

CHAPTER 11

SCHEDULE 13 – RIGHT OF ENTRY

11.1 The Chapter examines the Bill's proposed amendments to the right of entry provisions of the WR Act. The proposed changes attracted attention from many witnesses, particularly unions.

Outline of proposed amendments

11.2 This Schedule introduces new requirements for entry to places of employment by union officials, consistent with the principal that unions have a role in representing employees, but which does not extend to allowing interference with the operation of businesses.

11.3 Currently, a holder or a permit under the WR Act is authorised to enter premises, on 24 hours notice, in order to hold discussions with union members, or employees who are eligible to be members. Visits may only take place during meal breaks or other breaks.

11.4 Under the proposed amendments, a union official may enter a workplace only upon written invitation from an employee who is a union member. Provision is now made to ensure the confidentiality of the employee issuing the invitation. The Commission has slightly increased powers to revoke a permit given to a union official if there is evidence that the powers of entry are being abused.

Abuse of right of entry provisions

Evidence

11.5 In support of these amendments the Master Builders' Association of Western Australia (MBAWA) supplied written evidence that on occasions the Construction, Forestry, Mining and Energy Union had advised employers of their intention to send up to ten named union officials to building construction sites, in their view, for the purposes of intimidating builders and their employees and sub-contractors. The MBAWA reported that six union officials who had forced their way onto a building site for the purpose of holding a meeting during working hours had been charged with trespass.¹

11.6 Matters outlined in the submission of the MBAWA were raised with the organisation by members of the Committee when the MBAWA appeared at the hearings in Perth. The MBAWA told the Committee that circumstances occasionally arose when police had to be called to building sites to deal with union officials who abused their right of entry; that the matter could not usually be resolved by any

1 Submission No. 470, Master Builders' Association of Western Australia, vol. 22, p. 5770

approach to the Industrial Commission because of unacceptable time delays. Recourse to civil law was necessary in order to dispel the heat from confrontations.²

11.7 Since the commencement of the WR Act the Office of the Employment Advocate has received 55 complaints and inquiries in relation to right of entry provisions. All the complaints were from employers. The overwhelming majority of complaints were resolved without recourse to legal action.³ Although only one case has proceeded to court, the Department's submission indicates that the problem of abuse of entry permits is probably worse than collected data indicates.⁴ Anecdotal evidence from the Office of the Employment Advocate suggests that some union officials are entering building sites on 'fishing expeditions'.⁵

11.8 Union opposition to the amended provisions of the Act is based on two major premises: that employees may not understand awards and conditions sufficiently well to know when to use their rights to call in a union official; and that there is insufficient enforced compliance of workers' rights in the absence of union involvement.

11.9 The Shop Distributive and Allied Employees Union argues in its submission that while the current law at least ensures that right of entry for the purpose of having discussions with employees is conducted in a civil and reasonable manner, the proposed amendments will have the effect of significantly restricting right of entry because of the written invitation provision. The SDA considers this to be a potential invitation for management intimidation as employers will know that one of their employees has a grievance. A union visit may be seen a threatening act rather than a routine and acceptable tradition in the Australian workplace.⁶

11.10 Another submission claimed that the proposal to require a written invitation was particularly unfair to casual, part-time, young, female and NESB workers.

11.11 Some witnesses criticised the amendment requiring that meetings be held in places designated by the management suggesting that such venues may not offer sufficient privacy and may be under the surveillance of employers. The International Centre for Trade Union Rights (ICTUR) has submitted that the ILO has recognised that access to the workplace must involve 'due respect for the rights and property of management', but that an element of balance is required. The ICTUR argued that the provisions of this Bill are unbalanced, being excessively geared in favour of employers and occupiers.⁷

2 Evidence, Mr Kim Richardson, Perth, 25 October 1999, p. 295

3 Submission No. 328, Office of the Employment Advocate, vol. 10, pp. 2029-2030

4 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2149-50

5 *ibid.*

6 Submission No. 414, Shop, Distributive and Allied Employees Union, vol. 17, p. 3683-5

7 Submission No. 460, International Centre for Trade Union Rights, vol. 22, p. 5572

11.12 Several case studies alleging intimidation were cited in evidence presented in a number of submissions. The Committee majority, however, notes that unscrupulous, intimidatory and illegal practices may be found on both sides of the workplace divide.

11.13 A majority of the Committee further notes that the submission from the Australian Chamber of Commerce and Industry advocated more stringent conditions on right of entry than are provided for in this Bill, including a restriction on the number of visits that can be made to a work site and safeguards against the improper use of invitations to organisations.⁸ The Committee majority believes that there are adequate safeguards for employer rights in this Schedule.

Recommendation

11.14 A majority of the Committee **recommends** the provisions of Schedule 13 be enacted.

8 Submission No. 399, Australian Chamber of Commerce and Industry, vol. 15, p. 3371

