# UNITING CHURCH IN AUSTRALIA

**Submission to Senate Inquiry**

**into**

**Workplace Relations**
**and Other Legislation Amendment Bill 1996**

**SOCIAL RESPONSIBILITY AND JUSTICE COMMITTEE**

**JUNE 1996**

# Submission to Senate Inquiry into Workplace Relations and Other Legislation Amendment Bill 1996

## EXECUTIVE SUMMARY

**This submission offers comment in two areas:**

i. The philosophical underpinnings of the legislation and the way this has led to weaknesses in the legislation, and

ii. Specific terms of reference and recommendations.

iii. Conclusion.

### i. THE PHILOSOPHIC UNDERPINNINGS - A CRITIQUE:

(i) There is a narrow understanding of the place of work in human life and, thus, little effort to appreciate the relative needs of workers and industry. The legislation focuses on the purported needs of industry.

(ii) The legislation focuses on the rights of individuals, with little understanding of the social nature of human life and work.

(iii) There is a refusal to take seriously the conflict and imbalance of power which is a mark of our society. This is a central flaw, because the legislation does not provide adequate safeguards for workers but falsely assumes their relatively equal power in the industrial arena.

(iv) There is restricted view of the place of lions in industrial relations and in the wider society, which not only denies workers adequate protection but removes an important component from our democratic processes.

### ii. THE TERMS OF REFERENCE AND RECOMMENDATIONS.

(c) International obligations. The legislation appears to breach a number of Australia's international obligations.

(d) Similar provisions in other countries. The experience of people in NZ suggests lower wages and poorer conditions.

(l) A fair balance between parties. The Bill does not develop a fair balance of rights particularly in the present economic and industrial climate. This situation is made worse by those features of the legislation which discourage union involvement in the bargaining process, and which restrict the role of the AIRC.

(n) Work and family responsibilities. The pressure in the legislation is for lower wages and conditions and further pressure towards part-time work and more flexible shifts. For the family this will mean a lower standard of living, and

less time available in meaningful blocks at appropriate times for family activity.

## RECOMMENDATIONS

**SR&J opposes the proposed amendments which have the effect of stripping the AIRC of its jurisdiction to deal with claims for payment in relation to industrial action based on a reasonable concern about health and safety.**

**SR&J would want to see the same protection, including the right to picket peacefully as currently applies to industrial action in relation to certified agreements.**

**SR&J strongly demands that pieceworker be paid no less than the rates which would have been received under the award, including allowances and loadings or compensation for these.**

**SR&J acknowledges the importance of the powers and responsibility of the AIRC to ensure the principle of equal pay for work of equal value. Such power and responsibility should be preserved in their existing form. We oppose any attempt to restrict the AIRC from dealing with over-award gender based pay equity issues.**

**SR&J believes that equal remuneration should not be dealt with in two jurisdictions. The proper place is in the AIRC where it is treated as a systemic matter, not an individual matter. The AIRC remedy is quick and relatively inexpensive. HREOC is cumbersome, expensive and time consuming.**

**SR&J believes that the proposed legislation does not protect workers with the least bargaining power in the labour market. Those hardest hit will be Aboriginal people, unskilled workers, women, and migrants. This is already illustrated by those who work as clothing outworkers, people who receive wages as low as fifty cents per hour, because they often do not have the cultural experience or linguistic skills to protect themselves, urgently need even the little money they do earn, and have no protection from awards or unions.**

**SR&J contends that the proposed legislation does not adequately address the unequal power relationship between the individual and the employer in the workplace.**

**SR&J contents that the proposed legislation adversely impacts on those workers with the least bargaining power in the labour market.**

**SR&J believes that industrial relations reforms need to consider the whole culture of the workplace, and to concentrate on causes of difficulty rather than on relatively minor symptoms. It is inappropriate to devise an industrial relations system that has an almost exclusive focus on wages and financial conditions and the deliberate exclusion of the unions as part of the bargaining process.**

**SR&J believes that there is a need for an independent body to safeguard people's rights and that all agreements should be checked by the AIRC to ensure proper consultation and no disadvantage to workers. They also should be able to be checked by unions to ensure that workers have not inadvertently signed agreements that undercut award protection or leave them worse off.**

**SR&J believes that the proposed system of Australian Workplace Agreements (AWAs) should be subject to the same system of approval required for the approval of certified agreements (through enterprise bargaining). Specifically, an AWA should not come into effect unless it is approved by the AIRC.**

**SR&J believes that the approval of agreements contained in the legislation should be public and open to scrutiny. There should be provision for the involvement of parties who have a material concern relating to the approval of an agreement, including unions seeking to maintain the no disadvantage guarantees.**

**SR&J believes that the AIRC's powers to arbitrate and make awards must be preserved and not just restricted to a stripped back set of minimum or core conditions.**

**SR&J believes that the legislation should encourage the processes of collective bargaining and ensure that a certified agreement within its term of operation cannot be over-ridden by a subsequent AWA if employees do not want them.**

**SR&J supports the continuation of the need for annual reporting of the changes in minimum conditions being entered into by AWAs and other award conditions.**

**SR&J supports the continuation of maintenance of the existing powers of the Australian Industrial Relations Commission (AIRC) in order to provide for an effective independent umpire overseeing awards and workplace bargaining processes.**

**SR&J deplores the loss of minimum award provisions that affect the quality of life of families such as guaranteed minimum shifts, and penalty rates for weekends and nights, paid parental leave, child care, flexi-time rosters and hours worked between shifts.**

## CONCLUSION

**SR&J does not claim to know exactly how an industrial relations system should work. But we do insist that those who make the decisions in the concrete situation should do so by consideration not just of individual freedoms, or of economic factors, but in terms of the common good and the way work impacts on those who work and their families. This common good should include social, environmental and cultural aspects of the life of the community. At the same time, the system must ensure that there is a mechanism to prevent exploitation of the weak - which in our society has generally meant ethnic workers, women, young people and older workers, and those who are relatively unskilled.**

## 1. THE TERMS OF REFERENCE TO WHICH THE UNITING CHURCH WISHES TO RESPOND

The Assembly of the Uniting Church wishes to:

i. make comment on the underlying assumptions of the Workplace Relations and Other Legislation Amendment Bill 16.

ii. respond to the following terms of reference set by the Economics Reference Committee Inquiry:

(c) whether the provisions of the bill will fulfil Australia's international obligations and whether the provisions of the bill will affect Australia's international relations;

(d) the effects of similar provisions in other countries;

(l) whether the provisions of the bill provide a fair balance between the rights of employers and organisations of employers, and the rights of workers and unions;

(n) the impact of the proposed legislation on the balance between work and family responsibilities.

## 2. THE UNDERLYING ASSUMPTIONS OF THE BILL

In introducing the bill to the House of Representatives, the Minister for Industrial Relations articulated five underlying principles which the Uniting Church believes are crucial to any understanding of the legislation, and the way in which it will impact on both industrial relations and the shape of our society:

i. The view that the primary purpose of work is as a unit of production, and that the primary purpose of an industrial relations system is to protect the welfare of the employing organisation, and is only secondarily concerned for employee needs. This is illustrated in the unfair dismissal provisions where, regardless of the injustice suffered by the employee, compensation is only payable if it does not impact on the profitability of the firm.

ii. The view that industrial relations involves individuals (rather than groups), and is concerned primarily for the freedom of those individuals in particular enterprises.

iii. The view that industrial relations need not be conflictual or adversarial, but can be based on the assumption that people will pursue mutually beneficial common interests. "The Bill I introduce today represents a break with a system of industrial relations that has been based on a view that conflict between employer and employee is fundamental to the relationship and that an adversarial process of resolving disputes is appropriate and inevitable."

iv. The view that people do not need help in dealing with industrial matters. "The Bill rejects the highly paternalistic presumption that has underpinned the industrial relations system in this country for too long - that employees are not only

incapable of protecting their own interests but even of understanding them without the compulsory involvement of unions and industrial tribunals.

v. The view that unions have a restricted industrial role, and no place in the wider national political and economic debate. The Minister said that the legislation would force unions leaders to reassess their role and become purely 'service providers' to their membership, not taking a leading role in the national political and economic debate. No such restrictions were mentioned in relation to organisations of employers.

## 2.1 THE PLACE OF WORK IN SOCIETY

To understand industrial relations we need to understand the meaning and place of work in human life. The Uniting Church believes that work has a broader meaning and greater priority in human life than is suggested by the proposed Industrial Relations Legislation.

### 2.1.1 SUBSISTENCE

The most obvious way in which work is important is in providing access to the necessities of life. Work is the primary way in which people meet their basic survival needs. It is for this reason that the church says that people have a right to work and governments and industry have a responsibility to nurture an economy which provides work and enables people to be paid a just wage. Many who share the Christian faith affirm the vision of the *Universal Declaration of Human Rights*:

> Article 23
>
> 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> 2. Everyone who works has the right to just and favourable remuneration ensuring for himself [or herself] and his [or her] family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

### 2.1.2 SELF EXPRESSION AND GROWTH

Work is a valuable means of self-expression, growth and self-actualisation. Through our work we can express ourselves and grow as persons, developing our capacities, projecting our dignity, and becoming more fully human.[1] In our society getting a job has been an important rite of passage.

The central value of work is the way it contributes to the life of the person who does it. The thing or service produced is of secondary importance.[2] The dignity of work comes from the fact that it is done by persons who are free and conscious subjects of work.

It follows that work is for the person rather than the person for work. If people are more important than things, workers are to be considered before technology. The organisation of work, and of employment opportunities, should be structured around human needs and the whole economy should be harnessed to the service of the human person.

People as labourers are always to be the subject of labour, i.e. able to use their labour for their own life and development and not to be seen merely as a unit of production. This means that labour has priority over capital, and capital must always serve workers and not the workers serve capital. It also means that where the structures of society stop people from controlling their own lives, or where it makes them objects in the production process, then they have the right to struggle to reconstruct that social order so that they can control their own lives.

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1 see Pope John Paul II, *Laborem Exercens* n 9.

2 see *Catechismo della Chiesa Cattolica*, Liberia Editrice Vaticana, cina' del Vaticano, 1992. n 2428 and LE n 6.

This perspective puts both economics and technology in their proper place. Economic development and technological progress should be at the service of the human person. The economy and industrial relations must operate within a moral framework.

Work should be structured so that it does in fact provide opportunities for self-expression and growth rather than being mindless, soul-destroying drudgery. To put the 'demands of the economy' before people is to fundamentally confuse means and ends.

> "The Church acknowledges the legitimate role of profit as an indication that a business is functioning well.... But profitability is not the only indication of a firm's condition.... the purpose of a business firm is not simply to make a profit, but it is to be found in its very existence as a community of persons who in various ways are endeavouring to satisfy their basic needs. and who form a particular group at the service of the whole society.[3]

### 2.1.3 WORK AS PARTICIPATION IN CREATION

Christians understand work as a way of participating with God in the on-going work of creation. By our work we share, within the limits of our capabilities, in the activity of the Creator. This is the vocation of the human person outlined in the book of Genesis: being made in the image of an active and creative God, we are also active and creative, and are mandated to care for and exercise stewardship over the earth. Work is not only a right, it is also a duty and a vocation.

## 2.2 INDIVIDUALS AS THE BASIS FOR INDUSTRIAL RELATIONS

The assumptions expressed in the Ministers speech and in the legislation is that the primary actors in the workplace are individuals and that the issues involved can be restricted to a particular enterprise. Such a view is reflective of an increasingly individualistic understanding of life and does not, in our view, reflect an adequate understanding of people and society.

One of the results of the industrial revolution and changes in the way people understood work and its relationship to other areas of life, was a change in the understanding of person and society, which led to a major change in the way work was understood. A new ideology developed alongside liberal, industrial society, one that gave great importance to the value and right of individuals. It was an understanding in which

> the individual being conceived as essentially the proprietor of his own person or capacities, owing nothing to society tor them. Freedom was a function of possession, so the individual was free as the owner of himself. Society became a number of free, equal individuals related to each other as proprietors of their own capacities and of whatever they have acquired by the exercise of those capacities.... What makes the individual free is his freedom from any dependence upon others outside that of self interested contractual relations.[4]

The way in which workers were said to be able to participate in the proprietorial freedom of this sort of society was through the sale of their labour on the open market. There was

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3 *CentesimusAnnus* n 35.

4 Charles Davies Theologv & Political Societv. (Cambridge: Cambridge University Press, 1980) pp. 39-40.

considered to be an exchange equivalence between capital and wage-labour. Work was seen simply as a unit of production.

We would wish to put the position that human beings are essentially communal, and that there is a need for a better understanding of the relationship between individuals and the their place in the wider society.

Labour is a social act. No one labours alone. Labour demands co-operation and social organisation, and thus is one of the actions which both encourages and helps develop language, social values and symbols that hold society together. Work is an activity which maintains human existence. It is important that we understand work to be not just for the maintenance of our personal life, but for our social existence. It is also through labour that one is socialised into the values of the community. As such, labour effects family, political organisation, religious life and one's sense of community.

Work is an important means by which people contribute to the common good of the community. It is something we do not only for ourselves and those with whom we are most closely connected, such as our families, it is also for the benefit of the whole community.

Work brings us into relationship with others. Work is a service undertaken together with others and for others.

For this reason, industrial legislation must take account of more than individuals and their freedoms. The individual enterprise and the individual worker cannot be separated from other human relationships, and from the other forces - government policy, overseas markets, decisions in other firms, the state of the economy, even previous management decisions, which impact on present industrial relationships.

## 2.3 CONFLICT AND AN ADVERSARIAL CLIMATE

There are a number of ways in which we can understand the social dynamics of our society, the typical patterns of social relationships. One way is what the sociologists describe as structural-functionalism, which pictures society as cohesive and integrated by shared values. It is a society in equilibrium in which conflict is unusual and the forces are towards consensus. This is the sort of model which underlies the Bill which is before parliament.

The conflict model set s social systems as being made up of groups with competing values and interests, struggling to protect their own interests and realise their goals in the face of pressure from other groups. As the Minister indicates in his Second Reading speech, it is this understanding of social relations which has underpinned industrial relations in Australia.

The authors of this submission wish to suggest that an understanding of social reality that recognises the conflicted nature of life, particularly in the area of work is more realistic than one that assumes people work on shared interests.

If work is concerned for production, personal growth, job satisfaction, access to a fair share of the profits of those things produced by people's labour, then there is almost inevitably conflict between people in relation to these and the way they are controlled.

History and the present experience of such countries as the USA, show how fierce is the struggle over sharing access to a community's resources.

People do seek power, influence and wealth, and do so at the cost of others. We develop explanations, frameworks and an ethos to justify and explain who should be involved in decisions and who will have access to resources.

The present industrial relations system was put in place to limit the extent of the conflicts and to protect the interests of all parties. Why do we believe that employees and employers are less concerned for self-interest than those in other countries or periods of history, or more capable of seeing co-operation as beneficial for all?

The conflict caused by self-interest is made worse by what the Christian community has traditionally referred to as sin. As Pope John Paul II says, the typical structures of sin are "on the one hand, the all-consuming desire for profit, and on the other, the thirst for power, with the intention of imposing one's will upon others."[5]

This refusal to recognise the inevitability of conflictual relations in this area of life means that the proposed industrial relations framework makes no effort to mediate the conflict. The difficulty is compounded by the next assumption, that each person is capable of protecting their own interests.

5 *Solicitudo Rei Socialis* n 31.

## 2.4 EACH PERSON'S CAPACITY TO PROTECT THEIR OWN INTERESTS

The view reflected in this position would seem to be that, because each person is a free individual, they do not need other bodies interfering in the way in which they negotiate their place in the workplace. It is an assumption that flows from the view of human beings as proprietors of their own capacities, and which sees freedom as the absence of all outside restrictions on their activities. In the area of labour it is a view that tries to limit government legislation and collective bargaining on the grounds that they are restrictions on people's freedoms.

The difficulty with this position is that it separates the right to make decisions, and the capacity of each person to make such decisions, from the question of whether people have the power to implement their decisions. In short, it refuses to deal in a realistic way with the imbalance of power which exists in our society.

As the New Zealand Catholic Bishops have said as they reflected on industrial relations legislation in their country, there seems to be an assumption

> "that the free pursuit of his or her interests by the private individual automatically leads to the public or common good of society. As Bishops, guiding our people in faith and morals, it is our duty to reject this assumption for two reasons.
>
> Firstly because egoism is an inevitable part of the fallen human condition. Greed and lust for power are basic sinful attitudes. The 'all consuming desire for profit' and the 'thirst for power' lie behind all 'sinful structures' in society. The prescription for freedom in the legislation includes the freedom of the strong to exploit the weak resulting in less freedom for the weak. Thus the legislation will not lead to the common good.
>
> Secondly the Church teaches that human beings are by nature social beings and therefore the rights of individuals cannot be separated from the duty of individuals and the rights of the group. There is a relational aspect to all human activity: freedom is not the right to do anything one pleases but the right to act freely in doing what is just, not only for oneself but also in relation to others. The pre-eminence given in the legislation to the rights of the individual and the ignoring of the corresponding duties of the individual in effect negate the rights of the group. Thus again the legislation will not lead to the common good.[6]

Any emphasis on free choice must be balanced with concern for the common, i.e. public, good. The emphasis on the rights of individuals must be balanced with the accompanying duty to act in solidarity and to recognise the corresponding rights of the group.

If it is true that our society is marked by a major imbalance in power, then it is necessary to reconsider the Minister's assumptions about the place of Trade Unions in both the workplace and society.

## 2.5 THE PLACE OF UNIONS

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6 New Zealand Catholic Bishops' Conference *Pastoral Statement: Emploment Contracts Legislahon - A Catholic Response.* (19 April l991 ) n. 6-8. The Bishops quoted Pope John Paul II, Sollieitudo Rei Soeialis (1987).

Trade unions are a particular form of collective bargaining in which workers voluntarily associate and organise in ways that gives them relatively more power, access to information and specialist advice in order to negotiate with employers.

Overseas and Australian experience suggests that without the protection of the union movement workers lose wages and conditions. The danger is that, in tough economic times,

with short-term incentives to move away from collective bargaining, people will cease to be members of unions. They will also work for less so that they can get a job, thus undermining worker solidarity.

In a situation where the power of workers and employers is not equal, to remove the unions and the Industrial Relations Commission from the bargaining process is to raise questions about what alternative processes will be used to ensure that workers are not severely disadvantaged.

In regard to unions the church has taught:

i. The right of workers to form unions is a specific application of the right of association. No-one can deny the right to organise unions without attacking human dignity itself.

ii. Trade Unions, committed to the defence of the interest of workers, are morally necessary and indispensable elements of social life. The task of unions is not simply the achievement of individual rights, which individual contracts may or may not protect, but to enable people to help shape the economic order and institutions of society so that they contribute to the common good.

Where there are no unions there is the danger that economic and social power in society will be concentrated in too few hands, thus posing risks to the rights of the weakest and most disadvantaged in society. Free societies and free trade unions go together. Democratic processes are weakened, power shifts into the hands of small elites, when workers are not organised.

iii. People have the right to participate in union activities without the risk of reprisal.

iv. Unions may legitimately resort to strike action where this is the only available means to justice.

## 3. THE TERMS OF REFERENCE

### 3.1 "(c) Whether the provisions of the bill will fulfil Australia's international obligations and whether the provisions of the bill will affect Australia's international relations".

#### 3.1.1 RIGHT TO STRIKE

At present the right to strike is not recognised in Australia, and has led to successful damages cases against unions (e.g. pilots union). The right to strike is expressly recognised in such countries as Japan, the United States, Italy and Germany.

> It is also internationally recognised both by the ILO as a basic right inherent in freedom of association and by the UN in the International Covenant on Economic, Social and Cultural Rights (Article 8). These rights are recognised by human rights organisations such as Amnesty International.[7]

The International Labour Organisation's (ILO) Committee of Experts on the Application of ILO Conventions and Recommendations recently stated that:

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7 Senator Peter Cook, , Ministerial Statement in Senate, l7/l0/9l

> This [civil liability in respect of industrial action] appeared to the Committee to deny workers the right to take industrial action to protect and to promote their economic and social interests.

In the same report it criticised Section 45D of the Trade Practices Act for being too restrictive in outlawing sympathy strikes.

At present Australia's industrial laws appear to breach fundamental principles of freedom of association which Australia is bound, as a matter of international law, to observe. In Article 22 of the International Covenant on Economic, Social and Cultural Rights it states:

> Everyone shall have the right of association with others, including the right to form and join trade unions for the protection of his [/her] interests.

The proposed legislation gives employers the power to stop industrial action and therefore is quite inconsistent with Australia's international obligations in relation to the right to strike.

There is some concern about the location of provisions dealing with industrial disputes (secondary boycotts) being restored to the Trade Practices Act 1974 which is directed towards anti-competitive behaviour by business enterprises and is an inappropriate vehicle for the resolution of industrial disputes.

When an Australian Workplace Agreement (AWA) is in operation industrial action will not be permitted during its period of operation. All industrial action other than for health and safety is intended to be prohibited under the proposed Act and a breach of an injunction in relation to industrial action is to be a ground for deregistration. The encouragement of legal sanctions rather than the settlement of disputes through conciliation and arbitration is more likely to harden attitudes and make settlement difficult.

**SR&J opposes the proposed amendments which have the effect of stripping the AIRC of its jurisdiction to deal with claims for payment in relation to industrial action based on a reasonable concern about health and safety.**

**SR&J would want to see the same protection, including the right to picket peacefully as currently applies to industrial action in relation to certified agreements.**

### 3.1.2 MINIMUM WAGE ENTITLEMENT

Article 7 of the International Covenant on Economic, Social and Cultural Rights states that:

> The States Parties to the present covenant recognise the right of everyone to the enjoyment of just and favourable work which ensure in particular:
>
> (a) remuneration which provides all workers, as a minimum with:
>
> (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

If the minimum wages minimum entitlement is repealed then Australia will not meet its provisions under its international obligation in circumstances where employees do not have access to a properly set minimum wage.

We are also very concerned that workers such as outworkers in the clothing industry are adequately protected under the proposed legislation. They are not protected under the present legislation as they are receiving wages of between $2- $3 an hour. Wages paid to pieceworkers and non-pieceworkers under an agreement must be no less than he or she would have received under an award, taking into account hours worked at ordinary time and at overtime and penalty rates, allowances and leave loading. This provision can be satisfied if the agreement allows the worker to ask for a comparison and the employer obliged to pay any shortfall. This can be modified for trainees, apprentices and labour market program participants by regulation.

**SR&J strongly demands that pieceworker be paid no less than the rates which would have been received under the award, including allowances and loadings or compensation for these.**

### 3.1.3 EQUAL REMUNERATION FOR WORK OF EQUAL VALUE

We would want to see included in the minimum conditions the model anti-discrimination clause developed by the Sex Discrimination Commissioner and accepted by all parties (employer groups therefore have already committed themselves during the Award Review Process in 1995).

The removal of the important equal pay provision from the IR Act represents the most significant move away from the equal pay test case of 1969 and 1972. Most of the remaining gender gap in Australia is due to over-award payments. These are not covered in AWAs. This will deny women the options they now have of having discriminatory pay practices being remedied at a systemic level.

Both equal pay and equal remuneration are industrial relations issues. They need to be dealt with in an industrial setting which is why the above provisions have been so successful in the past. Equal remuneration for equal work of equal value, rather than equal pay, would ensure equality for women in non wage benefits, such as bonuses or commissions, superannuation, provision of housing, cars, entertainment or equipment, training and leave entitlements.

**SR&J acknowledges the importance of the powers and responsibility of the AIRC to ensure the principle of equal pay for work of equal value. Such power and responsibility should be preserved in their existing form. We oppose any attempt to restrict the AIRC from dealing with over-award gender based pay equity issues.**

The proposed Act limits the powers of arbitration in over-award areas and removes references to ILO conventions on discrimination and equal remuneration. This means the stripping away of other minimum provisions such as paid maternity leave, predictable hours and days of work, equal employment opportunity, affirmative action, and workplace harassment clauses. Women currently earn only 54% of men's over-award payments.

Our understanding is that only equal pay matters can be heard by the AIRC under the proposed legislation. Equal remuneration matters must be heard in the Human Rights and Equal Opportunity Commission (HREOC) as they cover over-award issues. The AIRC does not hear over award issues.

The HREOC is not an adequate tribunal for these matters. It has no powers to enforce its decisions. While decisions are lengthy and will get worse, there is a real probability that there will be matters that will have some aspects of the award and some over the award, and

therefore they will have to be heard in separate jurisdictions with different time tables and possibly different or inconsistent outcomes.

**SR&J believes that equal remuneration should not be dealt with in two jurisdictions. The proper place is in the AIRC where it is treated as a systemic matter, not an individual matter. The AIRC remedy is quick and relatively inexpensive. HREOC is cumbersome, expensive and time consuming.**

## 3.2 "(d) the effects of similar provisions in other countries"

The right to organise and bargain collectively is recognised by the ILO and has been part of Australian and New Zealand law for almost 100 years. However, in New Zealand the Employment Contracts Act 1991 moved away from this recognition and placed the primary relationship as being between an individual worker and his or her employer. In addition barriers were set in place to hinder the ability of workers to organise and bargain collectively. This has placed many workers in a weak and vulnerable position, with many seeing a reduction in their wages and conditions over the past few years. [8] Other evidence indicates that at least half of the workers covered under collective contracts have received either a nil wage increase or a wage cut.[9]

## 3.3 "(l) whether the provisions of the bill provide a fair balance between the rights of employers and organisations of employers, and the rights of workers and unions".

In responding to this issue, there are a number of areas that deserve consideration:

i. Given the assumption that a significant issue in industrial relations is the ability of any party to exercise enough power to protect rights, does the present economic situation make it possible for parties to exercise that power? If not, what is being done in the legislation to balance that power'?

ii. One way in which workers gain support to negotiate on a more equal basis is through unions. Does the legislation facilitate access to unions which would have the capability of protecting workers?

iii. A second protection for workers is awards, which provide for real wages, the setting of conditions, and a process for review.

iv. A third way in which workers and industry have been protected has been through the Industrial Relations Commission. Does the AIRC still have the power needed and, if not have other provisions been made?

### 3.3.1 THE CAPACITY OF PEOPLE TO PROTECT THEIR OWN RIGHTS

The capacity of the proposed legislation to protect the rights of all parties depends to a large extent on how well the legislation actually carries out the Minister's commitment that:

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8 People's Charter p.41-2, March 1994. Part of Building our own Future, a project initiated by the Conference of Churches of Aotearoa New Zealand.

9 Chris Eichbaum, *Market Liberalisation in New Zealand: Fightback! in Practice?* in Ed Vintila, Peter et al, Markets Morals & Manifestos, Institute for Science and Technology, Murdoch University, p.231, 1992

> "Above all, the legislation is designed to empower employers and employees to make decisions about their relationships to work, including over wages and conditions, based on their appreciation of their interests".

The issue is whether the legislation will empower people (i.e. give them actual and effective power) to make decisions, or will only provide an environment in which they could make these decisions if they had the power (e.g. information, the freedom - in a period of high unemployment - to stand up for their wishes, the capacity to articulate their needs).

One of the things which impacts on the capacity of people to negotiate with some equity is the state of the industrial scene and the subsequent issue of the availability and security of work.

Australia is in the middle of a major industrial change. At present that change is marked by:

- a shift from heavy industry to high tech and service industries, increasing use of equipment rather than labour, and pressure to reduce the size of government spending which have changed the employment possibilities faced by many people.

- a decade in which Australia has shown that lowering real wages, and providing tax cuts for industry has led to greater profits for owners, more take-over bids and less real investment in the technology needed for the long term health of the economy. Technology has been used to achieve short term gains through replacement of labour, rather than for long term productivity gains by workers.

- an increase in part-time work (mostly for women), and decreasing full-time opportunities.

- high unemployment, particularly among young people, older people and those who are unskilled, and a great deal of uncertainty about future work.

- increasing stress and less job satisfaction because of the pressures caused by high unemployment and constant restructuring of both business and government sectors.

- a drive for increased efficiency to enable Australian companies to compete in an international market place, and significant downward pressure on wages.

- a tendency for business to be driven by short-term profit rather than longer term investment.

- falling membership of trade unions, combined with efforts by some employers to remove effective trade unions from the workplace.

- continuing exploitation of migrant workers, particularly in the clothing industry.

- an increase in work-place agreements and contracts.

These and other factors have produced an industrial climate in which people are less able to negotiate as equals. It was precisely in recognition of the fact that the typical relationship between an employer and an individual employee is one of unequal power that labour laws and trade unions developed.

One of the things which makes work such an ambiguous act is that employers and workers rarely have equal bargaining power. In our situation it is worth hearing the NZ Bishops again:

> "The legislation purports to give equal bargaining power to employers and workers. We are convinced that in a period of high and rising unemployment and in our difficult economic times, employers and workers do not have equal bargaining power. Direct negotiations will favour employers as workers will not be prepared to put their jobs at risk in order to get a fair award. It is women - whose skills have traditionally been undervalued - along with low skilled workers with a disproportionate representation of Maori among whom unemployment figures already are highest, who will be hardest hit by this new legislation.[10]

**SR&J believes that the proposed legislation does not protect workers with the least bargaining power in the labour market. Those hardest hit will be Aboriginal people, unskilled workers, women, and migrants. This is already illustrated by those who work as clothing outworkers, people who receive wages as low as fifty cents per hour, because they often do not have the cultural experience or linguistic skills to protect themselves, urgently need even the little money they do earn, and have no protection from awards or unions.**

### 3.3.2 THE PLACE OF TRADE UNIONS

It is clear that the legislation seeks to restrict the place of the trade union movement in industrial negotiations. It does this by:

- actively encouraging individual contracts that do not involve union representation.
- restricting the right of access of unions to the workplace. (Union right of entry is restricted to invitation only.)
- allowing employer veto over a unions right to be party to a collective enterprise agreement even in 100% unionised sites.
- employers can pick and choose between unions, and encourage tamer unions.
- encouraging the formation of smaller, enterprise based unions which will not have the resources necessary to provide the information and expertise needed in complex industrial situations.

Australian industrial relations has been based on collective representation of workers and employers. Collective bargaining provides for a better balance of power between workers and employers, particularly in large industries.

**SR&J contends that the proposed legislation does not adequately address the unequal power relationship between the individual and the employer in the workplace.**

Without the protection of collective bargaining individual workers can be singled out to accept less, and in a time of high unemployment this creates downward pressure on all

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10 NZ Bishops *op cit* n. 9.

wages and conditions. With only their labour to sell, individual workers have little bargaining power in many situations.

**SR&J contents that the proposed legislation adversely impacts on those workers with the least bargaining power in the labour market.**

Most debate on industrial relations seems to occur on the assumption that Australia is beset by strikes or too high wage structures organised by a too-powerful and irresponsible union movement. The concern for strikes has led to a focus on penalties and sanctions. The concern for wage levels has led to moves for individual bargaining, and minimal guarantees on wages and conditions. In both cases there are renewed efforts to encourage individual bargaining which minimises the role of unions.

Yet strikes account for only one twentieth of lost work time, the major causes being work related illness and injury and absenteeism. The 1991 Australian Workplace Industrial Relations Survey found that 72 percent of workplaces had never had any industrial action. A further 10 percent had not had any form of industrial action for two years or more. Yet there has been no reduction in disputes over what the Statistician defines as managerial policy issues. The greatest amount of time and energy is actually directed towards the least important obstacle to reform.

Wages are the way in which workers participate in the material wealth of a nation. Over the last decade disputes over wages have fallen by 80 percent, and wages have generally fallen in relation to the cost of living and in relation to executive salaries and company profits.

For many Australians the work place is a dangerous place - 500 workers lose their lives each year in work-related accidents, and at least 300,000 workers are injured. Fourteen million working days a year of productive industry time are lost through work-related illness and accident.

Job absenteeism is high, which reflects a failure by management to address issues of work organisation and job satisfaction.

> Unjustifiable absences from work are widely accepted as being a symptom of unfulfilling work, poor job satisfaction, weak organisational commitment and rigid work organisation which makes difficult the blending of work with family and other responsibilities.[11]

**SR&J believes that industrial relations reforms need to consider the whole culture of the workplace, and to concentrate on causes of difficulty rather than on relatively minor symptoms. It is inappropriate to devise an industrial relations system that has an almost exclusive focus on wages and financial conditions and the deliberate exclusion of the unions as part of the bargaining process.**

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11 Senator Peter Cook, *op cit.*

### 3.3.3 AWARDS

Awards will no longer cover paid rates, but will set a minimum safety net. Very few conditions will be able to be included in the awards. Workers will have to negotiate actual wages and conditions. This means that every time an agreement is negotiated, workers will have to defend all previous conditions above the 'safety net'.

There are two options in the present proposal:

- Enterprise Agreements, and
- Australian Workplace Agreements (which are the Governments preferred option).

AWAs are strictly private agreements, and they can over-ride enterprise agreements. They are not to be checked by the AIRC, and can only be challenged after the person has signed the contract and it has come into operation.

This seems unfair on two counts:

- If a person feels pressured to sign an agreement, they would be under the same pressure not to complain about it.
- The only way a person can challenge an agreement is to go to court. The court will only be concerned if the worker was forced to sign against their will, or if some very basic conditions are breached. Even if the agreement takes away long established conditions it need not be illegal.

**SR&J believes that there is a need for an independent body to safeguard people's rights and that all agreements should be checked by the AIRC to ensure proper consultation and no disadvantage to workers. They also should be able to be checked by unions to ensure that workers have not inadvertently signed agreements that undercut award protection or leave them worse off.**

There is considerable concern at the secrecy of the new AWAs. There are not enough mechanisms to ensure that AWAs are entered into fairly and with appropriate consultation and do not disadvantage workers. What if employees do not understand the agreement? Such agreements should be open to scrutiny of the AIRC, anti-discrimination bodies, unions and other concerned workers to make sure that such an agreement does not disadvantage a worker.

The process of awaiting a complaint from a worker is not a just way to safeguard the process from unjust manipulation. Given the complexities of power dynamics in the workplace it is important that people who are expert in the industry are able to advise workers about whether the agreement is just or unjust.

**SR&J believes that the proposed system of Australian Workplace Agreements (AWAs) should be subject to the same system of approval required for the approval of certified agreements (through enterprise bargaining). Specifically, an AWA should not come into effect unless it is approved by the AIRC.**

**SR&J believes that the approval of agreements contained in the legislation should be public and open to scrutiny. There should be provision for the involvement of parties who have a material concern relating to the approval of an agreement, including unions seeking to maintain the no disadvantage guarantees.**

### 3.3.4 MINIMUM CONDITIONS AND AWARDS

Before the Federal election the government promised that: "No worker in Australia under the Howard industrial relations policy can have his or her award conditions taken away". Under the legislation a whole range of award benefits are to be taken out of awards. These include maximum hours of work, shift and spread of hours arrangements; minimum breaks between shifts, superannuation, and choice of fund; meal breaks, distant work, transport and fares; training and study leave, amenities, clothing and equipment; rights of unions to visit the workplace and occupational health and safety. Some kinds of work need complex and adequate safeguards and therefore it can be dangerous and unjust to restrict awards to minimum standards. The removal of many minimum conditions weakens the "no disadvantage" test.

Even if an employer agrees to some or all present conditions these will not be able to be put in awards. This means that such additional terms and conditions can be taken away and have to be bargained every time that an agreement is negotiated. Many of these are included in paid rates awards and it is the intention of the legislation to get rid of paid rates awards. The proposal that enterprise agreements can be refused on the grounds that they threaten higher productivity, low inflation, international competitiveness and workplace flexibility needs to be approached with care. Such claims need to be negotiated or arbitrated because they can be used unjustly.

**SR&J believes that the AIRC's powers to arbitrate and make awards must be preserved and not just restricted to a stripped back set of minimum or core conditions.**

AWAs exclude the concept of collective bargaining and over the minimum award payments ,which at present are the legal minimum payments. AWAs encourage payments which are below these current award and legal entitlements. Once an AWA is signed there will be no access to the AIRC leaving people isolated in dealing with employers.

Collective bargaining has been a way in which people have gained support of colleagues, unions and access to the AIRC for help in negotiating enterprise agreements between union member and employers. Under the proposed legislation employers can veto union involvement. For there to be genuine choice and real protection requires some ground rules for collective bargaining.

**SR&J believes that the legislation should encourage the processes of collective bargaining and ensure that a certified agreement within its term of operation cannot be over-ridden by a subsequent AWA if employees do not want them.**

In the proposed legislation a bargaining report is only required every three years instead of annually as at present.

These reports need to be both quantitative and qualitative.

There is no prior scrutiny to check if AWAs meet minimum conditions and they are not open to public scrutiny after they are filed.

**SR&J supports the continuation of the need for annual reporting of the changes in minimum conditions being entered into by AWAs and other award conditions.**

**3 3.5 THE AIRC**

The proposed legislation takes away the powers of the AlRC to resolve disputes by arbitration, to make awards on a whole range of issues, to set out actual rates of pay, to inspect AWAs, or keep awards up to date.

Without such a body, there would seem to be a likelihood of increased industrial action as the way to settle disputes. This will disadvantage those workers in industries where industrial action is difficult - e.g. police, fire officers, medical staff.

Some features of the present industrial relations proposals seem to suggest that the only parties involved are the employees and the employer. Yet both employers and employees are influenced and constrained in their activities, including their capacity to negotiate just relationships, by the broader social and economic structures that shape the economic and industrial climate. Employer groups, professional associations and unions, investors, banks and other lending bodies, special interest groups, international obligations of governments, and general government policy always impact on labour relations.[12]

Governments have a particular role in industrial relations because it is their role to foster and protect human rights and to promote and organise the common good. Thus they must protect the right to work and to adequate income. A particularly grave responsibility exists to intervene on behalf of the most vulnerable members of the community.

Proposed legislative changes alter relationships between employers, workers and the state that have been in place since at least 1911.

In the past the AIRC has been the independent umpire that ensures that fairness and justice are fundamental parts of the IR system. We are aware that disputes can be resolved at the enterprise level by agreement between employees and employer, but when there is a disagreement and/or unjust demands then help is needed to solve the situation. We are concerned that the aim of the legislation is to take away some of the powers of the AIRC so that it can no longer be the umpire to resolve issues of justice in a quick and inexpensive way. With the emphasis being put onto the individual there will be a change in the power relationships between employer and employee. In the present climate of high unemployment and job uncertainty, many workers who although they feel they have been treated unjustly will not take action because they are concerned about loosing their job. Others are employed in areas where industrial action takes a long time to be effective.

Where people do complex and dangerous work there is a need for a suitably qualified body to arbitrate so as to enable comprehensive awards and maintain the relevance of awards.

**SR&J supports the continuation of maintenance of the existing powers of the Australian Industrial Relations Commission (AIRC) in order to provide for an effective independent umpire overseeing awards and workplace bargaining processes.**

## 3.4 "(n) the impact of the proposed legislation on the balance between work and family responsibilities".

12 Pope John Paul II raises this issue in *Laborem Exercens* under the heading of 'indirect employers', a term he uses to refer to "all agents at the national and international level that are responsible for the whole orientation of labour policy". (n 18)

When the Government Insurance Office was privatised in NSW, and GIO was released from the provisions of the Public Service Act, there were major changes in conditions enjoyed by workers. Without the protection of an industrial award, women workers for GIO had their access to paid maternity leave removed, and their flexi-time rosters were replaced with a 35 hour, 7 day roster, all hours paid at normal rates. Not only did the women lose leave they had struggled to achieve over many years, but the new hours created real difficulties for those women who carried the burden of care of families.

Shift work and flexible hours are clearly areas where employers and workers have different needs, and present awards have sought to offer better protection to workers with such things as guaranteed minimum shifts, and penalty rates for weekends and nights. For those who have responsibility for care of families such shifts often entail greater care costs (e.g. child care which is not necessary during school hours, or alterative meal arrangements). In the present economic climate people will be forced to choose between no work or work with conditions similar to those imposed by GIO, and families will suffer.

The pressure in the legislation is for lower wages and conditions and further pressure towards part-time work and more flexible shifts. For the family this will mean a lower standard of living, and less time available in meaningful blocks at appropriate times for family activites.

**SR&J deplores the loss of minimum award provisions that affect the quality of life of families such as guaranteed minimum shifts, and penalty rates for weekends and nights, paid parental leave, child care, flexi-time rosters and hours worked between shifts.**

## CONCLUSION

SR&J does not claim to know exactly how an industrial relations system should work. But we do insist that those who make the decisions in the concrete situation should do so by consideration not just of individual freedoms, or of economic factors, but in terms of the common good and the way work impacts on those who work and their families. This common good should include social, environmental and cultural aspects of the life of the community. At the same time, the system must ensure that there is a mechanism to prevent exploitation of the weak - which in our society has generally meant ethnic workers, women, young people and older workers, and those who are relatively unskilled.

Rev Robert Stringer
National Secretary for Social Justice
2nd June 1996