CFMEU

24 February 2009

Committee Secretary
Senate Education, Employment and
Workplace Relations Committee
Department of the Senate
PO Box 6100 Parliament House
Canberra ACT 2600
By Email: eewr.sen@aph.gov.au

Attention: Mr J Carter

Dear Sir

Re: Inquiry into *Fair Work Bill* 2008

We write in response to a number of submissions made recently by various employer organisations to the present Inquiry.

Although the CFMEU has not had the opportunity to appear before the Committee, we believe it is necessary to respond to a number of points made by the MBA and AMMA in particular, which refer to the union.

Firstly, the employer groups have asserted that the provisions of the Bill relating to greenfield agreements should be amended on the basis that they are inconvenient to employers and raise the prospect of demarcation disputes over new projects in the construction industry. This assertion is baseless.

Since the introduction of the concept of greenfield agreements there have been a large number of major projects which have been covered by such agreements. These agreements have been successfully negotiated with a range of major employers and employer bodies by the various construction unions acting as a single bargaining unit. Often the construction unions have also negotiated under the auspices of a state or national peak union body. Unions have also successfully jointly negotiated major project awards which have delivered projects like the Sydney Olympics. Employer assertions about demarcation disputes are very much exaggerated.

Construction Forestry Mining and Energy Union National Office
John Sutton National Secretary
L 12/276 Pitt Street Sydney
PO Box Q235 QVB PO NSW 1230
P: (612) 8524 5850
F: (612) 8524 5851
www.cfmeu.net.au

However, on some occasions in the past, employers have sought to use greenfield agreements to exclude one or more unions from a worksite that they would otherwise be entitled to cover under their rules. Under *WorkChoices*, this problem was compounded because employers were able to by-pass unions altogether through the use of so-called 'employer greenfield agreements'.

The International Labour Organisation has criticised these provisions on several occasions recognising that they pose a serious problem and tend to undermine freedom of association. In March 1999 the Committee of Experts observed that the greenfield agreement provisions allowed employers to pre-select the bargaining partner on behalf of potential employees regardless of whether or not that union would ultimately be representative of the workers who would be employed. In March 2000, the Committee again noted that the provisions permitted agreements that prejudiced the workers choice of bargaining agent for a considerable period.

Because the WorkChoices amendments exacerbated these issues, there is an urgent need that they be addressed by the Rudd Government.

The provisions of the *Fair Work Bill* are a measured and sensible response. Allowing unions with representative rights to participate in bargaining is actually ***less*** likely to create demarcation issues than the present system. This is because the current provisions can sometimes result in employees with a particular union affiliation and membership being told that their union of choice is not recognised for a particular project.

The Bill allows unions with a legitimate interest in any proposed agreement to be advised of and participate in negotiations. We would urge the Committee to recommend that the terms of the Bill not be altered in this respect.

On the issue of right of entry, the employer groups again cite the prospect of demarcation disputes as a reason for winding back the current provisions. Again, these assertions are very much exaggerated in our view.

We point out that the notion that award coverage would provide a clearer mechanism on which entry rights could be based has been superseded by the award modernisation process as it relates to the construction industry. The Australian Industrial Relations Commission has now issued a single national award as an exposure draft for the entire construction industry, combining a range of different awards to which various unions are presently bound.

We also wish to point out that the proposed s 481 of the Bill could be considerably improved by amending the words *'who performs work on the premises'* in sub-section (1)(b) to ensure that permit holders are also entitled to enter for the purpose of investigating suspected breaches relating to *ex*-employees as well as current employees performing work. A considerable number of complaints which require

investigation are made by former employees and the CFMEU has had employers raise the equivalent wording in s747 of the WRA as an obstacle to an investigation when there was otherwise no argument that the employee in question has been underpaid.

Thank you for the opportunity to make this further submission.

If you require anything further please contact this office.

Yours faithfully,

John Sutton
National Secretary
CFMEU