

*ACCI SUBMISSION ON THE DRAFT SOUTH  
AUSTRALIAN INDUSTRIAL LAW REFORM  
(FAIR WORK) BILL 2004*

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## ACCI

- The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak council of business associations. ACCI's members are employer organisations in all States and Territories and all major sectors of Australian industry.
- Through our membership, ACCI represents over 350,000 businesses nationwide, employing 4 million employees, including:
  - The top 100 companies.
  - Over 55,000 medium sized enterprises employing 20 to 100 people.
  - Over 280,000 smaller enterprises employing less than 20 people.
- Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. This includes major business organisations in South Australia - including Business SA as well as industry associations across the retail, hospitality, service, housing, construction, contracting, mining, agribusiness, entertainment and printing industries. A list of ACCI member organizations is attached (Attachment A).
- In South Australia, ACCI member organizations are estimated to represent in excess of 20,000 businesses employing approximately 280,000 employees.
- ACCI members actively participate in developing national policy on a collective and individual basis. ACCI members also independently develop business policy within their sector or jurisdiction.
- ACCI represents Australian employers in international forums, including those of the International Labour Organisation and through ACCI's membership of the International Organisation of Employers.
- Some ACCI members are registered under the federal *Workplace Relations Act 1996*, whilst others are registered under State industrial relations laws. Other employer organisations choose not to seek registration. ACCI, as the peak council of employer organisations, has the same status under federal laws as the ACTU - it is recognised and acts as a peak council and as agent for registered organisations but as a peak council is not registered in its own right.

## INTRODUCTION

1. On 19<sup>th</sup> December 2003 the South Australian government released for discussion a draft Bill proposing amendments to that State's laws relating to employment and workplace relations. That Bill is the draft *Industrial Law Reform (Fair Work) Bill 2004* ('the Bill').
2. A short period for submissions was set (12<sup>th</sup> February). That was subsequently extended to 4<sup>th</sup> March. Having regard to the substantial issues arising from the proposed Bill and its wide-ranging implications, this extended period for response and submissions has been too limited to constitute proper consultation with industry.
3. The Bill represents the first iteration of the South Australian government's response to the inquiry conducted into the States industrial laws in 2002/03 by a former member of the State Industrial Commission, Greg Stevens.
4. The Bill seeks to make fundamental amendments to the South Australia's principal legislative enactment regulating the conduct of employers and employees - the *Industrial and Employee Relations Act 1994* ('the Act').
5. The current South Australian Act was enacted by the South Australian parliament in May 1994, following one of the longest and most detailed periods of legislative scrutiny and negotiation of industrial legislation in that State's history. The 1994 Act represented a full up-date and modernisation of the State's employment laws, rather than a series of *ad hoc* amendments imposed on top of existing law. However, many of the former concepts in State law remained in place - many dating back to the enactment of the 1972 Act by the Dunstan government, and beyond.
6. Over the past decade the 1994 Act has served the South Australian community well, and continues to do so - with the State characterised by a low level of industrial disputes and a generally co-operative approach between employers, employees and their representatives.
7. The Act has been regarded, across Australia, as a 'middle of the road' industrial enactment which shied away from some of the more fundamental reform measures introduced in other State's and federally during the 1990's - such as those that restricted arbitral powers of tribunals

to specified allowable matters, or the introduction of statutory individual agreements, or notions of protected industrial action.

8. The Act has also been well regarded by practitioners in industrial relations, for its relative simplicity, ease of comprehension and only limited subsequent amendments.
9. In these circumstances - where the current law is regarded by objective observers as properly balancing the interests of employers and employees, and where there is no serious or significant 'on the ground' culture of industrial disputation in the State - there is a particularly heavy onus on any party seeking to change the State law in a fundamental manner to fully, properly and rigorously justify those changes.
10. The case for change has to be properly made out - and made out by reference to actual issues / developments in workplaces requiring rectification and not merely by a recitation of principle, ideology or theory.
11. The significance of the present Bill lies in both its depth (the extent to which it seeks to change rights and obligations in a substantive manner), and its breadth (the extent to which it deals with a wide range of subject matters, some of which have not been previously dealt with by South Australian industrial law).
12. Consideration of the Bill cannot be conducted in isolation from the broader employment and workplace framework in South Australia. This broader framework is that:
  - a. Federal laws relating to precisely the same subject matters (employment and workplace relations) already apply in South Australia; those federal laws apply to approximately half of the State's workforce; amendment to the State law will only apply to that part of the workforce covered by federal laws where they are not inconsistent with federal laws.
  - b. South Australian policy makers would be making fundamental errors if they considered new industrial laws in isolation to the existing and continuing laws that will apply to at least half of the State's workforce and their employers and the extent to which employees and employers would have recourse to any alternative avenues in the face of poor or ill directed State laws.

- c. The South Australian economy and its relationship to the national and international economy. Laws relating to employment and workplace relations not only affect social outcomes but also, and crucially, they drive economic decisions - decisions to employ, to invest and the capacity of businesses to compete nationally and internationally.
- d. South Australian policy makers would be making fundamental errors if they considered any new industrial laws which did not have proper regard to the broader economic objectives of the State and its economic vision.

# **THE DRAFT INDUSTRIAL LAW REFORM (FAIR WORK) BILL 2004**

## **Purpose of the Bill**

1. The Bill seeks to amend South Australia's employment and workplace relations laws in every key subject matter of regulation. It extends to:
  - a. The nature of industrial tribunal powers.
  - b. Regulation of employment conditions by legislation.
  - c. Regulation of employment conditions by industrial awards.
  - d. Regulation of the system of enterprise bargaining.
  - e. Union powers including right of entry and inspection of business records.
  - f. Remuneration and incomes.
  - g. Termination of employment and unfair dismissal.
  - h. Enforcement and penalties for breaches of industrial law.
2. The Bill also proposes new and radical areas of additional employment regulation – and in some cases regulation of a kind that must be regarded as experimental, adventurous and beyond even the standards developed by the International Labour Organisation and other Australian jurisdictions.
3. This is particularly so in the area where the Bill seeks to redefine over a century of employment law developed by the South Australian courts and the South Australian parliament by imposing novel and ideological approaches to the regulation of contractors, labour hire and the scope of the employment relationship.
4. The purpose of the Bill was outlined by the State Minister upon its release. It was claimed that the Bill was needed to provide “fair work for all”, to provide necessary ‘protections’, and to generally modernize and extend existing laws.

5. All rationales expressed to date for the Bill, including reference to the Stevens report, have been couched in such general terms, directed to issues of broad concept. They in no way emanate from any generalised evidence of 'grass-roots' workplace conduct or misconduct, nor from empirical research or data.

## **ACCI Position on the Bill**

6. ACCI, as the peak national body of employer associations in Australia, primarily deals with national, not State issues. Our State member organisations in South Australia, led by Business SA and industry specific employer associations, have primary carriage of the public and private debate and advocacy on this Bill.
7. However, in view of the far reaching nature of the Bill for the State's employers, its manifest inconsistency with federal laws that also govern South Australian employers and its unheralded policy adventurism and regulatory dimensions, ACCI has made this submission in order to locate the Bill in its proper national and international policy context.
8. Consistent with the position of member organisations in South Australia, ACCI opposes the Bill, seeks that it not be proceeded with and that alternative approaches to amendment of the State's law be adopted - should a case for amendment be able to be properly made out.

## **Major Areas of Concern**

### **Interaction with Federal Laws**

9. Federal workplace relations laws (principally the *Workplace Relations Act 1996*) apply in South Australia. They deal with the same subject matters as the Bill. This means that many employers in South Australia have both federal and State laws applying to their business - with employees of different classes working alongside each other but with different employment regulation affecting rights and responsibilities. Even where that does not occur, the dual operation of federal and State laws mean that a South Australian business in one industry competes with another South Australian business in the same industry (and maybe even in the same geographical area of Adelaide or the State) but operates under different laws.

10. Neither the current Act nor the Bill are responsible for this complexity (with all of its industrial and commercial consequences). It arises from the constitutional separation of industrial powers between State and federal parliaments and the *ad hoc* way in which federal industrial laws establish coverage of workplaces.
11. Nonetheless, these realities dictate that insofar as is possible policy makers in South Australia should not seek to exacerbate the differences between federal and State industrial laws, unless there is particularly good reason.
12. Yet the present Bill does attempt precisely that. Rather than close some of the existing gaps between State law and federal law (which it should, for economic reasons apart from any other) it moves in completely the opposite direction. Whereas the federal law is an amalgam of the 1993 federal Labor government and the 1996 federal Coalition government's commitment to a more decentralized and less regulated industrial system, the Bill would re-regulate South Australian law in quite the opposite direction - with more mandatory outcomes, more centralised decision making and less flexibility in workplace decision making.
13. As such, differences in rights and obligations between two identical South Australian businesses operating under different laws will expand, as will differences between employees in those businesses doing the same job.
14. These differences add complexity, and create grounds for unfair or uneven access to industrial rights and obligations.
15. They also affect business competitiveness. It is worth noting that in Victoria businesses now only operate under one set of industrial laws. That State has rid itself of the duality of regulation. Whilst it is not necessary in considering this Bill to enter the debate about a multiple or single system of regulation in South Australia, it is important to recognize that widening the gap between South Australian and federal regulation will simply create anomalies and in turn over time add weight to future debate for a more rational and harmonised system of regulation.
16. It is also likely that the Bill will actually weaken the South Australian jurisdiction by having workplaces move away from its new regulatory imposts into the federal system.
17. Whereas about 50% of South Australia employees are employed under State laws, it is quite conceivable that a re-regulation or unjustifiably heavy

regulation of employment through the State industrial system will move another 10% of workplaces into federal laws. This would include scope for increasing incentives for incorporated businesses in the State to make agreements under s170LK of the federal Act (non union collective agreements) or Australian Workplace Agreements (AWAs - statutory individual employer/employee agreements under the federal Act). Both of these forms of Agreements displace otherwise applicable State industrial laws.

18. This is no mere speculation. One simply has to consider the leakage to the federal system that arose after the manifest re-regulation of the Western Australian industrial laws in 2002.
19. Literally tens of thousands of Western Australian employers and employees who had previously operated under State law moved into the federal system. As a result, Western Australian now accounts for the highest proportion of AWAs of any Australian State (WA is lodging 31% of AWAs despite having only 10% of Australia's working age population).

### **Objects of the Law**

20. The Bill adds a variety of new objects onto the State law. There would be a page and a half of objects, many of which are mutually exclusive. With so many objects, the real purpose of the law is lost, and no real guidance is given to those responsible for applying or interpreting the law on exactly what the law is seeking to do. Fewer objects, more carefully crafted would be appropriate. In its current state the objects can mean anything to anyone, and be used for almost any purpose. That is not good policy.
21. An extended and detailed set of objects also inherently and necessarily creates scope for contradiction and addition litigation. It is inconsistent with an industrial statute which prevents and settles disputation to include objects which will inherently exacerbate and complicate contested matters.
22. The Bill also seeks to provide an object "to promote security and permanency in employment". This is code for setting up an attack on flexible forms of employment, such as casual employment and contract work. Casual employment and contract work should not be maligned in this fashion.
23. They contribute greatly to the strength of our diverse and productive labour force - and to the high participation rates by persons who have been

traditionally marginalized from the labour market such as working mothers, young people and mature aged workers. The law should not express preferences for one form of employment or engagement over another - it should be (as is federal law) neutral- and allow actual parties in the workplace to determine the forms of employment that suit their purposes.

24. The references to employment security are also questionable. Whilst academics and theoreticians might like to think that a workplace can be micro managed by legislation and that the law can create employment security, the real world of workplace relations and business activity is quite different. Employment can be no more secure than a business can be secure. Real job security occurs in the workplace, and cannot be legislated for by governments or parliaments. It can only be a function of the competitiveness and well being of the business and the economy in which it trades, and of the utility, skills, performance and productivity of employees.
25. The Bill also seeks to introduce an object that encourages union membership. ACCI has a commitment to collective representation of industrial interests, and is a collective organisation itself, as are our members.
26. However, we also believe in freedom of association. Statutory encouragement of union membership is not needed. Individuals will make those choices. An object which encourages membership creates an inherent bias in the law. Again - as is the case in the federal law - governments and parliaments should be neutral on these aspects.
27. If an object like this was introduced, then an open door would be given to all forms of regulation that are only one step removed from compulsory membership. Who is to say that a provision in an agreement or award that requires employers to give every employee a union membership form at their induction is not 'encouragement'? Who is to say that a provision in an award or agreement that would require non union employees to pay monies to unions for 'bargaining services' is not 'encouragement' to join? Simply said, tilting the balance in this fashion opens the door to back door compulsory unionism in the hands of adventurous union officials, governments, legislators or tribunals. There also appears to be scope for coercion and a failure to properly respect personal employee choices for participation and non-participation.

## **Awards and Minimum Standards**

28. The Bill provides extensive new powers for general orders on minimum employment standards. In doing so it raises the potential for substantial changes to the existing scope of minimum standards without further legislative consideration. New minimum standards are likely to have cost implications for employers and hence, for jobs.
29. The Bill also creates new and unusual distinctions between orders of general application and orders of specific application. How these concepts fit into the existing award structure where awards are generally regarded as 'common rule' is unclear. Such new industrial concepts can give rise to doubt and complexity, and in the worse case, litigation. The more novel and unclear such an approach, the greater the scope for such negative outcomes.
30. The Bill also contemplates circumstances where new employment standards imposed on industry would operate retrospectively. Retrospectivity is, in principle, wrong. At the very least, these aspects of the Bill should not be proceeded with.
31. It is also worth noting that rather than confine the arbitral powers to impose employment standards to certain allowable matters (as federal laws do), the Bill expands arbitral powers. In doing so, it creates less room for the bargaining system to work. A bargaining system is better placed to drive productivity than one size fits all employment regulation - this is the key workplace relations lesson of Australia's experience during the past decade and is the constant advice of international organisations such as the OECD.
32. Productivity, efficiency and reward created by a bargaining system will drive jobs growth in South Australia. The current Bill's focus on generalised arbitration moves in the counter direction.

## **Enterprise Bargaining**

33. The Bill maintains a limited system of enterprise bargaining - but seeks to regulate it in a manner that will fundamentally undermine its objectives.
34. Aside from removing incentives to bargain by creating greater scope for one size fits all rules to be applied, the Bill seeks to regulate both bargaining processes and outcomes. In both respects it goes too far.

35. Bargaining processes should be regulated in limited terms only. However, the Bill introduces scope for heavy regulation of processes and for unions to assert unwarranted control over that process. The Bill's focus on process will detract from the capacity to achieve outcomes. The conferral by the Bill of powers on unions to seek orders for 'good faith' or 'best endeavours' bargaining will mean that unions will be able to impose their presence on bargaining in non unionised businesses and require employers to produce commercially sensitive material (such as business plans and books of account) in order to justify their opposition to union claims or demands. This may be completely at odds with employee choices and preferences regarding union membership.
36. The Bill also allows for arbitration of agreements where an employer does not agree with union bargaining demands.
37. It must be recognised that this form of arbitration is not comparable to established arbitration of minimum standards (award arbitration). It in no way corresponds to the traditional approach where the Industrial Commission sets the safety net, and it would be disingenuous to characterise it in this regard.
38. The proposed approach would instead be 'arbitration'/determination of the wages and employment conditions that a union wants an employer to actually pay to employees. In that sense, it is arbitration of wages and employment conditions well in excess of established standards (i.e. potentially well in excess of the otherwise arbitrated award wages and conditions).
39. Compulsory arbitration of agreements is itself a contradiction in terms. If an agreement is to be arbitrated it is no longer an agreement. Only in very rare circumstances could this be justified – perhaps where there are essential services under threat or real and current threats to a major part of the State's economy. The Bill does not confine arbitration of agreements in this way. It is an open door to union dominated bargaining, and to compulsory arbitration of a type never seen before in South Australian (or Australian) employment regulation.
40. It is also worth noting that the Bill would not pick up any system of individual statutory agreement. In failing to do so, it exacerbates the gap with federal laws and will provide incentives for parties to move into federal Australian Workplace Agreements (see above).

## **Contractors and Labour Hire**

41. The policy adventurism of the Bill reaches its peak in its proposals to regulate labour hire and contracting. In so doing, it completely displaces the norms of employment law developed for over more than a century by the courts and the parliament.
42. Whereas employment is traditionally a contract between one employer and one employee for the provision of service, this Bill seeks to turn that notion on its head. It would do so in two ways:
  - a. By allowing people who are not at law employees (such as genuine independent contractors) to be declared employees.
  - b. By providing for an employee in a labour hire arrangement to have two employers even though at law they really have only one employment contract with one of the parties to the labour hire arrangement.
43. Regulation of independent contracting as employment is fundamentally unsound. It reflects an ideology which suggests that formal “employment” is the only legitimate form of working arrangement in contemporary Australia.
  - a. That is a notion that the business community completely rejects.
  - b. Even the International Labour Organisation has not acceded to such a proposition.
  - c. This would be at odds with the personal decision and priorities of the many thousands of Australians who chose to work and do business on a contract basis.
44. Regulation of independent contracting as employment is regulation of entrepreneurship. Why a South Australian government would think that this is necessary is not clear. Surely South Australia needs more entrepreneurship, not less. Whilst union ideology does not like independent contracting, and does not like labour hire, we know that these forms of working arrangement add great value to economic efficiency and activity.
45. If South Australia was to regulate such tools of economic efficiency into the industrial system – it would be regulating jobs out of the State because the State would be a less attractive place in which to invest and do business.

46. Numerous business organisations in South Australia, including ACCI members (such as Business SA and the Housing Industry Association) as well as other bodies (such as Independent Contractors Australia) have already voiced strong objections to these propositions. We do not repeat them, but agree with them.
47. If independent contractors are deemed to be employees, then they are drawn into the morass of employment regulation. This includes greater scope for unions to seek membership from independent contractors, and impose their bargaining and other industrial activities on commercial businesses and arrangements.
48. What is also lost in this debate is the fact that most, if not all of the contractors that the proposed Bill seeks to 'protect' as employees do not actually seek that protection. They want to be independent contractors and remain that way. Mere union ideology (coupled with academic theory) appears to lie behind this push. To the extent that the State Minister has said that the Bill seeks to introduce 'protections' it must be asked whether those it seeks to 'protect' are the ones seeking this new law. In the case of deeming genuine independent contractors to be employees, this is not the case. There appears to be no research, no data, and no solid foundation for this regulatory proposition.
49. Only a handful of Australian States have tried this approach. Where it has been tried it has failed. At the Industrial Relations Society of Australia's annual conference in Adelaide in 2003, the President of the Queensland Industrial Court and Commission indicated that the Queensland law enacted by the Beattie government was becoming unworkable. It has led to the absurd situation where the court had been asked to order that a private company was in fact an employee.
50. The proposed Bill also creates a concept in labour hire arrangements of two employers for the one employee, where the law would only in fact traditionally recognise one employer. In any labour hire arrangement the employment relationship exists between the worker and the labour hire company. The business which is engaging the labour hire company to provide a worker is not the employer. Yet the Bill seeks to turn that notion on its head, at least for certain purposes.
51. Artificially creating two employers for the one employee under general industrial law is without precedent in Australia. Apart from being wrong in principle, it is lazy policy making.

52. It reflects and attitude that all businesses associated with the performance of work should be brought into the employment net, without regard to who is actually engaging the employee.
53. Making parties which are not the employer, into the employer, imposes on those parties joint and several liability as an employer. This means that multiple different businesses and entities carry the same obligation to the same employee. How this complexity will be resolved in the workplace is not addressed in the Bill. Policy adventurism of this kind will leave South Australian employers with uncertainty and multiple liabilities. The bottom line is that there will be disincentives to utilise labour hire. Whilst that may be the intention of the union movement, and the un-stated intention of the proponents of the Bill., it would be a very regressive step for the State and its economy.
54. In seeking to regulate contracting and labour hire in these ways, the Bill goes beyond even the standards that have been set by the International labour Organisation (ILO). In June 2003 the International Labour Conference (ILC) (for present purposes, equivalent to the international parliament on labour standards) debated in detail the 'scope of the employment relationship'. International unions sought standards that created mutual employers in labour hire (described a 'triangular relationships') and sought to regulate contractors as employees - particularly dependent contractors. After three weeks of debate, the world's governments (including Australia) did not agree with the international union movement.
55. Indeed, a resolution was passed by the ILC, which the international union movement agreed to, that recognized the principle of freedom to contract for genuine contractors, and which contemplated ILO standards development only in the area of employees who are falsely and deliberately labelled as contractors (i.e. not genuine contractors). The ILC did not agree to any additional regulation of the labour hire industry as is now proposed. That aspect if left unresolved.
56. ACCI, as the representative of Australian employers at the ILC and in the other forums of the ILO, actively participated in these debates, including membership of the committee that drafted the final resolution that was adopted by the ILC.

## **Other Concerns**

57. There are a variety of other concerns with the Bill, particularly in the area of union rights of entry into non unionized businesses, the proposed unfair contracts jurisdiction, and the expansion of unfair dismissal laws and remedies.
58. ACCI supports the submissions of ACCI members organisations on these topics. We do not repeat them.

## **South Australian State Considerations**

59. The Bill must be considered in the context of the South Australia economy and its national and international competitiveness.
60. Mention has already been made in this submission as to how the Bill would relate to, or adversely impact on, competitiveness with other States or the federal workplace relations laws.
61. In this context it is important that proper scope to meet the economic challenges facing South Australia is supported (and not detracted from) by the Bill, or by any government policy proposal on employment and workplace relations.
62. Policies relating to industrial relations do matter. They matter because laws and decisions of governments which regulate rights and responsibilities between private employers and employees affect jobs, investment, productivity, competitiveness and economic activity. In turn, this affects living standards.
63. There can be no question that South Australia faces both economic challenges and economic opportunities. Some of these are structural; some unique to South Australia; some long term and some shared with other national and international economies. They include: expanding jobs and job opportunities, attracting private investment, broadening the economic base of the State, increasing South Australia's population share, preventing migration of skilled professionals and young people interstate and overseas, increasing workforce participation and addressing the ageing of the South Australian population.

64. It is difficult to see how any of the major initiatives in the Bill can contribute to better outcomes in these areas.
65. Rather, the Bill has a preoccupation with social policy and industrial rights (without merit, foundation or rigour) - to the exclusion of economic considerations. A balance between these considerations is what is required. Any sense of the bigger picture of how economic development itself drives social outcomes is sorely lacking in the Bill.

## **National Considerations**

66. South Australia, and its economy obviously does not operate in a vacuum. It competes for business investment and for the retention of its labour market with other States (and overseas). The State's interests are not well served if its industrial policy is moving in one direction when national policy and international developments are moving in a different direction.
67. Australia started to change laws and attitudes to workplace relations in the late 1980's and early to mid 1990's. Reform was necessary because the global economy required our workplaces to be more competitive and productive, and because we needed to get unemployment down and increase participation in our workforce.
68. A significant feature of the national workplace changes in 1993 and 1996 was that they were delivered by Australian governments of different political persuasions - firstly by a Labor government and then a Coalition government. Despite the inevitable politics associated with industrial relations, there was bipartisan support for the new direction in Australian employment regulation. Less centralised labour market policies were acknowledged by all parties to be in Australia's national interest. Reform meant that less emphasis was given to centralised economy wide decisions by tribunals, governments and unions. The South Australian 1994 Act was part of that reform effort, albeit a moderate and modest part.
69. Systems of enterprise bargaining and workplace agreements were made accessible in both unionised and non unionised businesses so that more decisions on wages and employment conditions could be made by more employers and employees. In this way workers could be better rewarded to reflect the success of a business and inefficient work practices could be replaced by improved productivity.

70. The reforms of the past decade have helped produced beneficial results for Australian employers and employees - including those in South Australia.
71. The benefits of workplace relations reform in Australia have included:
  - a. Consistently Lower Inflation
  - b. Higher Productivity
  - c. Higher Real Wages
  - d. Lower Interest Rates
  - e. Fewer Disputes and Strikes
  - f. Record employment
  - g. Lower Unemployment
72. These outcomes, whilst not perfect, make our living standards what they are today. They have seen Australia withstand economic shocks and increase participation in the labour market by young people, working parents and older Australians.
73. However, the draft South Australian Bill moves in the opposite direction to these less centralized and less regulatory focused federal laws.
74. A policy to re-regulate employment presumes that labour market reform in Australia and South Australia has gone too far. That is not the case.
75. Contrary to the claims of some commentators, reform in the 1990's did not see Australia, let alone South Australia, deregulate its labour market. The changes in the 1990's did not (unlike, for example in New Zealand) displace the former system. Workplace bargaining was an addition to the system of conciliation and arbitration, not a substitute for it. The changes were enabling, not compelling. Key institutions like industrial tribunals, awards and collective representation remained in place with a substantial role. This was particularly so, in the case of the 1994 South Australian Act.
76. An extensive and complex set of laws continues to govern employment in Australia - as many private employers and small businesses in the State can attest to.
77. The direction that workplace reform to date must be maintained if we are to continue gains to date, and secure better outcomes. Unemployment and

underemployment continue to plague our labour market and society – even though they have been reduced in recent years.

78. In 2002 Australian business organisations, through the Australian Chamber of Commerce and Industry (ACCI), developed a policy Blueprint, *Modern Workplace: Modern Future 2002-2010*, for improving the Australian workplace relations system over the next decade. The ACCI Blueprint set out key objectives, and proposed changes to work practices and industrial laws. Many of the proposals in the ACCI Blueprint build on the foundations that were laid by the changes a decade ago.
79. The Bill moves in the counter direction to the policy change recommended by the business community through the ACCI Blueprint.

### **International Considerations**

80. Mention has already been made in this submission of how the Bill goes beyond the consideration of the International Labour Organisation terms of core labour standards or employment regulation.
81. Beyond the ILO, other international bodies have provided some guidance on the policy direction that Australia (including South Australia) must keep pursuing in terms of labour market reform and its overall economic objectives. Recent OECD projections on future labour productivity have Australia at 2.3% growth running below the OECD average and less than major countries such as the US and UK – and 5% less than competitors such as South Korea. In 2003 the OECD told Australia that pressing ahead with fundamental labour market reform of the type that had been enacted at a national level since 1993 and 1996 was essential for our economic well being.

“In order to meet the longer-term objective of raising living standards towards the highest in the OECD, further reforms to labour, product and financial markets and to social policies will be needed, that will encourage more people to join the labour force, remain in it, and steadily raise their productivity” (OECD 2003 Economic Survey on Australia)

82. Similar sentiments have been expressed by the Productivity Commission, the Reserve Bank and the International Monetary Fund.
83. The current South Australian Bill exacerbates differences with national laws and moves in a counter regulatory direction.

84. A better alternative is for the Bill to be reconsidered, and for any changes to the South Australian workplace relations system to better reflect the policy direction advocated by bodies such as the OECD for labour market reform.

## **CONCLUSION**

85. The Bill breaks with the State's traditional moderate approach to employment regulation. South Australia's current industrial laws do not reflect policy extremes. The current laws are considered, in national terms, amongst the most moderate of the Australian jurisdictions. For better or worse, modest and middle of the road industrial laws reflect the approach of State governments of different political persuasions for a generation.
86. South Australia's industrial laws have not reacted to either of the polar edges of industrial debate in Australia. As a result, South Australia has had a stable industrial relations climate. Dispute levels are low. In contrast, the proposed new laws are extreme and adventurous. As such, they do not reflect the tenor of the State's conventional approach to regulating industrial issues. The proposed new industrial laws also risk destabilizing South Australia's stable industrial climate without proper justification or the prospect of any real policy gains.
87. The Bill reacts to ideology, not actual workplace problems. The proposed new law reflects an ideological and academic underpinning. They are not borne out of any need to remedy real or actual deficiencies in workplace conduct or overcome industrial disputes or misdealing by employers.
88. There is no evidence based justification for the new proposals. They are, at best, theoretically based. New law, without having a factual basis in terms of workplace conduct, represents poor policy making.
89. The Bill is preoccupied with union and employee rights, and not balanced by business considerations. Industrial laws need to reflect a mutuality of interests. The current laws do. The proposed new laws are one sided, and premised on the grounds that employers are exploitive and need to be more heavily regulated.
90. The circumstances of businesses and the inherent legitimacy of commercial considerations as countervailing considerations in industrial relations are missing from this Bill.

91. The Bill does nothing to meet South Australia's bigger economic challenges. The proposed new laws will detract from the essential bigger picture economic vision for South Australia. Jobs, investment, broadening the economic base of the State, increasing its population share, preventing migration of skilled professionals and young people interstate and overseas, and increasing the participation of South Australia's population in the workforce (especially its ageing population) are crucial and fundamental challenges. On each score the Bill does not provide any basis for moving forward or doing better.
92. The Bill is bad for jobs. The Bill takes and already regulated employment and workplace relations environment and adds new regulation to it. More regulation on top of regulation represents higher costs of doing business, less secure jobs, and less work able to be offered by South Australian employers. There are no offsetting factors for industry in this Bill. Each of its proposals adds weight to the burden of creating employment in the private sector – none of them alleviate those burdens.
93. The Bill will make employment regulation in South Australia equal to the worst and heaviest in Australia. The proposed new laws will take a middle of the road set of industrial laws and make them either the equal most regulated, or most regulated of any State. This alone must render South Australia less competitive, and less attractive as a destination for investment and opportunity.
94. The Bill goes beyond international standards of employment regulation. The Bill takes various aspects of employment regulation to the extremes, and in so doing goes into regulatory areas that are beyond even the standards of the International Labour Organization. Further, its regulatory thrust is directly odds how the OECD says Australia can secure greater jobs and employment growth.
95. The Bill will weaken the State industrial system by making competing federal laws more attractive to industry. This is likely to be an unintended consequence for the perspective of the State government. It arises because the Bill would accentuate a different and more regulatory policy direction from that of national laws.
96. In these circumstances the Bill should not be proceeded with.
97. A fresh Bill should be prepared which reflects the policy directions recommended by the OECD in its *Jobs Strategy* and by business

organisations in the *Modern Workplace: Modern Future 2002-2010 Blueprint* for workplace reform in Australia.

98. In contrast to the current Bill, these alternative approaches are consistent with the States overall economic vision, and would close some of the gap between State industrial laws and the federal industrial relations system.



## **Attachment A**

### **ACCI MEMBERS**

#### **STATE/TERRITORY ASSOCIATIONS**

ACT and Region Chamber of Commerce and Industry  
Australian Business Ltd  
Business SA  
Chamber of Commerce and Industry Western Australia  
Commerce Queensland  
Employers' First <sup>TM</sup>  
Northern Territory Chamber of Commerce and Industry  
State Chamber of Commerce (New South Wales)  
Tasmanian Chamber of Commerce and Industry  
Victorian Employers' Chamber of Commerce and Industry

#### **NATIONAL INDUSTRY ASSOCIATIONS**

Agribusiness Employers' Federation  
Australasian Soft Drink Association  
Australian Consumer and Specialty Products Association  
Australian Entertainment Industry Association  
Australian Hotels Association  
Australian International Airlines Operations Group  
Australian Mines and Metals Association  
Australian Paint Manufacturers' Federation Inc.  
Australian Retailers Association  
Housing Industry Association  
Investment and Financial Services Association  
Insurance Council of Australia

Master Builders Australia

Master Plumbers and Mechanical Services Association Australia

National Electrical Communications Association

National Retail Association Limited

Oil Industry Industrial Association

Pharmacy Guild of Australia

Plastics and Chemicals Industries Association

Printing Industries Association of Australia

Restaurant and Catering Australia

Victorian Automobile Chamber of Commerce