CHAPTER 2

OBJECTS OF THE WORKPLACE RELATIONS ACT 1996

2.1 Part A of the Committee's terms of reference required it to examine the impact of the Workplace Relations Act 1996. As part of this the Committee was asked to assess whether the principal objects of the Act (particularly paragraphs 3(j) and (k)) have been fulfilled in practice.

2.2 Section 3 of the *Workplace Relations Act 1996* outlines the principal object of the Act which is to provide a framework for cooperative workplace relations which promotes the prosperity and welfare of the people of Australia. This chapter reports on the evidence presented to the Committee on the performance of the WR Act against a range of key objectives. It should be noted, however, that some of these received little if any attention in submissions or in oral evidence to the inquiry.

Encouraging the pursuit of high employment growth, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market.

2.3 The Committee was presented with various views on the impact of the Workplace Relations Act (WR Act) on the Australian economy. These views ranged from the view expressed predominantly by unions that the WR Act has had no discernible impact on economic growth and employment, to the employer groups and some economic research organisations who argued that these changes had fostered significant productivity improvements and that this was important for Australia's competitiveness both domestically and internationally. In addition were the views of some academic witnesses who suggested that it was simply too early to determine the overall impact on the economy.

2.4 Australia has enjoyed a relatively sustained period of economic growth since the recession of the early 1990s. The economic indicators point to a high average rate of growth in GDP, amongst the highest in the OECD, particularly in 1997-98.[1] The economic recovery from this recession has been compared to other economic recoveries, in particular that following the recession of 1982-83. The current recovery is noteworthy in a number of respects. The recovery from this latest recession was not as rapid as was observed in the mid 1980s and certainly did not produce the same rates of employment growth in its initial stages. The ACTU notes in particular the relatively slow growth of full-time employment.[2] However growth has continued at a relatively steady pace, and has included growth in full-time employment. Associated with this has been a gradual decline in the unemployment rate, with more significant

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1 OECD, *Economic Outlook – Preliminary Edition, November 1999*, OECD, Paris, p. 57

2 Submission No. 423, Australian Council of Trade Unions, vol. 19, p. 4385

falls in the last year, bringing the rate of unemployment to its lowest levels since the beginning of the decade.[3]

2.5 The Committee has considered the effect of the introduction of the WR Act in 1996 on economic outcomes. While the Committee heard a number of differing opinions on the economic impact of the WR Act there was little in the way of research presented which could illuminate the issue. The area most likely to yield some information is the change in labour productivity, an area which the WR Act was directly attempting to improve. Data on labour productivity shows that there have been significant improvements over the last 10 years and that in the last 2 years there has been a particularly strong improvement. Australian Business Limited had the following comment to make with respect to productivity improvements:

> There is no disputing that Australia's recent impressive productivity performance is largely a result of microeconomic reform, of which labour market reform has been one of, if not the most significant aspect.[4]

2.6 The Business Council of Australia, highlighted in its submission the difficulty of quantifying the direct impact of the WR Act on economic outcomes but suggested that:

> At a time when productivity and employment growth is strong and inflation, interest rates and industrial dispute incidences are at low levels there is no reason not to assume that the reforms to the Australian workplace relations system introduced by the 1996 legislation have contributed to these outcomes.[5]

2.7 Improving living standards is also an objective. This area was contentious with arguments put to the Committee that while the living standards for some have been improved under the WR Act, those in weaker bargaining positions have not enjoyed the same increase.

2.8 Evidence was presented to the Committee of growing levels of income inequality, both between the highest and lowest paid as well as between men and women. However, while the gap may have been increasing, it was also the case that average real wages for all earnings levels has increased in recent years. While some have been doing better than others, even the low paid have received the benefit of real wages increases. The growth in real wages in part reflects the low inflation environment that has been maintained in recent times. A flexible labour market, inter alia, helps to restrain labour costs and therefore reduces the pressure on business to increase prices for goods and services.

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3 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2231

4 Submission No. 457, Australian Business Limited, vol. 22, p. 5401

5 Submission No. 375, Business Council of Australia, vol. 12, p. 2569

2.9 Any gap between male and female earning may reflect a number of factors. One witness suggested that in highly feminised industries, that is those with a high proportion of female employees such as nursing, a greater proportion of employees were reliant on the award rather than certified agreements and therefore wage increases were usually much lower than those negotiated under certified agreements.[6] The Women for Workplace Justice Coalition stated that:

> Women are not in a job long enough to participate in the negotiation of a certified agreement or Australian Workplace Agreement…
>
> Where women are concentrated in less secure employment, such as casual or part time employment, they may feel less able to negotiate with their employer over the terms of a certified agreement.
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> [Women] will rarely have the bargaining power to contradict what their employer wants in a certified agreement of Australian Workplace Agreement.[7]

2.10 A counter argument put to the Committee was that women were more likely to trade off large pay increases for other conditions of employment which allowed them to better balance family and work responsibilities.

2.11 The Committee notes that the ACTU is pleased with the current economic outcomes and conceded that the WR Act 'has not made anything worse' and is, at least partially, the cause of these positive economic outcomes.

2.12 In addressing economic considerations relating to the WR Act the ACTU said:

> …it is true that the economic parameters are very good and we are very proud of that…but…all these outcomes…low inflation rates and good GDP growth are not something that has just happened because of the Act…these trends of low inflation and high levels of productivity are not just simply the outcomes of the 1996 legislation. The 1996 legislation has not made anything worse…[8]

2.13 Whilst it is difficult to isolate the impact of the WR Act on overall economic performance, the Committee believes that the WR Act has been an important component in restructuring the Australian economy, creating a foundation for continuing economic growth and ensuring Australia remains internationally competitive.

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6 Submission No. 520, New South Wales Government, vol. 26, pp. 6925-6

7 Submission No. 441, Women for Workplace Justice, vol. 21, pp. 5180-81

8 Evidence, Ms Jenny George, Canberra, 1 October 1999, p. 26

Ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employers and employees at the workplace or enterprise level

2.14 There is little doubt that the WR Act has achieved this objective which has, in principle, received the support of both political parties, trade unions and employers over the last ten years. These changes were in response to the recognition that to be internationally competitive, workplaces needed to be flexible and a large part of this was to allow individual workplaces the discretion to determine the most appropriate working arrangements for their circumstances. The WR Act continued this evolutionary path, a key component of which was the introduction of a greater degree of choice with respect to the types of agreements that could be entered into by employers and employees, and the simplification of awards.

2.15 The provision of a formal option for individualised agreement making was generally accepted as a positive aspect of the legislation. More concern was raised about the use rather than the principle of AWAs. The rationale for the simplification of awards is to retain them to provide a safety net of enforceable minimum wages and conditions. Thereby encouraging employers and employees to enter into agreements. Simplifying awards involved removing certain award provisions that were either covered by other legislation or were deemed to be issues better determined at the workplace level. It was the latter which generated the most comment.

2.16 Employer groups who made submissions to the Committee believed the changes to agreement making were beneficial to productivity.[9] The NSW Minerals Council suggested that the WR Act had been essential in the restructuring of the coal industry and highlighted in particular the benefits of AWAs and having awards focused on providing a safety net only.

> The passage of the Workplace Relations Act (together with the consequential measures, particularly section 150A overhaul of awards) has been arguably the most important policy initiative for the coal industry in terms of its reform and restructuring since the 1940s.[10]

With respect to award simplification the New South Wales Minerals Council said:

> In May 1998, the Australian Industrial Relations Commission bought down its decision in relation to non allowable matters in the coal industry awards. This decision removed key provisions which had been major impediments to the efficiency of mining operations including seniority and preference to unionists.

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9 See for instance submission No. 267, Master Builders Australia Inc., vol. 6, p. 1231; Submission No. 375, Business Council of Australia, vol. 12, pp. 2577-8; Submission No. 399, Australian Chamber of Commerce and Industry, vol. 15, p. 3408

10 Submission No. 497, New South Wales Minerals Council Limited, vol. 24, p. 6363

> The removal of seniority from awards has been a significant milestone. Seniority and the associated preference to retrenched workers provision had had a pervading influence on the coal industry, impacting on recruitment, retrenchment, training, shift allocation and leave allocation processes.[11]

2.17 Some employer organisations believed that unions were using pattern bargaining to subvert the intention of the legislation which was to allow for the establishment of agreements at the enterprise or workplace level. They therefore supported the proposed changes in the current Bill to prevent pattern bargaining occurring. Others believed that industry wide agreements were logical in some circumstances and promoted their use.[12]

Enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, wether or not that form is provided for by this Act.

2.18 The WR Act introduced a much wider range of choice in agreements than was previously available in Australia's industrial relations system, allowing employers and employees to choose a form of agreement which best suits their individual circumstances. The WR Act provides for individual agreements in the form of AWAs as well as collective agreements which can be either negotiated between a union and an employer or directly with employees. Multi-employer agreements have also been available under sections 170LB(2) and 170LC.

2.19 The Department of Employment, Workplace Relations and Small Business provided the Committee with information on the take-up of the alternative forms of agreement. The statistics reveal that while certified agreements are the dominant form of agreement, the split between union and non-union certified agreements as well as the growth in AWAs and continued use of multiple employer agreements suggests that employers and employees have embraced the increased choice in agreement making.[13]

2.20 The Queensland Branch of the Australian Workers' Union commented in its submission to the inquiry on the requirements under section 170LC of the WR Act for establishing a multiple-business agreement. They argued that requiring certification by a Full Bench of the Commission, which must only approve the agreement if it is considered to be in the public interest, was cumbersome and a deterrent to many who may wish to institute a multiple-employer agreement.[14] The data presented by the Department of Employment, Workplace Relations and Small Business, indicates that 14 agreements were certified under this provision between 1 January 1997 and 30

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11 *ibid.*, pp. 6363-4

12 See Submission No. 267, Master Builders Australia Inc., vol. 6, pp. 1231-2; Submission No. 392, Australian Industry Group and the Engineering Employers' Association of South Australia, vol. 14, pp. 3096-7

13 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2081

14 Submission No. 506, The Australian Workers' Union Queensland Branch, vol. 25, p. 6457

June 1999 covering 761 employers. The data also shows, however, that while there is little difference in the total number of multi-employer agreements certified under the WR Act compared to the previous legislation, there are around three times as many employers who are party to such agreements.[15]

Providing the means:
(i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level; and
(ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment.

2.21 It was put to the Committee that there were sectors of the economy that were dependent on awards, particularly in the TCF and manufacturing sectors, despite the availability of enterprise bargaining since 1991. The ACTU argued that employees had lost significant award entitlements as a result of the award simplification process, particularly in workplaces where no certified agreements existed.[16]

2.22 The submission from the Department of Employment, Workplace Relations and Small Business drew the attention of the Committee to the Award Simplification Decision of the Full Bench of the Commission on 23 December as evidence of the fact that award simplification is not about reducing entitlements. The Department stated that the only way in which the level of an award entitlement can be reviewed under award simplification is within items 49 (7)(b) and (c) and 51(6)(b) and (c) of the Workplace Relations and other Legislation Amendment Act 1996, which concern productivity and efficiency.[17]

Providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them.

2.23 The Committee heard evidence of attempts by both employers and unions to subvert the agreement making process. It was alleged that such instances had become more prevalent since the introduction of the 1996 legislation.

2.24 A particular concern of many unions was that while the Act provides for unions to represent individual members in AWA negotiations where they have been nominated as the bargaining agent, they are often unable to have any substantial impact.

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15 Submission No. 329, The Department of Employment, Workplace Relations and Small Business, vol. 11, pp. 2084-5

16 Submission No. 423, Australian Council of Trade Unions, vol. 19, pp. 4363-5

17 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2104

2.25 The Department indicated to the Committee that the framework established by the 1996 legislation aims to achieve a balanced and fair system which effectively meets the needs of both employers and employees. They state that the success of the new framework is reflected in the acceleration in agreement making under the WR Act since the new provisions came into affect.[18]

Ensuring freedom of association, including the rights of employees and employers to join an organisation or association of their choice, or not to join an organisation or association.

2.26 It was put to the Committee that freedom of association relates to the basic human right, as defined in the International Labor Office (ILO) Constitution, for employees to join a collective organisation if they wish to do so and is not about not joining one if they do not wish to.[19] It was suggested that union preference clauses were completely within the spirit of the ILO definition provided that they did not force employees to join and argued therefore that they should not be considered as objectionable clauses under the WR Act.[20]

2.27 The Committee heard allegations of employee victimisation by employers for either being in a union or seeking to join a union. However the Employment Advocate indicated that the largest proportion of complaints received by his office were actually from employees claiming to feel pressured to join the union.[21]

2.28 The Office of the Employment Advocate was criticised by unions for being biased in its operations to enforce the freedom of association provisions of the legislation. It was claimed that the OEA particularly targeted unions to ensure that they did not attempt to pressure employees into joining but ignored employers accused of preventing or restricting the ability of employees to join a union. The Employment Advocate denied these allegations, stating that his office investigated every complaint that it received. He explained that they received significantly more complaints from employees regarding forced unionisation than complaints about not being able to join a union.

2.29 The submission from the Department of Employment, Workplace Relations and Small Business indicates that they have identified gaps in the operation and coverage of Part XA of the Act relating to freedom of association in the context of the Employment Advocate's investigations of possible breaches. The Department stated that these were taken into account during the policy development process for the

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18 *ibid*., pp. 2116, 2120

19 Evidence, Mr Mordy Bromberg, Melbourne, 8 October 1999, pp. 208-9

20 Submission No. 460, International Centre for Trade Union Rights, vol. 22, pp. 5584-5

21 Evidence, Mr Jonathan Hamberger, Canberra, 28 October 1999, p. 487

Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999.[22] Amendments to this part of the Act are discussed in Chapter 12.

Ensuring that employee and employer organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively.

2.30 Unions were critical of some aspects of the legislation, which they claim have not allowed them to operate effectively. Their complaints focused on the right of entry provisions and the prohibition of union preference clauses included in awards and agreements.

2.31 Evidence was given that the current rules surrounding right of entry unduly restrict the operations of unions and their ability to meet with and recruit new members. It was claimed that employers often sent a member of the managerial staff along to meetings or they were conveniently located nearby and that this resulted in many employees either not attending or being too intimidated to raise issues of concern with the union organiser.[23]

2.32 The Committee also heard evidence from employers and employer organisations about the abuse of right of entry provisions by unions. A particular complaint arose in relation to construction sites upon which there are usually a number of different employers. The WR Act requires a union to give an employer at least 24 hours notice of the union's intention to exercise its right of entry. However, it was claimed that, once on a building site, union representatives sought to talk to all employees or investigate the records of any employer despite the fact that they may have notified only one of them. It was also claimed that unions were issuing notices of their intention to enter a workplace, sometimes with up to ten union officials listed, at anytime between two given dates, usually a week, and then often did not turn up.[24]

2.33 Unions submitted that under the WR Act there had been a significant increase in demand for union resources and legal representation which was placing a significant financial drain on them.[25] Unions were critical of the current Act which they claimed restricted their ability to recruit new members.[26]

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22 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2140

23 Evidence, Ms Sally McManus, Sydney, 22 October 1999, p. 264

24 Submission No. 267, Master Builders Australia Inc., vol. 22, p. 5770

25 Evidence, Mr Tony Maher, Sydney, 22 October 1999, p. 274

26 Evidence, Mr Kilian Jeffers, Brisbane, 27 October 1999, p. 450

Enabling the Commission to prevent and settle industrial disputes as far as possible by conciliation and, where appropriate and within specified limits, by arbitration.

2.34 Some witnesses claimed that the WR Act reduced the role of the Australian Industrial Relations Commission and were critical of its perceived weakened role. These claims are discussed in Chapter 3.

2.35 It was put to the Committee that the inability of the Commission to arbitrate beyond the 20 allowable matters has resulted in more protracted industrial disputes and an associated disharmony in the workplace, as was allegedly the case in the waterfront dispute.[27]

2.36 The Commission has retained some discretion, under section 170MX, to arbitrate on non-allowable matters in limited circumstances. That is, where the Commission believes that there is no prospect of agreement between the parties and the parties have been customarily covered by a paid rates award or where industrial action threatens serious harm to the community or the economy.[28]

2.37 Evidence presented in the submission from the Department of Employment, Workplace Relations and Small Business showed that there have only been a few cases which have been arbitrated under section 170MX since its introduction in January 1997.[29]

Assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers.

2.38 It was put to the Committee that flexibility in hours of work could create greater uncertainty, particularly for part-time and casual employees which made it harder to balance work and family responsibilities.

> Award simplification has enabled employers to distribute working hours and incidence of work in ways which dislocate private life and family commitments…The 'flexibility' that was much touted as the end product of the 1996 amendments has tipped the scales in favour of flexible outcomes for employers at the expense of those employees with reduced industrial muscle.[30]

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27 Submission No. 424, Australian Manufacturing Workers' Union, vol. 20, p. 4765

28 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2153

29 *ibid*., p. 2156

30 Submission No. 441, Women for Workplace Justice Coalition, vol. 21, p. 5185

2.39 The Committee was told that the ability to change rosters with only a week's notice and an increased span of standard working hours could result in people starting or finishing work outside of the hours of operation of child care centres.[31]

2.40 The Committee accepts that there will be cases where the arrangements in some workplaces do not suit everyone and was presented with examples of this throughout the course of the inquiry. However, many people have secured much better arrangements for balancing work and family responsibilities at their workplace. The Department of Employment, Workplace Relations and Small Business's publication, *Work and Family State of Play 1998*, indicates that a significant proportion of agreements contain at least one family friendly provision.

2.41 Senator Collins questioned the Department about how family friendly provisions were defined for this study and referred to comments that other witnesses had made that what were recorded as family friendly provisions were, at the workplace level, actually family unfriendly. In response the Department stated that they did not accept this criticism, having been careful to include only those provisions which they judged to be beneficial to employees. The Department informed the Committee that:

> …in the hours of work area, the sorts of flexibilities that we have included, and we say they are likely to benefit employees and families, are time in lieu of overtime at ordinary and penalty rates, hours averaged over an extended period, flexible start and finish times, flexible system in operation, hours of work negotiated by employees or decided by the majority of employees, make up time and banking and accrual of RDOs. With each of those the department would say that they provide substantial potential benefits to employees and their families. In compiling the report we have attempted to ensure that only those flexibilities which we judge have a beneficial effect are included.[32]

2.42 Similarly, the Employment Advocate stated to the Committee:

> I understand the argument broadly from people like ACIRRT that flexibility is all one way—I think even if you forget about the flexible hours, there are still a lot of family friendly provisions in a high proportion of AWAs. But on the flexible hours issue our experience is—and this is based on spending quite a lot of time talking to employees about this—that many employees do appreciate flexible hours. Of course, there might be some situations where a 'flexible hour provision' may be to the detriment of an employee. There may be some circumstances but there are many, from our experience, where it is actually at the request of the employees that those flexible hours have been put in there. Often it is a win-win situation.[33]

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31 Evidence, Ms Susan Halliday, Sydney, 26 October 1999, p.379

32 Evidence, Mr Barry Leahy, Canberra, 28 October 1999, p. 540

33 Evidence, Mr Jonathan Hamberger, Canberra, 28 October 1999, p. 490

Respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

2.43 Submissions and oral evidence were given to the Committee in relation to the issue of the gender pay gap. The data used in most cases was ABS data on the ratio of male and female average weekly ordinary time earnings or data compiled by the Department of Employment, Workplace Relations and Small Business. Drawing conclusions based on the ABS data should be done with caution. This is because it is an aggregate figure revealing little about the underlying reasons for the discrepancies. For example, it is not clear how much of the pay differential reflects the industrial and occupational composition of employment for both males and females. Traditionally, the industries and occupations dominated by female employment tend to be lower paid compared to traditionally male dominated industries and occupations.

2.44 Academic researchers and women's groups interested in the impact of the WR Act and in particular the introduction of AWAs on female employees were critical of the lack of available data. It was argued that until detailed information was made available on the wages and conditions contained in AWAs it would not be possible to assess the impact of the Act.[34]

2.45 Data presented in the submission from the Human Rights and Equal Opportunity Commission (HREOC) from ACIRRT's Agreements Database and Monitor (ADAM) provides a breakdown of annual average wage increases by industry and cross-references this with the proportion of women in the workforce. The largest increase was in the construction and mining sector, a male dominated industry.[35] The Committee heard from the New South Wales Minerals Council that award rates of pay in this industry are over twice the levels in other industries.[36] Therefore, any gender pay gap may not necessarily reflect direct or even indirect discrimination by employers but may reflect the occupations and industries in which males and females predominantly work.

2.46 The submission from the Human Rights and Equal Opportunity Commission also includes data on complaints received under the Sex Discrimination Act, a high proportion of which related to employment. The submission also states that there has been an increase over the past three years in the number of complaints relating to employment although they did not claim that the WR Act has contributed to this increase.[37]

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34 See Submission No. 496, Dr Barbara Pocock, vol. 24, p. 6194, and Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p. 5800

35 Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p. 5810

36 Submission No. 497, New South Wales Minerals Council, vol. 24, pp. 6364-6

37 Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p. 5881

2.47 The WR Act requires the AIRC to prevent and eliminate discrimination in the performance of its award making and award simplification functions and to refuse to certify an agreement if it is discriminatory on any of the specified grounds. Similarly AWAs must contain anti-discrimination provisions. The Department's submission indicates that these provisions seem to be working effectively with few, if any, examples where the AIRC has been required to take remedial action to ensure that awards or agreements do not contain provisions that discriminate on the specified grounds.[38]

2.48 The Department also notes that the provisions under the Sex Discrimination Act and the WR Act which allow the Sex Discrimination Commissioner to refer discriminatory awards or agreements to the AIRC have so far not been used. According to the Department one explanation for this is that the requirements of the Commission have ensured that few, if any, awards or agreements contain discriminatory provisions.[39] The Department also indicated a range of agencies including themselves, the OEA, the HREOC, the Affirmative Action Agency and State and territory labour and equal opportunity agencies undertake activities to raise the awareness of both employers and employees of anti-discrimination issues.[40]

2.49 Allegations about access to parental leave and discrimination on the basis of pregnancy were also bought to the Committee's attention. The submission from HREOC, and evidence given by the Sex Discrimination Commissioner at the Sydney hearing on 26 October, made reference to the report of the National Pregnancy and Work inquiry, *Pregnant and Productive*.[41]

Assisting in giving affect to Australia's international obligations in relation to labour standards

2.50 The Committee received written submissions and heard oral evidence from a number of witnesses who argued that some provisions of the *Workplace Relations Act 1996* breach Australia's international obligations with regard to a number of International Labour Organisation Conventions to which Australia is a signatory. In particular they point to the Committee of Experts report which highlights the concerns of the ILO in relation to the changes to Australia's industrial relations laws that were introduced in 1996, particularly relating to freedom of association and protection of the right to organise and the right to bargain collectively.

2.51 The International Centre for Trade Union Rights (ICTUR) argued that Australia plays an important part in the community of nations and is highly respected

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38 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, pp. 2163, 2166

39 *ibid*., p. 2169

40 *ibid*., pp. 2169-71

41 *Pregnant and Productive: it's a right not a privilege to work while pregnant*, Human Rights and Equal Opportunity Commission, 1999

internationally and for these reasons it is important that Australia demonstrates leadership in the observance and application of international human rights instruments.[42]

2.52 The majority of the Committee understands the concern expressed in terms of Australia's compliance with ILO conventions but notes that the ILO has not made a final judgement on whether Australia's industrial relations legislation is in breach of any convention. The Department of Employment, Workplace Relations and Small Business informed the Committee at its public hearing in Canberra on 1 October that while the ILO had made an observation and expressed concerns, dialogue between the Government and the ILO is continuing.[43]

2.53 A majority of the Committee considers that it is inappropriate to comment on this matter until discussions between Australia and the ILO have been finalised.

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42 Evidence, Mr Mordy Bromberg, Melbourne, 8 October 1999, p. 206

43 Evidence, Mr Barry Leahy, Canberra, 1 October 1999, p. 5