



Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004

1. Introduction

- 1.1 The Australian Nursing Federation (ANF) welcomes this opportunity to make this submission to the Senate Employment, Workplace Relations and Education Committee inquiring into the Workplace Relations Amendment (Right of Entry) 2004.
- 1.2 The ANF is the national union for nurses in Australia with branches in each state and territory. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.
- 1.3 The ANF's 142,500 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries.
- 1.4 The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veterans affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.
- 1.5 Nurses as members of the ANF are mainly employed under the awards of the Australian Industrial Relations Commission except for nurses employed in New South Wales and in the private sectors of Queensland, where industrial systems in the relevant industrial system cover them.

2. The Workplace Amendment (Right of Entry) Bill 2004

- 2.1 The ANF opposes the Bill because it is unnecessary, onerous, and a further attack against trade unions which will do nothing to progress fair and balanced industrial relations in Australia.

In considering the Bill the ANF respectfully requests that the Committee consider the following issues.

3. The ILO Convention No. 87

- 3.1 The Bill seeks to override the well established principles of freedom of association set out in ILO Convention 87 on the Freedom of Association and Protection of the Right to Organise. The Freedom of Association Committee has held that:

“Workplace representatives should enjoy such facilities as may be necessary for the proper exercise of their functions and including the right of access to workplaces”.¹

The Committee has also held that

“Government’s should guarantee access of trade union representatives to workplaces with due respect for the rights of property and management, so that the trade union can communicate with workers, in order to apprise them of the potential advantages of unionisation”²

4. Granting, revoking and suspending Right of Entry Permits

- 4.1 The Australian Nursing Federation does not support provisions of the Bill that seek to change the existing requirements for granting and revoking Right of Entry Permits.

¹ 234th Report, Case No. 1221, para 114 in ILO Official Boards and Volume LXV11, 1984, Series B, No. 2)

² ILO Freedom of Association; Digest of Decisions and Principles with the Freedom of Association Committee of the Government Body of the ILO, Fourth (Revised) Edition 1996, para 954.

- 4.2 The Industrial Registrar has at present wide powers to revoke a Right of Entry Permit should the Registrar be satisfied that a person holding the permit intentionally hindered or obstructed any employer or employee or otherwise acted in an improper manner (s.285A). The Industrial Registrar must also take into account these issues when determining to issue a further permit where one has been previously revoked [s.285A(6)].
- 4.3 Similarly, under s.285G the Commission has extensive powers to revoke a Right of Entry Permit for the purposes of preventing and settling an industrial dispute.
- 4.4 There is no evidence to conclude that the existing powers available to the Industrial Registrar or the Commission are deficient. And there is no public call from employers or employer organisations for the further restrictions proposed by this Bill.

5. Restriction on right of entry for the purpose of investigating a breach

- 5.1 Trade unions have a direct interest in ensuring that the provisions of awards and/or agreements to which they are respondent are complied with, and that breaches are investigated. It is in the public interest that this principle be maintained.
- 5.2 The historical practices whereby registered organisations may enter a workplace for the purposes of ensuring compliance with industrial instruments reduces the possibility of damaging industrial disputation and assists in avoiding the expensive and often unnecessary involvement of industrial tribunals and the courts.

6. Prohibition of certification of agreements with right of entry provisions

- 6.1 The Bill is contrary to the objects of the Workplace Relations Act as stated in s.3(b), where the primary responsibility for the making of agreements which meet the needs and the circumstances of the enterprise are to be determined by the employer and the employees and their registered organisations. A blanket requirement that agreements do not include right of entry provisions, which take into account the needs of the enterprise, is not based on good industrial relations practice and should be rejected.
- 6.2 The right of entry arrangements should be determined by agreement between the parties with access to the dispute settling powers of the Commission where agreement cannot be reached.

7. Right of Entry and the health and community services sectors

- 7.1 There are sound reasons rights of entry and access to employees in the health and community services sectors by registered organisations should not be restrictive but rather consistent with the needs of the sectors.
- 7.2 In most settings the health and community services sectors operate on a 7 day a week 24 hour a day basis where employees are often required to remain in the vicinity of their working area for periods of work for the length of their shift including breaks. These work areas may be in the vicinity of public access and activity and places where people reside.

In these circumstances appropriate and commonsense industrial practices have been agreed to between the industrial parties to ensure that the needs of the employees and the enterprise are met.

8. Conclusion

To apply the restrictive and artificial requirements of this Bill would hinder the efficient operation of the workplace, disadvantage patients and residents and increase disputation. It is in the public interest and the interests of the industrial parties that international conventions and domestic industrial laws that promote fairness and workplace harmony be observed and maintained.