



18 July 2005

The Hon Kevin Andrews MP  
Minister for Employment and Workplace Relations  
Parliament House  
CANBERRA ACT 2600

**RE: PROPOSED FEDERAL INDUSTRIAL RELATIONS LEGISLATION REFORMS**

Dear Minister

Further to our meeting of Monday 4 July 2005 I provide the following comments on the government's proposed reform of the federal industrial relations system and legislation. You will appreciate from our recent meeting that ACCER is developing a comprehensive analysis of the proposals that it will submit to the government in due course. Therefore, this correspondence serves to indicate at this point in time matters for further discussion and clarification.

ACCER bases its assessment of any legislative change on the values of Catholic Social Teaching. A fundamental principle of Catholic Social Teaching is that work affirms, enhances and expresses the dignity of those that undertake it. The Church's teaching on work does not permit the worker to be treated as a commodity in the marketplace. A worker should be able to establish and properly maintain a family and to provide for its future security. We also draw upon our collective experience as an employer in order to develop a balanced approach to the employment relationship so that the objectives of employers are also respected and supported.

In this context, ACCER raises the following issues:

1. The proposed method of setting the minimum wage will be on the basis of a *single* adult worker. The Church has been a strong advocate of a *family* wage; that is, the wage should be fixed having regard to the *needs* of the family so it can live with dignity. Accordingly, the charter of any wage setting body should be about the setting of a *family* wage, taking into account the *needs* of the family, taxation arrangements and government transfer payments and relevant economic and social considerations. It is also important for the credibility of any wage setting body that it is an independent statutory authority that functions in an open and transparent manner.

Points for further clarification and elaboration of detail include:

- What is the rationale for taking the wage setting function away from the AIRC?
  - What is the impediment to the AIRC undertaking this function?
  - How many appointments will be made to the AFPC?
  - What will the selection criteria, the process of selection and tenure of appointments to the AFPC?
  - How will conflicts of interest be resolved if appointees are part-time or of limited tenure?
  - Will there be a role for advocates and public submissions?
  - Will the rules of natural justice apply?
  - What will be the parameters of the AFPC in examining the wages of a single worker?
  - How will the changes ensure that low paid families will be able to live with dignity?
  - How will this be achieved?
  - What type of research and evidence will be collected?
  - How? Who by?
  - Will the needs of families be taken into account?
  - How will this be considered with other factors?
  - How will the AFPC reach a decision?
  - What will be the frequency of reviews of minimum wages?
  - How will this interact with the award system?
2. The intent to exempt certain sized businesses from unfair dismissal laws removes the legal requirement upon the employer for the fair treatment of workers. Termination of employment could become an arbitrary decision of the employer, without respect for the employment relationship and the need for a worker to support a family. ACCER believes improvements can be made to the current unfair dismissal laws that would provide a merit-based and non-legalistic grievance and dispute resolution process for employers and workers. In the absence of a fair process it is difficult to expect the development of a constructive relationship between employers and workers based on mutual trust and loyalty. Furthermore, the proposed exemption will not necessarily protect employers from workers seeking other means of redress.

Points for further clarification and elaboration of detail include:

- What empirical evidence is there to support the need for exemptions?
- Why was the figure of 100 employees chosen as the threshold for the exemption?
- How many employees does this potentially include?
- What is the current data on applications by small business employees to the federal tribunal?
- What alternative processes are being considered for unfair dismissal applications?
- What other legal forums will remain available for terminated workers to access unfair dismissal remedies?

3. The use of the Standard as the basis for the No-Disadvantage Test for bargaining raises concern about the balance between employers and workers in the bargaining process. There is potential for erosion of employment conditions in workplaces. The proposed Standard of five items only compared currently to the entire contents of an award is not sufficient to provide a fair balance. For example, the proposed Standard would exclude matters such as entitlements for work performed outside of normal working hours. The bargaining agreement also needs to be *properly* scrutinised by an independent authority to ensure fairness and compliance with the accepted minima and contain a mechanism for redressing invalid agreements.

Points for further clarification and elaboration of detail include:

- How will agreements be scrutinised for compliance with the standard?
  - How will invalid agreements be redressed?
  - How will genuine consent be identified?
  - How will employees be able to raise concerns or objections about the terms of lodged agreements?
  - Will the quality of the checking by the OEA be audited?
  - What will be the quantum of entitlements for the four basic conditions?
  - What will be the rate of pay for hours worked beyond the maximum ordinary hours of work standard?
  - How will the maximum ordinary hours of work benchmark affect industry sectors with non-traditional hours arrangements?
  - Will long service leave in effect vary from state to state with its removal from federal awards?
  - Or, will a national standard be introduced for long service leave?
  - How will the no-disadvantage test operate with respect to redundancy, casual rates of pay, overtime and shift penalties?
  - Will AWAs be required to be essentially identical in nature in any manner for employees performing the same work?
  - Will AWAs override existing collective agreements?
  - What resources will be devoted to education and enforcement of obligations?
4. Approximately twenty per cent of workers in Australia are totally dependent upon award conditions of employment. That is, they are not able to engage in enterprise bargaining and rely upon awards for their safety net. Additionally, there would be non-award workers who have their rates of pay and conditions referenced to an award. A *fair* set of pay rates and conditions of employment is important to their dignity as persons engaged in the workplace and their ability to support their families.

Points for further clarification and elaboration of detail include:

- What will be the capacity for “test cases”?
  - What will be the role of the AIRC in ensuring the continuing relevance of awards?
  - Will there be savings provisions for award employees where the current award standard is greater than the proposed legislative standards (e.g. superannuation and long service leave)?
  - Will employers be roped into awards in the future?
  - How will disputes be settled?
  - What will be the nature or type of disputes able to be brought before the AIRC?
  - What is the future of Arbitration? Conciliation? Mediation?
  - What will be the roles, rights, responsibilities and obligations of employer associations and unions in the proposed industrial system?
  - Will there be any capacity for submissions or involvement of employer associations, unions or other parties in the review of the award classification structures?
  - How will the respective jurisdictions of the AIRC, AFPC and OEA operate to ensure clarity, separation of functions and enforceability of decisions?
5. The use of the Corporations power to introduce a unitary system will have implications for some employers (including Church organisations) currently under State industrial jurisdictions in terms of whether they will fall under the scope of the Corporations power and for the transition of existing state based employment arrangements to the federal jurisdiction.

Points for further clarification and elaboration of detail include:

- Will there be transition arrangements into the proposed unitary system for existing state awards and agreements?
- Will award first principles apply for state awards brought into the federal system?
- Will there be common rule awards introduced to replace state awards?
- Will there be recognition of existing state based enterprise awards and agreements until their expiry dates?
- What will happen to unincorporated bodies excluded from the federal system?

The above identification of the issues arising from an examination of the proposals is not exhaustive. At this stage we have endeavoured to locate those of a first order level. Further issues will obviously turn on the release of further detail.

As expressed at the meeting, it will also be advantageous to meet with the relevant Departmental officers to discuss many of the issues in fuller detail.

Thank you for your consideration of these matters and I look forward to your response.

Yours sincerely

**JOHN RYAN**  
**Executive Officer**