Australian Catholic Commission for Employment Relations (ACCER)

Submission to the

Senate Employment, Workplace Relations, Small Business and Education Legislation Committee

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

Workplace Relations Amendment (Termination of Employment) Bill 2000

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

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INTRODUCTION

The Australian Catholic Commission for Employment Relations (ACCER) seeks to make a submission to the Senate Employment, Workplace Relations Small Business and Education Legislation Committee (the Committee) on four Workplace Relations Amendment Bills referred to the Committee on the 17th of August 2000. The four Bills are the:

- *Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000;*
- *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000;*
- *Workplace Relations Amendment (Termination of Employment) Bill 2000;* and
- *Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000.*

In making its submission to the Committee, the ACCER draws upon Catholic Social Teaching.

Catholic Social Teaching is a set of principles and teachings based on Christian values, which aim to bring about a good and fair society for the benefit of all.

Official texts establishing Catholic Social Teaching include papal documents, known as encyclical letters, documents of the Second Vatican Council and statements of local and regional conferences of Catholic Bishops.

A fundamental principle of Catholic Social Teaching is that work affirms, enhances and expresses the dignity of those that undertake it. Given this, the dignity of the individual should be at the core of any industrial relations system.

From this, and other fundamental principles, Catholic Social Teaching establishes rights and responsibilities for employees and employers. In the context of the Bills before the Committee, the following principles are considered to be relevant.

The right to work

Work is considered to be the one of the principal means by which people seek personal fulfilment, dignity and make their contribution to the common good. Therefore, people should not be treated like any other resource or commodity in the market place.

Laborem Exercens states that:

> "work bears a particular mark of man and humanity, the mark of a person operating within a community of persons. And this mark decides its interior characteristics; in a sense it constitutes its very nature."[1]

The ACCER supports the development of a direct relationship between employers and employees at the workplace. The relationship between the employer and the employee should be one of mutual respect and dignity, with both parties working together to achieve the objectives of the business and security of employment.

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[1] John Paul II, *Laborem Exercens* (Homebush: St Paul Publications, 1981), page 10.

Furthermore, the role and influence of the *indirect employer* is seen as necessary to the development of the employment relationship:

> "Apart from governments,… courts, tribunals and other institutions which shape the legal framework and the manner in which the employer/employee relationship is regulated…must also act justly and must recognise freedom of association."[2]

It is recognised that, on occasions, the relationship between the employer and the employee may not be harmonious and that they may not be able to resolve matters of difference. An independent third party may be required to assist the bodies to settle such differences in a fair and just manner.

Therefore, any industrial legislation should not act to the exclusion of third parties in the employment relationship, whether those third parties are unions, employer associations, private mediators, industrial tribunals or courts, or governments.

In some instances it may be necessary for an industrial tribunal to intervene in the employment relationship, in order to protect the social and economic considerations and interests of the community.

It may be also necessary for such a tribunal to intervene in order to provide balance to the bargaining relationship between the two parties, especially where one party is able to use its industrial strength as a means of intimidation against the other.

The right to just wages

> "Every family has the right to sufficient income through work. Workers have the right to just minimum wages and to just and safe working conditions."[3]

In this context the employer has a moral obligation to provide a just wage. This is considered to be a wage that takes into account the needs of the individual and their family, and not just that individual's value within the labour market. Catholic Social Teaching does not regard the welfare system to be a means of substitution for a just wage.

> "In circumstances of exploitation and coercion, the indirect employer must provide opportunities for the just settlement of disputes. They also may think it wise to set down a code of minimum standards of wages and conditions based on respect for the dignity of each human person engaged in the workplace and cognisant of the needs of the worker and his or her dependents."[4]

As such the award system, being a statutory minimum for wages, should be maintained and continued to ensure that wages do not drop to such a level that it becomes impossible to sustain a decent standard of living. However, the setting of a statutory minimum wage by governments or industrial tribunals should not be a substitute for the moral obligation of employers to pay a just wage.

The right to form associations

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[2] Bishops' Committee for Industrial Affairs, *Industrial Relations - The Guiding Principles*, page 4.
[3] Ibid, page 2.
[4] Ibid, page 5.

The right of employers and employees to form trade unions and employer associations is considered to be the proper and legitimate exercise of the right to freedom of association.

The right to freedom of association is considered to be a fundamental freedom of a just society. *Laborem Exercens* states that the purpose of trade unions is to defend the vital interests of employees.[5]

> "They are…*a mouthpiece for the struggle for social justice,* for the just rights of working people in accordance with their individual professions."[6]

In this context such organisations must act in the interests of their members and within the guidelines of the law.

The right to strike

The right to strike or to withdraw one's labour is considered to be a basic right of every individual. It is recognised by Catholic Social Teaching as being legitimate in proper conditions and within just limits:

> "In the case of industrial disputes, the right to strike must only be used as a last resort and in proportion to the issue. It is an 'extreme means'."[7]

Therefore, it is considered appropriate to strike only when all other avenues of a proper process have been exhausted and where the withdrawal of labour, or other type of industrial action, is in proportion to the justice of the claim. The taking of sympathy action, or using industrial action for political purposes that are external to the immediate employment relationship, is not considered to be appropriate.

It is based on these rights and responsibilities, and the principles established in Catholic Social Teaching, that the ACCER makes the following points regarding the proposed amendments to the *Workplace Relations Act 1996 (Cth)* (the Act).

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[5] Above, note 1, page 81.
[6] Above, note 1, page 83.
[7] Above, note 2, page 3.

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

The *Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000* (the AWA Bill) seeks to "strengthen" the provisions of the Act relating to Australian Workplace Agreements (AWAs).[8]

1. *The proposed amendments would enable an AWA to take effect on the date of signing or, if later, the date specified in the AWA as the commencement date. Alternatively, in the case of a new employee, it would be the date that the employment commences.*[9]

   This proposed amendment is part of an amalgamation of the filing and approval process for AWA, which will "ensure a much simpler and speedier formalisation process."[10] This proposed streamlining approach presumes that an AWA will meet all requirements of the statutory tests. This may be problematic where the AWA does not pass the No Disadvantage test, but the terms of the AWA have been implemented for some time.

   Alternatively, problems may exist as to the type of deficiencies that exist in the agreement as to whether one party has been unfairly or inequitably treated. Provisions for salary increases, which are linked to productivity gains or to the implementation of new work practices, may further complicate this uncertainty.

   Finally, there does not appear to be a similar proposal for Certified Agreements to be able to take effect from the date of signing. This appears to lead to an inconsistent approach to the overall procedures for certification of agreements, being essentially dependent on a distinction between an individual agreement and a collective agreement.

2. *The proposed amendments would permit employees to sign AWAs at any time after receiving a copy of the information statement prepared by the Employment Advocate and an explanation as to the effect of the agreement.*[11]

   Such an amendment may encourage unscrupulous employers to place pressure on employees, especially those employees who are vulnerable in the labour market, to sign the AWA immediately. This could negate the ability of employees to receive independent advice regarding the AWA.

   The Australian Council of Trade Unions (ACTU) submission to the Committee on the *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999* indicated that such pressure was already being placed on employees. In particular, the ACTU stated that:

   > "the evidence is overwhelming that AWAs are rarely, if ever, the subject of real negotiations between the employer and the individual employee. The most common practice is for identical AWAs, possibly with different wage rates, to be provided to employees on a "take it or leave it" basis."

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[8] *Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000,* Explanatory Memorandum, page 1.
[9] Ibid, Item 2, section 170VAA.
[10] Reith, P., *Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000,* Second Reading Speech, page 2.
[11] Above, note 8, page 1.

The ACCER is concerned that such behaviour may occur and that there does not appear to be adequate safeguards against such behaviour. Accordingly, it does not support this proposed amendment.

Additionally, employees are placed in a difficult situation if they are required to withdraw from an agreement that they have previously agreed to, whether that agreement was obtained under duress or not. In some situations, employees may be likely to "put up" with poor working conditions, for the sake of employment, rather than trying to withdraw from an agreement.

3. *The proposed amendments, under section 170VBA, would permit an employee, party to an AWA that provides for remuneration of $68,000 per year or less, to withdraw consent within a specified cooling-off period.*[12]

The proposed amendments appear to be unfair for those employees earning greater than $68,000 per annum, as they would not be entitled to a cooling off period.

Therefore, as a matter of principle, if this approach is to be adopted, employees who earn greater than $68 000 per annum should also be entitled to a cooling off period.

In order to provide a just and fair industrial relations system, all employees signing AWAs should receive the same protection. That is, the AWA should be subject to the same tests, no matter what the income level of the employee.

Additionally, the remuneration rate of $68,000 per annum for the application of a cooling off period after signing an AWA appears to be an arbitrary figure. Regulation 30BF of the Act places $71,200 as the remuneration level at which people no longer have access to the unfair dismissal provisions of the Act. While it is recognized that there is no link between an application for a cooling off period after signing an AWA and applying for unfair dismissal, it is suggested that in order to avoid confusion, the two remuneration levels should be the same if it is determined to proceed with this type of amendment.

4. *The proposed amendments would remove the requirement to offer identical AWAs to comparable employees.*[13]

This proposed amendment may result in a reduction in the general conditions of employment that prevail at the workplace. It may also result in indirect discrimination against employees or groups of employees at the workplace.

The Australian Chamber of Commerce and Industry supported a similar amendment in the *Workplace Relations Amendment (More Jobs, Better Pay) Bill 1999*, citing that the requirement to offer identical AWAs to comparable employees created an inflexibility for employees who wish to tailor the AWA to align with their personal requirements.[14]

It is not entirely clear as to what matters might be creating inflexibility in terms of "personal requirements". It may be that flexibility in working hours to achieve a balance between *work and family* can be legitimately accommodated within a *spread of hours* clause without the need for "differing" AWAs.

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[12] Above, note 8, Item 1.13.
[13] Above, note 8, page 1.
[14] Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Consideration of the Provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999*, (Canberra: Senate Printing Unit, 1999) page 104.

5. *The proposed amendment would simplify the approval process by implementing a one step approval process.*[15]

The ACCER would contend that any approval process for industrial agreements should embody the principles of fairness and due process for all parties to the agreement. Such principles ensure the dignity of the individual employee and employer.

6. *The proposed amendment would simplify the approval process by removing the requirement that the Employment Advocate refer an AWA to the AIRC when it did not meet the requirements of the No-disadvantage Test.*[16]

It is suggested that an independent third party, such as the Australian Industrial Relations Commission (AIRC), is necessary to ensure that the minimum terms and conditions of employment are met and that neither party is being unfairly disadvantaged by the agreement. This scrutiny should occur even where the parties have not raised issues of concern or have not identified reductions in the current terms and conditions of employment.

7. *The amendment would simplify the approval process by streamlining the process for AWAs that provide rates of remuneration in excess of $68,000 per year.*[17]

The ACCER contends that the approval process for all AWAs should be the same regardless of the income level of the employee.

Once again, the ACCER would like to point out that the remuneration level of $68,000 appears to be an arbitrary amount, and that in order to avoid confusion, if such an amendment is to be introduced, it should be aligned with the remuneration level for an unfair dismissal application.

8. *The proposed amendment would modify the provisions relating to the relationship between AWAs and certified agreements and AWAs and awards made under section 170MX(3) of the Act.*[18]

This modification may act to the exclusion of Certified Agreements and Awards at the workplace. This may enable employers to single out those employees on AWAs for favorable or unfavorable treatment. Such provisions may act to the exclusion of collective agreements.

Additionally, further clarification is sought on section 170VDA of the AWA Bill as to whether this enables AWAs to prevail over legislation to the extent that legislation prescribes greater conditions of employment.

The ACCER contends that individual agreements should <u>not</u> be promoted over collective agreements or statutory provisions establishing conditions of employment.

9. *The proposed amendment would remove the limited immunity available in respect of industrial action taken in support of a claim for an AWA.*[19]

This amendment is <u>not</u> supported. While it is acknowledged that it might be an unusual occurrence for an individual employee to take protected industrial action, nevertheless this could arise in some circumstances. This provision also creates an inconsistency in the overall

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[15] Above, note 8, page 1.
[16] Above, note 8, page 1.
[17] Above, note 8, Item 1.25.
[18] Above, note 8, Item 1.50.
[19] Above, note 8, Item 1.58 & 1.59.

framework of the Act as protected industrial action is allowed during the bargaining of a certified agreement. Therefore, this would appear to discriminate against employees who are employed under AWAs.

10. *The proposed amendments would change the circumstances in which a party to an AWA may be extended past the nominal expiry date.*

The ACCER notes that any extended AWA must be reassessed by means of the No-disadvantage Test. If this approach is to be adopted, the amendment needs to be explicit about this requirement. The current draft infers that this will occur but it might not be immediately apparent to employers or employees unfamiliar with the detailed workings of the legislation.

Workplace Relations Amendment (Termination of Employment) Bill 2000

The *Workplace Relations Amendment (Termination of Employment) Bill 2000* (TE Bill) aims to maintain the "fair go all round" principle already applied in the Termination of Employment provisions of the Act, while addressing the perceived procedural problems of these provisions. In particular, the TE Bill proposes to discourage the making of unmeritorious and speculative unfair dismissal claims, streamline the unfair dismissal process, take the needs of employers into account and clarify the jurisdiction of the AIRC in unfair dismissal cases.[20]

1. *The proposed amendments would prevent forum shopping by employees who are entitled to a remedy under the Act in respect of harsh, unjust or unreasonable termination.*[21]

   The ACCER would agree with this amendment. The ACCER agrees that *forum shopping* needs to be prevented. That is, an applicant should not be able to make two applications in relation to the same termination of employment.

2. *The proposed amendments would make it clear that people engaged in a contract for services are not entitled to apply for a remedy in respect of termination of employment.*[22]

   The exclusion of people engaged in a contract <u>for</u> service from the termination of employment provisions of the Act is accepted, if such employees do not have a true expectation of *ongoing* or *further* employment. However, the ACCER contends that *independent contractors* should have access to an appropriate jurisdiction for the review of the fairness of contracts of service.

3. *The proposed amendments would preclude an employee who has been demoted from seeking relief in respect of termination of employment where the demotion does not result in a significant decrease in remuneration and the employee continues in employment with the employer.*[23]

   This is not accepted. An employer may use discrete forms of pressure or coercion over time to cause an employee to resign without directly stating that this is the intention of the conduct. Accordingly, the employer may use a demotion as a form of pressure to force an employee to resign. In any event, it is a possible breach of the contract of employment to change an employee's position in this manner.

4. *The proposed amendments would identify the matters which the AIRC and the Federal Court are to have regard to in exercising their discretion to grant extensions of time for lodgment of application in relation to unfair, unjust or unreasonable terminations of employment.* [24]

   It is believed that the applications for extensions of time should be heard on the merits of the case. However, applicants who are genuinely unaware of their rights until later than the prescribed twenty-one days for lodging an application should not be excluded from access to the termination of employment provisions.

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[20] Reith, P, *Workplace Relations Amendment (Termination of Employment) Bill 2000,* Second Reading Speech, page 1.
[21] *Workplace Relations Amendment (Termination of Employment) Bill 2000* Explanatory Memorandum, Item 6.
[22] Ibid, Item 8.
[23] Above, note 20, Item 9.
[24] Above, note 20, Item 11.

It should be noted that section 170CE(7) of the Act requires the AIRC to consider whether it would be "unfair" not to grant an extension for lodgment of applications in respect of both unfair and unlawful termination of employment. Thus, it is not considered to be necessary for the TE Bill to be any more prescriptive than this when identifying the matters in which the AIRC is to have regard when granting extensions.

5. *The proposed amendments would provide that, in certain circumstances, a respondent to an application in respect of termination of employment may seek to have a motion for dismissal of the application for want of jurisdiction dealt with at any time.*[25]

This requires further clarification with respect to due process and the fair conduct of the proceedings. It is acknowledged that jurisdictional points may be raised at any time now. In other words, such points may be raised in current proceedings and that, sometimes, it is not until the evidence is heard that the question of jurisdiction is able to be determined.

6. *The proposed amendments would confer power on the AIRC to prevent an applicant for a remedy in respect of harsh, unjust or unreasonable termination proceeding to arbitration where the AIRC forms the view that the application has a substantial prospect of being unsuccessful.*[26]

Conferring power on the AIRC to prevent an applicant for a remedy in respect of harsh, unjust or unreasonable termination proceeding to arbitration may be considered to be contrary to the principle of natural justice.

Conciliation does not necessarily involve a full hearing of evidence. A party may attend a conciliation conference and simply maintain that it is not prepared to reach a settlement with the other party. In such cases the AIRC is not always able to predict the likely outcome if the application were to proceed to arbitration.

Alternatively, this proposed amendment might initiate unintentionally a "full" hearing of the evidence before it is necessary. Such an amendment may impinge on the conciliation process, with the parties prematurely proceeding to an approach based on arbitration principles.

7. *The proposed amendments would require the AIRC to have regard to the degree to which the size of the employer's undertaking, establishment or service may impact on the procedures followed in determining whether a termination was harsh, unjust or unreasonable.*[27]

In a previous Implementation Discussion paper, *The Continuing Reform of Workplace Relations: Implementation of <u>More Jobs, Better Pay</u>,* it was recognised that the unfair dismissal provisions of the Act require detailed documentation, record keeping and extensive counselling of an unsatisfactory employee. This was seen as an onerous task for a small business that often deals with issues as they arise and does not have the human resource functions of a large corporation.

The ACCER supports the requirement to take into account the size of the employer's business when examining the procedures followed in the termination of an employee. Indeed, currently, there is some discretion for the AIRC to take such matters into account, and there are some decisions to that effect.

It is unrealistic to expect the same degree of *procedural documentation* from a small business as from a larger enterprise, especially when the former would not have in-house employment

[25] Above, note 20, Item 12.
[26] Above, note 20, Item 14.
[27] Above, note 20, Item 26.

advisers. However, the principle of *procedural fairness* should apply to all organisations, irrespective of the size of the employer. This principle should never be diminished.

8. *The proposed amendments would limit the AIRC's jurisdiction to find that a termination was harsh, unjust or unreasonable where the employer can establish that the termination was effected by the operational requirements of the employer's undertaking, establishment or service.*[28]

The amendment to limit the AIRC's jurisdiction in finding that the termination of employment was effected because of the operational requirements of the employer's undertaking establishment or service is not supported by the ACCER. The amendment removes the ability of the AIRC to order reinstatement or the payment of compensation to an unfairly dismissed employee. In some instances the selection of employees for redundancy may be open to legitimate challenge. This can occur where the selection criteria are poorly developed or are not rigorously applied by the employer.

It should be noted that, to a certain degree, the AIRC already takes into account the size of the business when making orders after arbitration of a termination of employment case. Section 170CH(2) of the Act requires the AIRC to take into account "*the effect of the order on the viability of the employer's undertaking, establishment or service.*"

9. *The proposed amendments would preclude the AIRC and the Federal Court from including an amount to be paid to an employee in lieu of reinstatement a component for compensation for shock, distress or humiliation or other analogous hurt, caused by the manner of termination.*[29]

This requires careful consideration. Generally, the loss of employment is currently treated as an amount of time and wages foregone. In reality, the termination of employment can cause great emotional suffering, especially when future prospects of employment may be unfairly diminished because of the circumstances surrounding the termination and the subsequent proceedings. It is possible also for an employer to take a calculated commercial risk about the termination of an employee no longer required but for which there are not valid reasons for that termination.

10. *The proposed amendments would confer the power on the AIRC to require a representative who has been retained pursuant to contingency fee agreement or costs arrangement to disclose that fact to the AIRC.*[30]

This is seen as an unnecessary and irrelevant intrusion into the arrangements between applicant and representative. As such, it is difficult to appreciate how this could have any possible bearing on the merits of the application.

11. *The proposed amendments would confer express power on the AIRC to dismiss an application in relation to a termination of employment if the applicant fails to attend the proceedings.*[31]

This requires further explanation as to the circumstances of the failure to attend the proceedings. It is noted currently, however, that the AIRC may give the applicant a "reasonable' opportunity to be heard.

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[28] Above, note 20, Item 10.
[29] Above, note 20, Item 29.
[30] Above, note 20, Item 30.
[31] Above, note 20, Item 30.

12. *The proposed amendments would widen access to costs orders and clarify that costs can be awarded in jurisdictional, costs and appeal proceedings.*[32]

    The ACCER would be concerned as to the motivation for this widening of costs orders. It is trusted that this is not to be used as a form of general deterrent but is to properly award costs in particular situations. Further information is required as to why this is seen to be necessary.

13. *The proposed amendments would confer power on the AIRC to require an applicant to lodge an amount as security for any costs that may be awarded against them.*[33]

    The ACCER is concerned that this would deter applicants who have genuine grounds for their application but may not have the requisite amount of security deposit.

14. *The proposed amendments would prevent an applicant from making two applications in relation to the same termination of employment.*[34]

    The ACCER agrees that only one application should be made for the same termination of employment.

15. *The proposed amendments would introduce new provisions containing a prohibition on advisers from encouraging applicants to institute or continue speculative or unmeritorious proceedings in respect of harsh, unjust or unreasonable termination.*[35]

    It is difficult to envisage the practical manner or tests in which this amendment would achieve its ends.

[32] Above, note 20, Item 31.
[33] Above, note 20, Item 34.
[34] Above, note 20, Item 39.
[35] Above, note 20, Item 40.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

The *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000* (the SB Bill) sets out requirements for the taking of protected industrial action. The new provisions are intended to ensure that protected industrial action is not used as a substitute for genuine bargaining between the parties and that the final decision to take industrial action is made by the parties involved.[36]

1. *The proposed amendments will require a union or employee to apply to the AIRC for an order for a 'protected action ballot' to be held. People who apply for a 'protected action ballot' may do so anonymously.*[37]

2. *The proposed amendments will require that a bargaining period be in place, and that the applicant is genuinely negotiating an agreement, before the AIRC is able to order a ballot.*[38]

Under the current Act, the AIRC has the power to issue a secret ballot where it may be helpful in preventing or resolving an industrial dispute. Members of unions may request the AIRC to order a ballot be held in relation to proposed industrial action.

The ACCER supports a democratic process at the workplace to determine whether or not to take industrial action. Secret ballots are <u>one</u> form of a democratic process that may be used at the workplace.

It is contended that the provision requiring a secret ballot *before* industrial action is not consistent given that a secret ballot is not required to *lift* or *cease* the industrial action.

The ACCER argued that the amendments contained in the *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999,* which are slightly different to the proposed amendments contained in the SB Bill, were designed to reduce the right of workers to take genuine industrial action.

The right to strike or to withdraw one's labour is considered to be a basic right of every individual employee.

> "In the case of industrial disputes, the right to strike must only be used as a last resort and in proportion to the issue. It is an 'extreme means'."[39]

Therefore, it is considered appropriate to strike only when all other avenues of a proper process have been exhausted or where the withdrawal of labour, or other type of industrial action, is in proportion to the justice of the claim.

The right to withdraw one's labour should exist without the threat of personal sanctions or criminal charges being laid against the worker and without the threat coercion, duress of intimidation of the worker to take, or not to take, the industrial action.

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[36] *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000* Explanatory Memorandum page 1.
[37] Ibid, Item 17.
[38] Above, note 35, Item 20.
[39] Above, note 2, page 3.

3. *The proposed amendments would ensure that, where a union applies for a ballot, only union members whose employment would be covered by the proposed agreement would be entitled to vote. Where employees seeking a non-union agreement make the application, then all employees whose employment would be covered by the agreement would be required to vote.*[40]

   This appears to disenfranchise non-union employees in respect of union ballots. In any event, the non-union employees would be either adversely affected by or seek to be involved in the consequent industrial action.

4. *The proposed amendments would authorize industrial action where at least 50% of eligible voters participate in the ballot and where more than 50% of the votes cast are in favor of the proposed industrial action.*[41]

   It is a generally accepted industrial maxim that a successful industrial activity requires at least the support of 50% of those voting.

5. *The proposed amendments would also make consequential changes to the existing secret ballot provisions of the Act.*[42]

   Such amendments need to maintain the ability of employees and their unions to act democratically but without artificial restrictions on their industrial activities.

6. *The proposed amendments would make it possible to take protected industrial action, in certain circumstances, once a bargaining period has been suspended.*[43]

   The ACCER contends that such an amendment may be problematic as it may enable an unscrupulous union to elongate the dispute by taking industrial action outside of the bargaining period.

   Additionally, there does not seem to be any corresponding provision enabling employers to take protected industrial action outside of the bargaining period.

[40] Above, note 35, Item 23.
[41] Above, note 35, Item 23.88.
[42] Above, note 35, page 1.
[43] Above, note 35, Item 22.

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

The *Workplace Relations (Tallies and Picnic Days) Bill 2000* (the TPD Bill) further simplifies federal awards, removing provisions from relating to Union Picnic Days and Tallies. It is believed that these two issues may be more appropriately decided at the workplace level.[44]

1. *The proposed amendments ensure that the tally system in the meat industry and union picnic days are no longer included in federal awards.*[45]

2. *The proposed amendments would also allow a transitional period of six months for parties to an award to apply to the AIRC to vary to award so that it deals only with the allowable award matters.*[46]

3. *The proposed amendments would require the relevant awards to be simplified at the same time they are varied for the removal of provisions relating to union picnic days and tallies.*[47]

The ACCER supports the maintenance of the award system as a *fair* and *just* system of minimum conditions and standards in the workplace for all employees.

It has supported also the award simplification process *only* to the extent that it is used for the removal of ambiguity and arcane language, for the inclusion of relevant community and industrial test case standards, and for the removal of obsolete provisions.

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[44] *Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000* Second Reading Speech, page 2.
[45] *Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000* Explanatory Memorandum, Item 1 & Item 2.
[46] Above, note 44, Item 2.
[47] Above, note 44, Item 6 & Item 8.

SUMMARY OF KEY POINTS

In this submission to the Employment, Workplace Relations, Small Business and Education Legislation Committee Inquiry, the ACCER makes the following points.

Workplace Relations Amendment (Australian Workplace Agreement Procedures) Bill 2000

- The ACCER supports the streamlining of the requirements for the certification of agreements, provided that the basis of the agreement making process will be fair and just, and that no party will be disadvantaged by the amendments.

- The ACCER argues that employees signing an AWA should receive the same protection, no matter what the income level of the employee.

- The ACCER does not support the amendment repealing protected industrial action when negotiating an AWA.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

- The ACCER contends that compulsory secret ballots might reduce the ability of workers to take genuine industrial action.

Workplace Relations Amendment (Termination of Employment) Bill 2000

- The ACCER contends that the amendment to require Commissioners to indicate the likely success of an unfair dismissal application at arbitration is contrary to the principle of natural justice.

- The ACCER supports the requirement to take into account the size of the employer's business when examining the procedures followed in the termination of an employee.

- The ACCER does not support the amendment to limit the Commission's jurisdiction to find that a termination of employment is unfair in *valid* redundancy cases.

- The ACCER supports the right of independent contractors to have access to an appropriate jurisdiction for the review of the fairness of contracts for services.

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

- The ACCER supports the award system to maintain fair and just minimum conditions and standards at the workplace.