

13 March 2008

Mr John Carter
Committee Secretary
Education, Employment and Workplace Relations Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Carter

Response to questions on notice — Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008

While giving evidence to the Committee on 7 March 2007, we were asked by Senator Murray and Senator Siewert to comment on various submissions made by Professor Andrew Stewart and Dr John Buchanan.

Although we have not had the opportunity to consider Professor Stewart's oral evidence, as proof Committee Hansard is not yet available, we provide our comments on the remainder of the evidence as follows.

Professor Stewart's submissions

1. *Complexity*:¹ we agree that industrial relations legislation has become too complex, and agree that Australia needs a new industrial relations statute which is simple to understand and based on a clear conception of workers' rights.
2. *New employers*:² we agree that the Workplace Authority needs additional powers to ensure that workplace agreements made by new employers are tested against the most appropriate instruments. We made this similar point (at paragraph 58 of our submission) in relation to pay rates.

¹ Professor Stewart's submission, 2–3.

² Ibid 3.

3. *Loss of State-based conditions:*³ we agree that the no-disadvantage test should provide compensation for the loss of any employment conditions, whatever their source. Accordingly we support the proposal to ensure that agreements are tested against all relevant Commonwealth, State and Territory laws, with special reference (if necessary) to long service leave rights.
4. *Approval of collective agreements:*⁴ we agree that the Bill should be amended to ensure that the Workplace Authority cannot approve a collective agreement unless it is satisfied that no worker will be worse off under the agreement. In most cases, the parties would be able to so satisfy the Authority by including appropriate clauses (such as reconciliation clauses) in the agreement.
5. *Anti-victimisation provisions:*⁵ we agree that the anti-victimisation provisions in relation to the administration of the no-disadvantage test need to be strengthened. As the Cowra abattoir case demonstrates,⁶ a 'sole or dominant reason' test does not adequately protect employees. We make this point at paragraph 30 of our submission, and also made the same point in our submission to the Committee's consideration of the Fairness Test legislation.
6. *Scrutiny of Workplace Authority:*⁷ we agree with the criticism that the Workplace Authority operates without sufficient scrutiny, and support the proposal to allow an aggrieved party to receive written reasons for a decision.
7. *Expired AWAs and ITEAs:*⁸ we agree that the principle of workplace democracy requires a collective agreement to prevail automatically over an expired AWA or ITEA. We also support amendments to ensure that employees on pre-reform AWAs can participate in collective bargaining.
8. *Termination of expired agreements:*⁹ we agree that the Commission should retain oversight over the unilateral termination of expired collective agreements. We also agree with the amendments proposed in relation to the termination of employer greenfields agreements.
9. *Award modernisation:*¹⁰ we agree that the Award Modernisation Request does not make it sufficiently clear that the process should not disadvantage employees. We would support a directive to the Commission to conduct award modernisation along the lines of the no-disadvantage test, so that the Commission could not reduce any award condition without providing an offsetting benefit elsewhere in the award.

³ Ibid 3–4.

⁴ Ibid 4.

⁵ Ibid 4–5.

⁶ Office of Workplace Services, 'Summary of the Investigation into Alleged Breaches of the Workplace Relations Act 1996 at Cowra Abattoir' (7 July 2006) Media Release.

⁷ Ibid 5–6.

⁸ Ibid 6–7.

⁹ Ibid 7.

¹⁰ Ibid 7.

Dr Buchanan's submissions

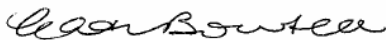
10. *Award coverage*:¹¹ we agree that modern awards should have flexible coverage clauses, and that the coverage and content of awards should be regularly reviewed to ensure they remain relevant to the labour market. We also agree that there is a risk that some workers who require award coverage will be left out of modern award coverage. We would support the creation of a 'catch-all' award or some other mechanism to cover these workers.
11. *Award matters*:¹² we agree that the list of permissible award matters is too narrow, and argued in our submission (at paragraph 53) that additional matters should be allowed on a discretionary basis.
12. *Award modernisation*:¹³ as discussed at point 10 above, we support the proposal that the Commission be directed to ensure that workers are not disadvantaged, overall, by the award modernisation process.

Finally, we wish to respond to the call, by some employers, for an amendment to proposed section 326(2)(b)(i) of the Bill to allow employers to use ITEAs for new employees who have a history of working for the business.¹⁴ We are concerned that, unless adequate anti-victimisation provisions were put in place, such an amendment could be exploited by employers (for example, by dismissing employees and re-engaging them under ITEAs).

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We trust that this information will be of assistance to the Committee. If you have any further queries, please do not hesitate to contact me.

Yours sincerely



Cath Bowtell
Industrial Officer

¹¹ Ibid 31–2; Dr Buchanan's submission, 2–4.

¹² Proof Committee Hansard (6 March 2008) 35.

¹³ Proof Committee Hansard (6 March 2008) 35–6.

¹⁴ AMMA submission 15; BCG Contracting Pty Ltd submission 1.