AUSTRALIAN DEMOCRATS' MINORITY REPORT

Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2001

1.1 The Australian Democrats support the rights of employees and employers to join or not to join registered organisations. We support the prohibition on duress. This bill addresses the possibility of non-members of unions being forced to pay bargaining fees (fee-for-service as it is also known), which then converts into a kind of compulsory unionism. The Democrats believe that fee-for-service issues must be separated out from issues of freedom of association and a prohibition on duress. Both fee-for-service and freedom of association are principles we support. The question then revolves around enabling legislation and whether this bill is the appropriate vehicle for the resolution of these issues.

1.2 We note the 25 submissions received on this bill and the discussion this matter has received (and continues to receive) in the Australian Industrial Relations Commission (AIRC) and in public discussion more broadly. This bill was introduced into the House of Representatives on 23 May 2001 and has been the subject of some consultation to date. In essence, the bill would amend the Workplace Relations Act 1996 (WRA) to prevent unions and employers from demanding fees from non-members for bargaining services.

1.3 The Government has characterised such fees as a form of compulsory unionism and this comprises their main argument for these amendments.

1.4 It is hard to see how provisions for bargaining fees should be against the spirit of the WRA and its object of facilitating agreement making. Agreement making is desirable, and if fee-for-service contributes to that, it is to the good. There is also the issue of 'free-riders', by employers on the backs of employer organisations, and employees on the backs of unions.

1.5 We consider it fair that those who benefit from agreement making should make a contribution towards its costs, whether employers or employees. This strikes us as a fair principle.

1.6 The bargaining fee may represent only a small portion of the real cost of completing an agreement, for instance where that agreement involves union members' foregone earnings through taking protected action.

1.7 We see a clear distinction between the notion of compulsory unionism (which we oppose) and a contribution to the costs of bargaining, where the person paying is a direct beneficiary of that bargaining. Such payees are not joining a union, but clearly the fee should not be a substitute for a normal union fee. They are paying for a service. They are not contributing to other activities of the union, or electing to play any role in the activities, policies or other conduct of the organisation, or getting any of the other benefits of a union. They are not union members.

1.8 Coercive attempts to force union membership are clearly illegal under the WRA and should remain so.

1.9 To allow a fee-for-service is not at all unusual under industrial relations and bargaining regimes in other countries. In some countries it is imposed. In the United States of America, those who are part of workplaces where a majority vote to join a union, and who

then benefit from rounds of bargaining to reach workplace agreements, must generally pay a fee to the union that wins the certification ballot and negotiates the agreement. Allowing workplaces to take a vote on agreements which include provision to charge such a fee, and then where the majority vote in its support, permit its collection, is not out of step with practice in other places. To repeat, it seems fair and reasonable that those who benefit also pay.

1.10 Of course some unions will not go down this path. They will reject a source of funds to unions that are based on agreement-based rights to charge and collect a bargaining fee. Such a practice does not sit easily with unions with a monopolist compulsory culture, or with those who support the 'organising approach' that has attracted much discussion in Australian unions since the mid-1990s. This approach places priority upon building unions through active membership, not providing services to non-members. There is lively debate within the union movement on these questions.

1.11 Requiring fees to be agreed to in advance by non-members who are advantaged by bargaining (a practice which the Government does not oppose) will not necessarily overcome the free-rider problem, as many free-riders will still see it in their clear self interest to refuse to give their consent in advance. This problem needs to be further explored.

1.12 The Democrats will consider the bill further, if it is resurrected following the forthcoming Federal election. We remain open to the possibility that bargaining fees or fee-for-service provisions become part of workplace law, within the principles of freedom of association.

Senator Andrew Murray