

Inquiry into the Fair Work Bill 2008
SUBMISSIONS BY
Combined Small Business Alliance of WA Inc. (CoSBA)
to the
Senate Standing Committee on Education,
Employment and Workplace Relations

PROFILE: Combined Small Business Alliance of WA Inc. (CoSBA)

CoSBA WEB SITE: <http://www.cosba.com.au>

CoSBA, had its genesis in the early 1990s as the Combined Business Association, which in 1998 changed its name to the Combined Small Business Association, in order to more accurately reflect its objectives.

In March 2002 CoSBA merged with the Small Business Alliance, which now makes us the single largest peak small business organisation in WA with a membership comprised of business associations, local chambers of commerce, industry associations and other incorporated organisations that exist to support and assist the needs and aspirations small business.

Affiliates of CoSBA have a combined membership comprised of an estimated 3,200 employers, with a conservatively estimated annual turnover of \$800,000,000, employing an estimated 16,000 employees.

As a peak body, CoSBA acts as a representative and united voice for and on behalf of small business organisations, in so doing, we actively represents the interests of our Affiliates, and small business in general, by lobbying Governments and in being represented on a number of forums and bodies.

In recognition of our standing in the representation of small business we enjoy a close working relationship with the Small Business Development Corporation (SBDC) under a Memorandum of Understanding (MoU) established in July 2007. The MoU provides CoSBA with an official status as a peak small business organisation in Western Australia.

Aim and Objects of Association

The aim of the association is to further and protect the interests, needs and aspirations of small business owners and operators and organisations which exist to further and protect the interests, needs and aspirations of small business owners and operators.

The objectives of the association include:

To represent members in a co-ordinated approach at all levels of government - local, state and federal, in a non-political and non-sectarian manner.

To represent members at organisations, conferences, seminars, locally, statewide and nationally.

To encourage and participation in membership of similar business Associations.

To conduct dialogue with other business organisations and associations.

To promote and foster business alliances with the following objectives:

- to promote reciprocal trade;
- to exchange business knowledge between members;
- to promote member business and social contacts on a regular basis;

- to act as a representative body in matters of interest to members, in a non-political, non-sectarian manner.

MULTI-EMPLOYER BARGAINING/PATTERN BARGAINING

It is our understanding that as the law currently stands "Pattern Bargaining"/"Pattern Agreements" are illegal. Notwithstanding, elements of the union movement are imposing them upon employers with impunity, of which the Government is fully aware. It seems that the unions do so in the comfortable belief that the Government will take no action against them. Given that the Government and the unions are one of the same, a very reasonable assumption.

(See attached a copy of the LHMU "RESPONSIBLE CLEANING CONTRACTOR AGREEMENT" being imposed nationally on cleaning contractors, and we understand on other sectors of the hospitality and services industry, by the LHMU, with comments by the author of these submissions).

The so-called "Multi-Employer Bargaining" is in our judgment legitimising thuggery and coercion, a massive "kick in the guts" for small business. It is about giving legal effect to unions herding groups of small business employers into a room and demanding that they sign their "Pattern Agreements".

This fact we would suggest, is also aimed at the small business independent contractors, as reported on 6.1.09, as follows:

New laws 'will hit productivity'

Australia's 1.9 million independent contractors could become dictated to by enterprise agreements under the Rudd Government's proposed workplace laws, a move advocates say would be a disaster for productivity. The Master Builders Association said the Fair Work Bill before the Senate would bring back the practice of unions seeking to include provisions to govern contractors in agreements.

MBA national industrial relations director Richard Calver said loose wording in the Bill about what could be covered in an agreement was an unwelcome change. "One of the MBA's principal concerns is that the terms and conditions of independent contractors would be able to be regulated in agreements," Mr Calver said. "This is disastrous for productivity."

He said the Bill would allow unions involved in negotiating agreements to limit the use of contractors. "For example, you could see reintroduced a provision whereby contractors would have to be employed on no less-favourable terms and conditions than those of permanent employees," he said. "We think that would be problematic for productivity," (SOURCE/EXTRACT: *The West Australian*, 6.1.09)

The Minister for Workplace Relations Chief of Staff's letter to CoSBA dated 3 December 2008 (copy attached) confirmed that the only recourse for those small businesses is for them to appeal to "Fair Work Australia" to seek an exemption from the process. Small businesses have not the where-with-all, the time nor desire to be confronted with such legalistic bullshit. And, nor should they have to, this is more red tape.

It is about providing the unions a legal mechanism with which to unionise small business and to turn around their dwindling membership.

Significantly, although the Chief of Staff denies that "Multi-Employer Bargaining" is about "Pattern Bargaining", in stating ". . . a single agreement that applies to a number of specified employers, which may have identical terms or some variations within it for different employers.", is a clear admission that the "Multi-Employer Bargaining" process is about the imposition of "Pattern Agreements".

The so-called "Multi-Employer Bargaining", was in our understanding not a policy that the Government put before the electors prior to the election. The first we heard of the so-called "Multi-Employer Bargaining" was in the Minister for Workplace Relations' address to the National Press Club on 17 September 2008.

It is our submission that the multi-employer bargaining and pattern bargaining processes exploited by unions to impose union bargaining fees, payable by non-union employees or employers.

IR laws over many years have provided for Industrial Inspectors and other mechanisms to protect and police employees' rights and entitlements, and these statutory roles should not be abdicated to unions. History has demonstrated, that when unions have been given this so called "right" it has been abused and used as a mechanism to coerce and intimidate employers and non-union employees.

UNION RIGHT OF ENTRY/ACCESS TO EMPLOYEE RECORDS.

CoSBA acknowledges an entitlement, not a "right", for an accredited union representative to have entry to a workplace, in conformance with regulations for such, to meet with members of the union. However, we do not accept that a union should have a "right" to enter a workplace to recruit members. Nor do we accept that a union should have a "right" to enter a workplace to speak with employees who are not members of the union, or to enter a workplace where there are no members of the union.

The employer is held responsible for the protection, safe keeping and confidentiality of all information related to its employees, in so doing, only employees of the company who are specifically assigned to do so in the performance of their duties should have access to employees' information. No person, union representative or otherwise, should have access to any information of an employee unless written authorisation issued by the employee on each and every occasion for which access is to be had, specifying the date of access and the information authorised to be accessed.

ENTERPRISE AGREEMENTS

With reference to the Government's Fact Sheet 13 - Enterprise Agreements - published on the Government's web site at www.workplace.gov.au, that states, in part:

"The Fair Work Bill will enable enterprise agreements to be made between a single employer, or single interest employers, and their employees (a single-enterprise

agreement) or between more than one employer and their employees (a multi-enterprise agreement). Once approved, all enterprise agreements will operate according to a common set of rules.

There will be no distinction between union and nonunion agreements. This removes the capacity for disputes over which type of agreement parties should enter into. Unions may elect to be covered by an enterprise agreement if they are a bargaining representative for the agreement."

Given that, *"There will be no distinction between union and nonunion agreements."* And, *"Once approved, all enterprise agreements will operate according to a common set of rules"*. And, as it our understanding that the term "approved" means approval for an agreement by the employees. The important question that arises is that, for agreement made for an enterprise that has no union members and is approved by the employees, and given that such agreements *"will operate according to a common set of rules"* will the "rules" require the agreement to be endorsed by a union and/or will unions have power of veto over the registration of such agreements?

That is not made clear, and we suspect that may be case. If so, our submission would be that unions should not involved in the making, endorsing or have power of veto over the registration of such agreements.

CONCLUSION

As a result of the Government's IR laws the prognosis for small business is devastating, to say the least. The small bickie offerings by the Minister for Small Business and Prime Minister effectively amount to cheap sugar-coating to give small business the impression the Government is "looking after" us, whilst the IR laws will delivering small business a massive kick in the guts.

The proposed IR laws are designed to put small business under the direct control of the unions that will be an unmitigated killer for small business. A reprehensible demonstration of the Government's duplicity, lies and deception.

In conclusion, CoSBA fully and unequivocally supports the views expressed in the following reports on the Government's proposed IR laws.

Business backlash over 'dangerous' union era

THE Rudd Government faces growing business condemnation of its plan to allow a return to industry-wide union bargaining and an umpire's decision at the end of negotiations that fail.

Workplace Relations Minister Julia Gillard is highly sensitive to the employers' concerns, dismissing claims that Labor's Fair Work legislation unveiled last week would revive the practice of "pattern bargaining". But Ms Gillard is confronting protests from business groups led by the Australian Chamber of Commerce and Industry, which argue a resurgence of union power would be inappropriate, especially during the global economic crisis.

Business groups are concerned about Ms Gillard's proposal for a new multi-employer bargaining stream to help low-paid workers without bargaining muscle negotiate as one group across a range of companies or an industry. She flatly denies this system would see a return to old-style pattern bargaining in which unions lodge a log of claims and use their muscle to win common agreements.

ACCI chief executive Peter Anderson claims Labor's overhaul of the Coalition's Work Choices laws will, in effect, re-introduce pattern bargaining because it creates a new form of multi-employer bargaining with industry-wide arbitration. "We think what Labor is proposing is dangerous and a form of pattern bargaining," Mr Anderson said. (SOURCE: *The Australian*, 2912.08)

IR reforms asking for trouble

KEVIN Rudd shouts from the rooftops each day that the global financial crisis has changed the world, but the Prime Minister does not believe his own words.

A bizarre fate has befallen Australia. At the precise time it faces a global crisis, a business downturn and rising unemployment, the Rudd Government is recasting workplace relations to increase trade union powers, inhibit employment and impose new costs on employers. Normally this would defy any test of common sense. Indeed, it would seem the essence of irresponsibility. But it has instead won widespread applause, and its architect Julia Gillard has won almost universal acclaim as a political hero.

It is as though Australia's workplace relations system exists in some interterrestrial immunity from the rest of the economic world. The global crisis means everything has changed: the budget goes into deficit, fiscal stimulus replaces fiscal restraint, the Reserve Bank does a volte-face and begins to slash interest rates, and the Government guarantees deposits as Rudd declares the crisis is "sweeping across the world".

But standing immovable is Labor's support for greater trade union power, more costly restrictions on employers, a greater role for the revamped industrial relations commission, an effective end to individual statutory contracts, a revival of arbitration, and a sharp weakening of direct employer and non-union employee bargaining.

The new workplace relations model introduced by Gillard is a significant step into the past. It does more than abolish the Howard government's Work Choices model; it goes beyond Work Choices to Howard's 1996 reforms and even further to Keating's 1993 reforms in reshaping the system. It is hard to imagine how its impact will be other than to weaken productivity and employment. The immediate economic impact should be small. But this is major institutional reform with a long fuse. It is designed to endure and, as the unions test the laws and refine their procedures, it will shift workplace relations a long way from their present moorings. (SOURCE: *The Weekend Australian*, 29.11.08)

Submitted for and on behalf of the Combined Small Business Alliance of Western Australia Inc.



OLIVER MOON
Chief Executive Officer
Phone: 08-9250 3549
16 January 2009



OFFICE OF THE HON JULIA GILLARD MP
DEPUTY PRIME MINISTER

Parliament House
Canberra ACT 2600

03 DEC 2008

Mr Oliver Moon
Chief Executive Officer
Combined Small Business Alliance of Western Australia Inc.
PO Box 253
JOONDALUP WA 6919

Dear Mr Moon

Thank you for your letter of 15 October 2008 to the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, concerning bargaining for the low-paid. The Minister has asked me to reply on her behalf.

The Australian Government made clear its intention for Fair Work Australia to help facilitate multi-employer bargaining for the low-paid under the new system as part of its election commitments in *Forward with Fairness*.

The low-paid, multi-employer bargaining stream is being introduced to provide another option for employers and employees who, for various reasons, have not been able to bargain at the enterprise level in the past. This will give parties who may not have bargained before in a formal sense the chance to get together and look at measures that could improve productivity in their workplaces, whether that be through different work practices, flexible work conditions, or new arrangements for workplace consultation. Fair Work Australia will be available to assist the parties in this process.

Multi-employer bargaining for the low-paid is not in any way about pattern bargaining. If employers prefer to bargain at the level of the enterprise, this will be taken into account. For example, in deciding whether to bring parties into the low-paid stream, Fair Work Australia will be required to consider the extent to which the union is prepared to respond to an employer who wishes to bargain for its own single enterprise agreement. Decisions by Fair Work Australia that allow multi-employer bargaining for the low-paid will be subject to appeal and individual employers will be able to seek exemption from the process if they feel they should not be included. Protected industrial action will not be available in support of bargaining claims in the low-paid stream.

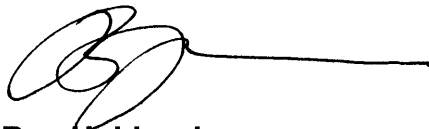
The outcomes of bargaining in this low-paid stream could also differ according to the circumstances. In some cases, this could mean a single agreement that applies to a number of specified employers, which may have identical terms or some variations within it for different employers. Alternatively, it could result in a number of

agreements in different terms applying to different employers, or a combination of these.

The Government recognises that low-paid employees often work in industry sectors where small businesses are operating on very tight margins. The low-paid stream will recognise the interests of employers in improving productivity at the workplace and continuing to be competitive.

Thank you for being this matter to the Minister's attention.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line.

Ben Hubbard
Chief of Staff

Concerning the LHMU's *Responsible Cleaning Contractor Agreement* (RCP) below, I have made some observations with respect to my assessment of the union's so called "agreement", highlighted in yellow and addressed in red.

As a prologue to my observations, I take the liberty of quoting Niccolo Machiavelli:

"Since my intention is to say something that will prove of practical use to the inquirer, I have thought it proper to represent things as they are in real truth, rather than as they are imagined."

RESPONSIBLE CLEANING CONTRACTOR AGREEMENT XYZ CLEANING SERVICES AND LHMU

The parties to the agreement are XYZ Cleaning Services and the Liquor Hospitality and Miscellaneous Union (LHMU).

This document represents a code of principles designed to give effect to the Principles for "A Clean Start" being advocated by the LHMU to the property industry but do not override any related matters that may be included in any registered industrial agreement to which either or both the parties may be bound.

1. That provision I would suggest operates to exclude other legitimate industrial instruments such as common law agreements, for which there is no requirement for them to be registered, and on which employers are legitimately entitled to engage employees.
2. Additionally, employers may have employees currently engaged on AWAs that, depending on the wording of their "Commencement and Duration" clause may remain in force for a period of five (5) years (or during which time the Agreement is cancelled or a succeeding Agreement is made), or thereafter until cancelled or a succeeding Agreement is made. In such cases, no provision of the RCP would override any provision of the AWA with which it is contrary to or in conflict with.

Industry Relationship

XYZ Cleaning Services and the LHMU are jointly committed to developing and maintaining a positive working relationship with each other.

XYZ Cleaning Services takes pride in being an employer of choice in the cleaning industry. The LHMU takes pride in organising and representing Australian cleaners.

Together we commit to working toward a quality focused cleaning industry:

- where clients receive and pay for good service,
- reputable contractors bid and win work based on fair contracting principles and reasonable reward, and
- Cleaners enjoy good jobs with sufficient hours, fair pay, reasonable work rates and safe conditions.

The Creation of Good Jobs

In accordance with the Clean Start principles XYZ Cleaning Services agrees, in consultation with property owners and unions, to discuss the development of:

- An industry protocol to determine appropriate work practices needed to ensure a high standard of cleaning and a reduction in the incidence of work related illness or injury. The parties acknowledge that such a protocol can only be implemented with the co-operation of contractors, property owners and the union. The union maintains its position that work rates and cleaning ratios in the industry need to be addressed.
- Professional standards which create a more stable workforce and promote the cleaning industry as a job of choice.
- Training standards which enhance employee skills and competence, workplace health and safety, and the quality of service delivery.
- A protocol to enhance the job security of individual cleaners and reduce the exposure of contractors to the risk of large numbers of redundancies at a time of contract change.

Collective Bargaining

- **XYZ Cleaning Services and the LHMU are jointly committed to a collective bargaining approach to determining wages and conditions for employees of Cleandustrial Services that creates a level playing field for the industry.**
 - **XYZ Cleaning Services and the LHMU commit to pursuing discussions for a collective agreement for cleaners in the first half of 2008. It is agreed that where commercial arrangements make it possible, existing XYZ Cleaning Services cleaners on individual contracts will be given the opportunity to sign across to this collective agreement. The timing of any such move from individual contract to collective agreement will be flexible depending on circumstances and what is agreed between XYZ Cleaning Services and the union.**
3. This I would suggest operates to commit employers to entering into the industry "pattern agreement" currently being negotiated between the and BSCAAWA, and employers agreeing to cancelling all AWAs under which they have employees currently engaged (See observation 2. Above.
 4. Julia Gillard has repeatedly stated that under the amendments to the *Workplace Relations Act* (WRA), whilst prominence would be given to Collective Agreements, industry "pattern agreements" would be unlawful. The voracity of Ms Gillard's

statement will only be known when we see the amendments to the WRA. And, the evidence strongly suggest that the unions are currently and will push the envelope to challenge the Government's resolve in the enforcement of its law in this regard.

5. These provisions are hypocritical, in that, they are a contradiction of the RCAs opening statement: *"This document represents a code of principles designed to give effect to the Principles for "A Clean Start" being advocated by the LHMU to the property industry but do not override any related matters that may be included in any registered industrial agreement."*
 - Pending these discussions, XYZ Cleaning Services is committed to tendering for work and paying its cleaners in accordance with registered industrial instruments.

Franchising and Subcontracting

Without negating its rights at law to engage in subcontracting and franchising arrangements to meet commercial requirements, XYZ Cleaning Services is committed to maximizing the use of direct (that is company employed) labour where that is appropriate for the best business outcome. XYZ Cleaning Services will ensure that franchisees and sub-contractors, when engaged, remunerate their employees in accordance with a registered industrial agreement which delivers the same or very similar outcomes to those enjoyed by cleaners employed direct by XYZ Cleaning Services.

Discussions will take place between XYZ Cleaning Services and the union about these issues.

6. Franchise and Independent Contract Agreements are matters between the parties only, and neither do the common law nor the *Independent Contractors Act* contemplate the involvement or intrusion of third parties in those arrangements.

Freedom of Association

XYZ Cleaning Services acknowledges the right of cleaners to join and participate in the LHMU as the recognised union representing the cleaning industry.

To facilitate this XYZ Cleaning Services will:

- a. Provide union representatives with access to all new starters through either:
 - (i) access to group inductions, or
 - (ii) the provision of advice to the union within 14 days of an employee's commencement with the company of the site/s at which the employee works and the provision of access for the union to meet the employee/s in an area of the building that is pre-agreed with the building owner/management.

The LHMU undertakes that meetings held with new employees of XYZ Cleaning Services will occur without disruption to XYZ Cleaning Services operations and that the meetings will not be used for political purposes.

- b. **Provide to all new starters a union form and union promotional material as provided by the LHMU.**
 - c. **The appropriate banking details of employees shall be provided to the union upon receipt of written authority from the employee.**
7. Deduction of union fees is currently in contravention of the WRA, what the future holds in this regard will only be known when we see the amendments to the WRA.
8. The provision of an employee's details to the union is a private matter between the employee and the union, in which an employer should not be a party.
- d. **Allow for a one off opportunity for union representatives to meet with all existing cleaners to discuss union and industry issues related to the Clean Start Campaign. This will occur as soon as practicable in the manner outlined below and in such a way as to ensure normal cleaning operations are not disrupted. The following manner of providing this opportunity is agreed:-**
 - (i) **The purpose of such a meeting shall be consistent with the purpose for which Union Right of Entry is legitimately permitted.**
 - (ii) **The Union will seek to reach agreement with XYZ Cleaning Services as to an appropriate time to conduct a meeting in accordance with normal Right of Entry notification as set in paragraph (h) and in such a manner that employees do not lose pay for attending the meeting.**
 - (iii) **Where such agreement is unable to be reached, the employer will facilitate a 30 minute paid meeting at the worksite at an agreed time.**
9. Freedom of Association provisions are enshrined in the WRA.
10. The WRA as it currently stands has explicit provisions controlling the entry of unions, and they do not contemplate that which the union seeks to impose.
11. Julia Gillard has stated that under the amendments to the (WRA) there would be little change to the unions so-called "right of entry". Again, the voracity of Ms Gillard's statement will only be known when we see the amendments to the WRA. See observations 2. and 4. Above.
- e. **Acknowledge the LHMU and XYZ Cleaning Services have a shared vision for improved industry standards and good jobs for cleaners. XYZ Cleaning Services acknowledges that the promotion of this agreement will also include advice to property owners and on the union website as to which companies are signatories to RCP Agreements and are abiding by the principles of those Agreements.**
12. My observation is that this could be intended to operate as a restrictive trade practice and in contravention of the *Trade Practices Act*. Legal advice should be sought.

- f. Issue a policy statement internally from the company to all staff clearly indicating the company position which endorses workers rights to join and participate in a union without hindrance or discrimination.**
- 13. A policy statement is totally un-necessary, those rights are enshrined in the WRA and in my judgement will remain so.
 - g. Facilitate the attendance of properly elected union delegates to attend union training. The number of hours of paid and unpaid leave will be discussed at a later date bearing in mind the operational needs of the employer.**
- 14. There is no requirement at law for the employer to facilitate or pay for this provision. And, any requirements for such will only be known when we see the amendments to the WRA.
 - h. XYZ Cleaning Services will facilitate collective and individual meetings between cleaners and union representatives. It is agreed these meetings will take place in areas of the building which are agreed with the Property Owner/Manager. The Union will respect the protocol of meetings not occurring in tenants' private or restricted areas and in acknowledgement of this XYZ Cleaning Services will ensure appropriate access to cleaners occurs. Agreed protocols will be followed, i.e:**
 - (i). Advanced notification to XYZ Cleaning Services, including the purpose of proposed meetings.**
 - (ii). Notification by XYZ Cleaning Services to property owners or managers.**
 - i. Where there is a significant contract change and the site in question has Union membership then XYZ Cleaning Services will work with the Union to minimise disruption at the point of changeover and to ensure that the rights of employees are properly protected.**

Dispute Resolution

XYZ Cleaning Services and the LHMU agree to quickly bring to each other's senior executive's attention any problems with the application of this agreement and any other matters of disputation or concern.

The LHMU will use all reasonable endeavours to protect XYZ Cleaning Services against any form of industrial action without prior, full and objective dialogue with XYZ Cleaning Services management during which the parties will explore all reasonable avenues for resolving the matters and avoiding industrial action.

The agreement represents the true intentions of the parties. It does not constitute, nor should be construed as, an agreement or contract subject to enforcement by either party or any third party in any State or Federal Court or agency or any non-governmental agency, including the Australian Industrial Relations Commission.

13. Notwithstanding that this "Agreement" is titled "Responsible Cleaning Contractor Agreement", this provision is a clear acknowledgement by the union that, "*It does not constitute, nor should be construed as, an agreement or contract*" enforceable in any competent jurisdiction.

Accordingly, it is not worth the paper it is written on, and should be treated with the contempt it deserves. It stands to discredit the creditability of the union. Machiavelli would be impressed with this convolution.

Either party may withdraw from the agreement by giving written notice to the other parties of its decision to do so.

14. This is a complete nonsense, if by the union's own acknowledgement the RCP is not an agreement, accordingly, here is NO "Agreement" to withdraw from, therefore there is no requirement for notice to do so. Again, Machiavelli would be impressed with this convolution.

Confidentiality

The LHMU agrees that it will use this Agreement in the public arena in a responsible way.

15. Again this is utter nonsense. The *Macquarie Dictionary* defines "confidentiality" as an adverb of "confidential", which it defines as:

"1. Spoken or written in confidence; secret; a confidential document. 2. Betokening confidence or intimacy; imparting private matters; a confidential tone. 3. Enjoying another's confidence; entrusted with secrets or private affairs."

Machiavelli would be impressed with this blatant misrepresentation.

DATED:

SIGNED BY:

Regards
OLIVER MOON