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29 August, 2000

John Carter
Secretary
Employment, Workplace Relations,
Small Business and Education Legislation Committee

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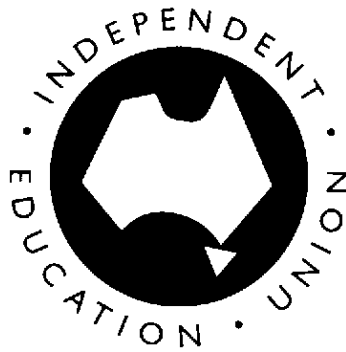
Dear Mr Carter,

Please find attached the Independent Education Union's submission to the Inquiry into a package of four bills to amend the Workplace Relations Act 1996.

Many thanks for your assistance.

Yours sincerely,

Lynne Rolley
Federal Secretary



INDEPENDENT EDUCATION UNION OF
AUSTRALIA

**SUBMISSION TO THE
SENATE EMPLOYMENT, WORKPLACE
RELATIONS, SMALL BUSINESS AND
EDUCATION LEGISLATION COMMITTEE**

**Inquiry into a package of four bills to amend the
Workplace Relations Act 1996**

August 2000

INTRODUCTION

1. The Independent Education Union of Australia (IEU) has prepared this submission for the Senate Employment, Workplace Relations, Small Business and Education Committee Inquiry into a package of four bills to amend the Workplace Relations Act 1996. These bills concern:
 - 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
2. The IEU has read and supports the submission made by the ACTU to this Inquiry.
3. The substance of the proposed Bills have already been part of legislative proposals put forward by the government, and have been part of rigorous public debate and a Senate Inquiry report in 1999. They failed to advance into law. **The IEU opposed them as part of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 and remains opposed in their recycled form. The IEU urges the Senate Inquiry report to reject the proposed legislation.**
4. The submission is structured so as to provide the committee with background information on the non government education sector and on the IEU's operation within it thus setting a context for the union's view on the impact of the *Workplace Relations Act 1996* and of the likely effects on the sector of the proposed amendments.

BACKGROUND

The Independent Education Union of Australia

5. The Independent Education Union of Australia (IEU) is a federally registered, organisation pursuant to the provisions of the *Workplace Relations Act 1996*.
6. The union has approximately 46,000 members in all states and territories. Membership of the union is voluntary. The membership total represents approximately 65% of those eligible to join the union. However, membership density in the Catholic sector, which comprises 75% of the non-government sector, is higher than this average and in most states and territories is approximately 75%.
7. The membership consists of teachers, principals, teacher aides, education support staff, clerical and administrative staff and other ancillary staff such as cleaners and groundpersons employed in primary and secondary schools, pre schools and kindergartens, English and Business colleges.

8. The IEU and its associated bodies are party to numerous awards and certified agreements. The awards and agreements applying in Victoria, Australian Capital Territory and Northern Territory are federal awards. The awards applying to schools and early childhood services in New South Wales, Queensland, South Australia, Western Australia and Tasmania are State awards. There are federal awards covering ELICOS Colleges, Life Education Centres, and private business colleges across most states and territories.
9. The IEU is strongly committed to an orderly and fair approach to industrial regulation for all education workers. Nevertheless the union is open and responsive to a flexible system of industrial relations which can properly accommodate the particular history, ethos, organisation and professional practice of the various education institutions in the sector. This is evident in the substantial number of awards and certified agreements negotiated by the union under the present and past systems of industrial relations.
10. Overwhelmingly, the officers and organisers of the union, its branches and associated bodies are former teachers from the sector. They have a deep knowledge and understanding of the work of teachers and school officers, of the culture and climate of the school context, of the complexity of the teaching and learning process and of the complex and dynamic nature of the relationships which exist at all levels within the school between teachers, teachers; parents and students; teachers and the school's leadership; teachers and parents and the broader community.
11. Combined with this expertise, is the union's knowledge and understanding of the law and practice of the industrial relations system and its practical operation in the non-government education sector. While it is appropriate that proper account be taken of the needs of particular schools and systems of schools, it is fair and reasonable that broader economic and industrial factors -such as inflation, general wage movements, productivity growth, government funding policy arrangements amongst others - will impact upon the negotiations on teachers' and education workers' wages and conditions with the employing authorities. It is not reasonable to expect employees, either collectively or individually, to bring an equal level of industrial expertise, knowledge and understanding to the negotiating table with their employers. All of their effort is devoted to the complexities of school life and the teaching and learning process.
12. It is the strong view of the union and the union's members that the outcomes from such an unequal process of negotiation with the employers would undermine the goodwill and morale at the school level and has the potential to be detrimental to the collaborative and cooperative climate so essential to quality teaching and learning.

The Non-Government Education Sector

13. The non-government education sector is a diverse one. There are approximately 2,620 non-government schools across the country employing 75,000 staff. The sector also comprises early childhood centres/pre schools, long day care centres, ELICOS Colleges (English Language Intensive Courses for Overseas Students) and private training providers.

14. Non-government schools are often affiliated with groups which have particular educational, ethnic or religious philosophies. In the main non-government schooling sector there are approx 1350 system or individual employing authorities. Accredited non-government English Colleges number approximately 134 while the number of private training providers is very large.
15. There is enormous diversity in the size of schools and education institutions. There are approximately 700 primary schools with enrolments of between 100 and 300 students, there are 109 primary schools with enrolments of up to 35 students and 5 primary schools with 800 to 1000 students. In the secondary sector, there are 37 schools with enrolments over 1000, but almost half with enrolments between 400 and 800 students. English Colleges vary enormously in size. A large employer may run a college with 50-60 staff while Elicos Colleges exist with as few as two teachers.
16. It is the strong view of the union and its members that this diversity of the sector has considerable implications for the management of industrial relations for non-government education employees. While flexibility of arrangements to take account of particular educational, ethnic, religious and financial arrangements can be accommodated, it is in the public interest that there is a general consistency across the nation of wages and conditions for Australia's teachers and education workers. Employees in individual schools and across systems do not have access to the complexity of information which impacts upon the operation of non- government schools, and therefore upon the wages and conditions of education employees.

Industrial Representation

17. It is important to understand that non-government systems and school employing authorities have aligned themselves to, or formed, national and state organisations to facilitate the sharing of information on the myriad of issues affecting education across the nation; including funding and resourcing issues, industrial matters and education issues. In the Catholic sector, there are state Catholic Education Commissions which then meet nationally as the National Catholic Education Commission. There also exists the Australian Catholic Commission for Employment Relations, the Catholic national organisation which manages industrial issues for the Catholic Church's enterprises in education, health and welfare.
18. The majority of independent Catholic and non Catholic schools are affiliated to the Association of Independent Schools (AIS) or in South Australia, the Independent Schools Board (ISB) which meet nationally as the National Council of Independent Schools Associations (NCISA). Most AIS organisations at the State/Territory level have an industrial function and negotiate with the union on a full range of industrial issues.
19. The organisation of non-government employers into peak bodies reflects their need for a consistency of approach, an orderly mechanism for sharing of information on a range of policy issues, including industrial policy, as a lobbying forum for the interests of non-government education and the development of expertise about the complexity of industrial and educational issues in Australia.

20. The union strongly believes that the employees in the non-government education sector are entitled to have their industrial and professional interests represented by a union, which has similar capacities for sharing information and resources, lobbying, and developing and maintaining a high level of expertise on industrial and education policy and practice. It is the union's view that such an approach serves the national interest in terms of the provision and delivery of quality teaching and learning.
21. Schools are not workplaces involved in measurable economic productivity. The success and prosperity of the educational enterprise cannot be measured in the profit and loss columns of the accounts book. The core business of Australia's schools is quality teaching and improved student learning outcomes. The relationships which exist in schools are complex and dynamic and on the whole directed to ensuring the emotional, social and intellectual well-being of the students.
22. It is the view of the union that it has been counterproductive to quality education to inject into employer/employee relationships, the primary responsibility for industrial relations and agreement making at the school level. It is not realistic to believe that a mutuality of power exists between employers and employees at the school level.
23. The union can draw on considerable experience to demonstrate that the goodwill, professionalism and high level of cooperation and collaboration so important to effective teaching is subverted and lost when teachers and school officers are engaged in negotiations, often in a contested way, directly with their employers over wages and conditions.

General comments on the Workplace Relations Act 1996

24. From its inception, the IEU believes that the *Workplace Relations Act 1996* has had direct and undesirable consequences for employees in non-government schools.

Under the Act the non government education sector has experienced

- increased levels of disputation
 - significant consumption of the time and resources of award parties for no real gain to employers and to the disadvantage of vulnerable workers
 - increased levels of litigation as award industrial parties turn to the Courts for remedies
 - the suppression of wage levels in some sectors where workers have not had increases in wages other than safety net adjustments and have lost award entitlements because their employers simply refuse to bargain.
25. The union has no confidence that the principal object of the Act, which is to provide a framework for cooperative workplace relations and promote economic prosperity and welfare of the people of Australia, is being met. *It is the union's view that these current amendments do nothing to strengthen the principal object, but instead undermine it. They were the subject of a Senate Inquiry in 1999, and were rejected by the Senate.*

26. There are a substantial number of independent schools which pay staff at award rates, which in all states and Territories are substantially below the rates in Enterprise Agreements negotiated with the union. Restriction of the AIRC's powers to facilitate bargaining and limitations on access to arbitration have reduced the capacity for vulnerable employees and those who wish to bargain collectively, but are without strength of numbers in a particular workplace, to achieve improved wages and conditions or have a say in matters affecting them in the workplace.
27. The right to withdraw one's labour in order to protect economic or social interests is a fundamental human right. It's a right which has been exercised from time to time by employees in the non-government education sector. The provisions in relation to industrial action in the current Act unacceptably limit the right of workers to strike in support of these interests. The proposed amendment requiring a secret ballot for protected action further undermines the Act in relation to this fundamental human right.

The proposed Four Amendments

28. It is the IEU's view that there are changes which are required to be made to the current Workplace Relations Act to make it fairer. However, the IEU does not believe that the four proposed new Bills achieve this, but in fact, represent a further attack on the industrial rights of workers. Employers in the non government education sector have not, to the union's knowledge, called for changes consistent with the proposed amendments. The amendments are recycled versions of provisions which were rejected in 1999. The proposed changes will work against the rights and capacities of employees to have fair outcomes in respect of their wages, conditions and industrial democracy generally.

Termination of Employment

29. The union is particularly concerned at the general intention of these amendments in terms of their restricting the rights of those whose employment has been terminated, to a fair process and what should demonstrably be a just outcome.
30. Many employers in the non-government sector could be characterised as small businesses. Given this, the IEU is concerned with provisions which require the Commission to have regard for the size of the undertaking and the degree to which the termination was made for 'operational reasons'. It suggests that small businesses should be exempt from requirements to exercise reasonable standards of fairness. The IEU is opposed to any provisions by which small undertakings are exempt from these requirements or singled out for special treatment. The union believes the law must provide for the rights of those who believe their employment has been unjustly terminated to have access to processes which deal with their complaint efficiently and which provide for a "fair go all round".
31. The IEU is strongly opposed to the provisions related to applications out of time. Termination of employment is a particularly distressing and devastating event for any worker and their family. It represents loss of livelihood, a sense of failure, loss of contact and relationships with work colleagues, and the loss of

purpose and place in their world. Very often, an employer's decision to terminate employment is their first call rather than the last.

32. It is from this standpoint that the IEU believe the harshness of the new provisions (170 CFA(8)) in relation to out of time applications does not reflect an intention of a "fair go all round". It seems extraordinary that an applicants' case may be demonstratively substantive, yet be unable to proceed, because it is a few days late. The IEU believes that the legislation must provide the Commission with the right to hear and balance all the factors to ensure that a fair outcome is achieved.
33. The IEU believes this is also the case with Section 170 HBA which prevents a second application being made in relation to the same termination. Within the non-government sector, the employing authority of a very large number of schools and other educational institutions would be unknown to those who work in them. In some cases, it is a private company, in others the parish priest, in others, the Roman Catholic Bishop of a particular diocese, or the Board of an Independent school. This issue of "who is the employer" has been the subject of rigorous legal argument in the industry and it is quite likely that staff would not know the correct employer respondent. For an application to be dismissed because the wrong employer has been mistakenly notified and a second application is not permitted is grossly unfair. The right to have your case heard on a matter as important as the termination of employment should not depend on such a narrow technical issue.
34. The IEU is very concerned about those provisions in the proposed legislation which act as a disincentive to workers whose employment has been terminated, to seek the assistance of the Commission or advice from legal representatives. Industrial law is complex and the processes involved in seeking a remedy, for an employee who believes they have been unfairly treated, are very daunting. It is the experience of the IEU that employees in these circumstances would much prefer a process of conciliation, under the helpful guide of the Commission, than full blown litigation or arbitration. The proposed legislation will have the effect of turning initial conciliation into arbitration because of the need for applicants to convince the Commission at the outset as to the merit of their claim for harsh, unjust or reasonable termination.
35. The IEU believes the provisions in relation to legal fees and Commission Certificates are harsh. For example, the proposal to allow the Commission to require applicants to lodge security for costs will be a major disincentive to sacked employees to pursue their case, regardless of its merits, particularly when they have no income and the outcome may require them to pay their employers' costs.

Australian Workplace Agreements

36. It is the union's view that there are very few AWA's (or their state equivalent) in non-government education institutions across the country.
37. However the union makes the following points in relation to the proposed amendments on AWA's:

- the IEU supports the proposal for a cooling off period for all employees who sign AWA's, regardless of their salary (S170VBA(6))
 - the IEU opposes the proposal that for those who have taken advantage of the cooling off period, their AWA then satisfies the no disadvantage test (S170VCB(2))
 - the IEU believes that the legislation must preserve the integrity of the no disadvantage test and the requirements for approval and certification. The provisions in S170VBD and S170VC undermine these elements in the existing legislation. The IEU believes that where there is concern about compliance with the no disadvantage test, then such AWA's should be referred to the Commission.
38. The union believes that AWA's are divisive instruments which run counter to the collegiate and collaborative context of schools and other educational environments. The proposed amendments diminish even further, any protections in the current legislation, in relation to the no disadvantage test and public interest. These provisions should be opposed.

Secret Ballots for Protected Action

39. The IEU supports the right of union members to vote on industrial action, including the right to strike, work to rule, work bans etc. In all cases, when a branch of the IEU has taken industrial action, members have been asked to vote in support (or not) of the action.
40. At present, section 136 of the Act provides for the right of employees to participate in a secret ballot with regard to proposed strike action.
41. The Act (Section 135) also provides for the Commission to order the conduct of a secret ballot on the basis that it may assist in resolution of a dispute or to ascertain whether an agreement has been genuinely made. As well, it is open to the parties to make submissions to the Commission that such a ballot should be conducted.
42. Of particular concern to the union is the lengthy and protracted process set out in the Bill for the taking of protected industrial action. This includes the content of the ballot paper, the nature and form of the action and its place and duration. Its complexity and costs are such that compliance with the provisions would make pointless the right to take protected action. This is an attack on industrial democracy.
43. The bias against union members in regard to this fundamental human right is also evident in the fact that the Bill contains no provisions limiting employers taking lock out action, recent examples of which have been far more protracted industrially and far more damaging to the economy of a community and the lives of the workers than any strike by employees in the same period.
44. The IEU strongly supports the statements made by Democrat Senator Murray in relation to the 1999 Bill when, in opposing the provision, he said:

“... the new provisions pose great dangers of actually escalating conflict, lengthening disputes, and making far more litigation ... In short, the provisions

of this Schedule add little to industrial democracy and add greatly to impediments to union's to undertake legitimate industrial action, while opening up the prospect of longer disputes and litigation."

45. The provisions in this Bill represent a significant blow to industrial democracy. Its intention, while seeming to give pre-eminence to secret ballot (an inherent element of a democratic society) is to undermine the fundamental human right to strike.

CONCLUSION

The IEU urges the Senate Inquiry to reject the four bills in their entirety.

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