union has members in each of Australia's states and territories.
3. The AMWU strongly opposes the unfair and unnecessary provisions of the PSBE Bill. The AMWU urges the Committee to recommend that the Senate block the passage of the PSBE Bill for the following reasons:
 - the bill will introduce further unfairness and inequity into the Australian industrial relations system;
 - the capacity to pay issues identified by the Government have already been appropriately dealt with by the Australian Industrial Relations Commission (the Commission);
 - the bill unnecessarily and inappropriately limits the Commission's dispute settlement jurisdiction and potentially will have a negative effect on the independence of the Commission; and
 - the bill unnecessarily and inappropriately overrides state tribunals.
4. In addition to the above matters the AMWU supports and adopts the submissions of the Australian Council of Trade Unions to this inquiry.

An Issue of Fairness and Equity

5. The AMWU submits that, if passed, the PSBE Bill will introduce further unfairness and inequity into the Australian industrial relations system. In particular the AMWU submits it is unfair and inequitable that an employee who is employed by a profitable small business is to be denied the *same safety net entitlements* as an employee doing exactly the same work but who is employed by a profitable medium sized or large business.
6. The Commission's recent Redundancy Pay decisions¹ already effectively discriminate against employees in the small business sector by limiting the size of redundancy payments to 8 weeks (whereas other employees can be entitled to up to 16 weeks redundancy). Contrary to the claims of the Minister of Employment and Workplace Relations, the Government will not

¹ In this submission "Redundancy Pay cases" or "Redundancy Pay decisions" refers to the two recent Full Bench test case decisions in PR032004 and PR062004.

“rectify a flawed decision of the AIRC”² by removing the already limited redundancy entitlements of employees whose employers employ less than 15 permanent employees. Rather, the government will be increasing current inequities in the industrial relations system and at the same time further diminishing the effectiveness of the award safety net in maintaining basic standards for all Australian workers.

7. The AMWU strongly submits that introducing further inequities into the Australian industrial relations system is not in the public interest and should not be supported by this Committee.

Capacity to Pay Issues

8. The Government has made much of what is said to be the lack of capacity of small businesses to meet the new termination and redundancy requirements. However, it is important to note that the Commission in coming to its position on these matters closely examined the issue of small businesses' capacity to fund redundancy payments. Relevantly, the Commission found that:

“[353] It would be inequitable and unfair to exempt an employer from the requirement to make severance payments in circumstances where there was not an incapacity to pay. This does not mean that a number of employers in a sector cannot claim that there is an incapacity to pay. This was conceded by the ACTU. This was also recognised by a Full Bench in *Re Pastoral Industry Award 1986*, but on the basis that a strong case would have to be made out by each employer.

[354] We recognise that any incapacity to pay case may present the applicant or applicants with difficulties. Almost by definition, an employer's resources to conduct such a case are under serious strain. However, the Commission is experienced in these matters and has sat out of hours, on-site, and has assisted both employers and employees who may not be represented. An example of an approach adopted by the Commission is provided by a recent matter involving the *Pastoral Industry Award 1998*.

9. The AMWU submits that where there are genuine issues about a business's capacity to pay such issues can and should be addressed by taking into account the individual facts and circumstances surrounding the redundancy.
10. Reflecting the Commission's Redundancy Pay decisions, the Commission's Termination and Redundancy Model Clauses specifically allow for such a consideration to take place. The AMWU respectfully submits that this is a balanced and appropriate response. On the other hand, the PSBE Bill continues the long line of bills the government has attempted to push through the Senate which openly seek to not only sideline the Commission but to remove benefits from some of Australia's lowest paid workers. Such a crude “slash and burn”

² As claimed by the Minister for Employment and Workplace Relations in his second reading speech.

approach to workers entitlements is simply not warranted by the final outcome of the Redundancy Pay decisions and should be rejected.

A Further Attempt to Marginalise the Commission

11. The PSBE Bill should be seen in the context of the Howard Government's continued attack on the role of the Commission. These attacks have not only come through a long line of bills aimed at limiting the powers of the Commission but also through the choice of a number of controversial appointments to the Commission.
12. In relation to the Redundancy Pay decisions the PSBE Bill seeks to overturn it is worth noting that:
 - The Full Bench (of four members) included very senior and experienced members of the Commission.
 - It was the first time for twenty years that the issue of redundancy pay had been comprehensively examined and the first time it has been improved.
 - The decisions came after extensive negotiations and formal proceedings concerning the issue of redundancy pay.
 - The Full Bench did not grant all aspects of either the unions' or the employers' applications.
 - The decisions of the Full Bench will have no immediate cost impact on small businesses.
 - The Full Bench made allowance for firms who genuinely do not have a capacity to pay the additional redundancy pay.
13. The AMWU submits that in such circumstances there is simply no adequate justification for removing redundancy pay for small businesses from the list of allowable matters upon which the Commission can arbitrate.
14. The Redundancy Pay decisions were not radical or outlandish. On any reasonable or objective analysis they cannot be said to constitute grounds for removing the Commission's power to make awards in relation to the subject matter of the decisions. Aside from the obvious and inappropriate loss of jurisdiction, removing the Commission's powers in such circumstances sends the wrong message to the Commission about future decisions affecting the award safety net.
15. The AMWU submits that in all the circumstances it would be highly undesirable both from the point of view of the appropriate jurisdiction of the Commission and from the point of view of the independence of the Commission, if the Commission's Redundancy Pay decisions are allowed to be used as a justification for further attacks on the Commission itself.

16. The Senate has rejected earlier attempts to limit the power of the Commission, including in relation to various small businesses exemptions. The AMWU submits that it is overwhelmingly in the public interest that it does so again.

The Effect on State Tribunals

17. One of the notable changes introduced in the *Workplace Relations Act 1996* was the insertion of section 111AAA of the Act. The provision, which requires that the Commission must cease dealing with a dispute if it is satisfied that there exists a relevant State award or State employment agreement (unless the public interest favours federal coverage), was introduced to prevent employees moving from the state jurisdiction to the federal jurisdiction. It would now appear that the Howard Government is only interested in state tribunals if it can be sure they will not act independently of the view of the Federal Government.
18. In this context the AMWU wishes to note that the Minister for Employment and Workplace Relations's second reading speech relies heavily upon the consideration of the small business exemption by the Queensland Industrial Relations Commission and to a lesser extent the New South Wales Industrial Relations Commission, even while he is attempting to legislate specifically to override any further decisions of those Commissions on the same issue.
19. The AMWU further notes that the government's assumption that the Redundancy Pay decisions will be flowed on uniformly throughout the state systems is not necessarily a reasonable one. The "danger" of independent tribunals is, of course, that they may in fact exercise their independence. Currently the state tribunal approach to redundancy varies. The most prominent example is that of the Tasmanian Industrial Relations Commission which specifically refused to pass on the 1984 TCR standards as a test case standard.
20. The AMWU submits that the Government simply does not have a credible argument as to why it is necessary or in the public interest to pre-empt and override the operation of the state tribunals on this issue.
21. Fundamentally however, the AMWU submits that the merits for not removing redundancy pay entitlements from state awards are substantially the same for not removing such entitlements from federal awards.
22. The AMWU urges the Committee to recommend that the Redundancy Pay Cases do not warrant the PSBE Bill overriding the consideration of the issue of redundancy pay and small business by state tribunals.

Conclusion

23. The AMWU strongly submits that this Committee should not let the government use the Commission's Redundancy Test Cases as a vehicle to pursue what has become a tired and predictable preoccupation with reducing both the award entitlements of employees and the legitimate and useful role of the Commission.
24. The AMWU urges the Committee to recommend that the Senate not pass the PSBE Bill for the reasons outlined in this submission.