1. INTRODUCTION:

1.1 Overview of Submission

This submission, prepared for the *Review of the Industrial Relations System in South Australia* is made by the South Australian United Trades and Labor Council (UTLC). The UTLC represents the interests of over 100,000 South Australian workers via affiliated unions.

The submission is based on the principle of achieving fairer and safe work for all South Australian workers. The UTLC believes that fair and just industrial outcomes for South Australians can be best achieved within a cooperative IR system that acknowledges the benefits of collective participation of working people through their union. In that regard, the UTLC agrees with statements made in the 2002 ALP election platform on industrial relations. In particular,

- "trade unions…have a legitimate role in the industrial relations arena" and

- 'the statewide industrial relations environment in South Australia should be based on cooperation and consultation between unions, employees, and employers and supported by a legislative framework that protects the rights of all parties. A cooperative, democratic and participatory approach to industrial relations will achieve the optimal outcome for workers, employers, and the community as a whole.' (ALP Election Policy 2002)

The UTLC submits that a review of the industrial relations system should acknowledge the current difficulties for labour market participants in South Australia and aim to design a system that can re-balance the interests of market power and the 'social good' and thus achieve fairer outcomes for workers. The UTLC determines these aims are best achieved by constructing industrial legislation on broad Objects that acknowledge the importance of cooperation and social justice and enable the making of collective Awards and Agreements to provide for terms and conditions of work. In addition, legislation should be written to clearly define the terms: 'employee', 'employer' and 'casual work' in the context of current labour market conditions. A revised system should provide basic minimum conditions of work and pay rates for all workers and facilitate access and equity to tribunal services for all South Australian workers.

In addition, the Council proposes that the Act covering industrial relations in South Australia, currently known as the "Industrial and Employee Relations Act 1994" be renamed the "South Australian Industrial Relations Act".

1.2 Context of Submission

Labour market conditions in South Australia have been significantly altered in recent years as a result of economic and political forces. The political impositions of the *Industrial and Employee Relations Act 1994* and subsequent workplace practices are a direct reflection of similar reforms introduced in other states of Australia and in the national arena. The situation is indicative of a strong global trend by western governments to use neo-liberal ideology to effect economic restructuring. In essence, the process has given management increased power at the workplace and served to maximize the profit making ability of business by minimising wages and working conditions for workers.

ACIRRT (1999:52,63) describes 'the level and pace of change (in Australia) during the 1980s and 1990s' as 'breathtaking'. The authors point out how 'the formal system of industrial relations has been dramatically reshaped'. The system 'is no less regulated than it was at the beginning of the century' but has 'moved from a system based on a high degree of external and centralised regulation to a system of internal and decentralised regulation.' Important external bodies such as the Industrial Relations Commission and unions have been deliberately marginalised by the political agenda.

Prior to this period, Australian workers' living standards had been protected for almost a century in an industrial relations system that acknowledged the intrinsic power imbalance between individual workers and employers; a system that validated unions and the use of collective bargaining. The uniquely Australian system was developed on principles of fairness and recognised that workers needed a decent 'living wage' to prevent social poverty. Centralised wage fixing and comparative wage justice were major features of the previous system. Industrial tribunals provided support to parties in dispute by way of conciliation and arbitration. Legislation supported an Award structure that embedded terms and conditions of employment at both state and federal levels. The system provided for flow-on provisions to address relativity and equity matters, thereby assisting workers with less industrial strength, employed in weaker areas of the economy.

The political agenda to shift the balance of industrial relations was activated against a background of global economic restructuring where progressive technologies made global transport and travel more timely and provided facilities to effect the speedy transfer of money around the world. The new economic and political environment gave rise to large transnational corporations with branches of their business spread over many continents. The main aim of large national and international corporations is to strategically locate (geographically) the various aspects of business in order to maximise profit potential. Hence, labour intensive processes are moved to or situated in countries or areas with lower wage rates and minimal industrial protection for workers.

One of the main features of a global economy driven by the interests of transnational business has been the loss of many manufacturing sector activities in so-called 'high-waged' western economies and a subsequent high rate of growth of employment in the service sectors. The dominance of the neo-liberal approach and change of sector dominance has produced major shifts in the amount and type of available work in developed nations. Australia, along with many other countries, has experienced high levels of long-term unemployment and an overall loss of full-time (mainly male) jobs. For those in employment, there is a greater threat of redundancy. The new jobs offered in the service sector are non-traditional, in the sense that they are insecure and do not provide benefits such as paid leave. The jobs are offered as irregular and short-term contracts and are largely part-time or casual hours. There is an increase in the number of people who are classed as self-employed, contractors, sub contractors and owner drivers. The participation rate for women in the workforce has risen with many of the precarious employment opportunities being filled by women. A pattern of outsourcing work and casualising employment has become a means to provide a source of 'just-in-time' labour that complements profit margins without accepting responsibility for workers' industrial rights.

Corporate globalisation has had similar effects in all western democracies. Government policies have assisted the profit-focused requirements of business. The overall detrimental outcomes for workers have also demonstrated identical trends. While some distinct historical arrangements within individual nations has influenced the progress of events, by and large the results of adopting economic rationalist ideals in industrial relations has occurred at the expense of the majority of workers in western societies.

In less developed nations, corporate globalisation has introduced versions of industrialisation that benefit business objectives but that actively resist industrial rights for workers. This segmentation of the global labour force is essential to maintain profit maximisation for International business and highlights the need for stronger and more coherent national and international labour standards. Strong international labour standards, for example, enforcement of International Labour Organisation Conventions can be a means for workers to organise across national boundaries and protect the interests of workers against exploitation.

The sea change in Australian industrial relations began in the late 1980s. From 1987, and the introduction of the structural efficiency principle, Australian wage increases became conditional on improved workplace efficiency instead of the principle of a fair and socially just wage. Industrial negotiations for improved wages and conditions were re-directed to an enterprise level and, far from delivering the promised 'benefits all round', the system precipitated impediments to flow-on provisions and the removal of wage relativities. The overall results have been

inequitable, particularly disadvantaging those classed as 'low-skilled' and those with less industrial strength. Further reform, introduced the concept of non-union workplace agreements in 1993, and then individual workplace agreements in 1996. These changes swung the balance of power further in favour of management in workplace negotiations. Similar reforms were adopted into state industrial legislation and were reinforced with varying degrees of vigour by individual states. Victoria and Western Australia took the most extreme approaches, but the basic ideology was incorporated into political agendas throughout Australia and featured anti-union rhetoric and anti-union laws. Current federal legislation in the form of the *Workplace Relations Act 1996,* has firmly entrenched and advanced the ideals of enterprise level industrial relations and individual contracts of employment.

The use of enterprise bargaining and individual contracts of employment have been over emphasised by business and some governments, and has contributed greatly to the increased number of low paid jobs and an overall decline in opportunities and conditions for workers. Australian workers surveyed in recent years complained of the stress created by trends in work intensification and the rapid spread of non-traditional forms of employment. Workers suffered from reduced job security, loss of standard hours of work, lack of paid leave provisions and felt continually threatened by the high levels of protracted unemployment in the community (ACTU 1999). The local workplace has been transformed by the dominance of a neo-liberal ideology within the context of globalisation and the majority of Australian workers have been losers in the process (ACIRRT 1999).

The combination of a shift in sector dominance and the changed essence of industrial relations in Australia has translated into fewer jobs and deteriorating conditions of work for Australians. Workers have been pressured to accept reduced conditions of work and lower reward for their labour. Workplace 'flexibility' was originally touted as good for workers and management but has proven to be one-sided, and only results in change to suit business. Workers are required to be 'flexible' with hours of work, work practices and conditions of work. This form of 'flexibility' has been deemed essential to enable business to become internationally competitive.

Under the current systems workers without Award protection or access to union assistance are left fully exposed to market forces. Those with high-level skills that are in demand in the market place have good leverage to negotiate wages and conditions for themselves, but those classed as low-skilled or isolated in small and very small workplaces are virtually dictated to by bosses. Even for some workers with adequate collective strength, enterprise level bargaining has proved to be less productive in terms of wages and conditions than previous industrial mechanisms. For example, in the traditional blue collar skilled areas where the core workforce has been devastated by the loss of manufacturing activities workers are also threatened in a never ending drive for increased efficiencies. Workers are pressured into

accepting redundancies, reduced wages and conditions to avoid being replaced by a casualised (labour hire) workforce. Overall, women have achieved less wage improvement than men and still struggle with the double bind of attempting to combine work and family responsibilities. Sectors of the economy where union density has been traditionally low or absent have also had less success in protecting workers wages and conditions under enterprise bargaining arrangements (ACIRRT 1999).

The ideological driven reforms have reduced funding and the powers invested in industrial tribunals. Conciliation and arbitration provisions have been reduced or eliminated but workers who resort to strike action to pursue claims in a bargaining period are held responsible for all the ills of the system. Anti-union laws prohibit collective support across enterprises and threaten huge fines for participants of 'illegal' strike action (ACIRRT 1999). Anti-union rhetoric is increasingly prevalent. Actions of federal industrial relations Ministers have clearly demonstrated the unbalanced approach of the Federal Government in industrial relations. As was witnessed in the 1998 Waterside dispute, and a recent strike at Walkers' in South Australia, the government openly (and covertly) provided encouragement and resources to employers who were prepared to take a hard-line stance or extreme action in support of individual work contracts and de unionising workplaces. While the written words in the federal *Workplace Relations Act* still state the principle of freedom of association for workers the Federal Government openly attacks and vilifies unions and the unionized workforce at every available opportunity.

At the same time as Australian workers have lost jobs, job security and valuable conditions of employment and gained only moderate wage increases, many corporate bodies have achieved serial record annual profits and CEOs have drawn very generous salary packages. Federal and state governments have spent tax payers' money on 'corporate welfare', enticing businesses to establish in particular locations but having no requirement in terms of mutual obligation on behalf of the businesses involved. To add to the list of evidence of injustice under the present system, thousands of Australian workers have lost paid leave and superannuation entitlements in recent years when companies have gone into liquidation and abdicated their responsibility to properly cater for worker entitlements.

Government support in Australia for increased management power at the workplace, and a decreased level of corporate responsibility to both workers and communities have negatively impacted on equity and fairness in the workplace and undermined the principles of social justice in Australian society. The elements of co-operation and fairness, previously apparent in Australian industrial relations systems have been considerably diluted by the political approach to recent reforms. The balance of fairness and the social good have become subservient to market power as governments have enforced models of industrial relations that have reduced collective bargaining practices and vilified unions.

As the President of the Australian Council of Trade Unions declared, 'the truth of the matter is that despite…years of unparalleled (economic) growth, Australia's working families have not had a fair share. This must set core objectives as we build the base of this century – a fair share for working Australians.'(AMWU 2000:33)

There is an obvious need to redress the balance in industrial relations at a local level in order to provide and protect jobs, wages and working conditions for all South Australians. The pendulum has swung too far away from the interests of workers. The environment has encouraged the prosperity of irresponsible and exploitative employers, at the expense of reasonable employers. It has had the effect of encouraging overly competitive practices that have disadvantaged responsible employers. The South Australian labour market is particularly vulnerable due to the effects of economic restructuring on manufacturing industries and is subject to the consequences of both state and federal industrial legislation.

A fair and equitable Industrial Relations system is an essential instrument to achieve social justice in the workplace and the community. Employers in South Australia who are fair and responsible to workers need an industrial relations system that runs smoothly and cooperatively rather than one driven by the desire to make a fast buck. Changes to state legislation and practices in industrial relations in South Australia can clearly assist in improving working life and social justice in South Australia for both employees and employers.

2. THE SOUTH AUSTRALIA CASE:

2.1 Nature of the South Australian Workforce

In a global context, South Australia is positioned as a small economy in a peripheral nation and historically the state's economy has been structured on agriculture and manufacturing. Over the past two decades the South Australian economy has been restructured to echo global and national trends.

Currently, South Australia is 7.8% of the Australian population and generates around 6.4% of the total national output (DETE 2002). The state's 'share of national economic output has fallen from 8.2%…since 1992/93. Over the last three years South Australia's growth rate has been around one-third that of the nation.' (Spoehr et al, 2002:1). Since 1990, South Australia has lost 28,000 jobs from the manufacturing workforce. However, SA's manufacturing sector still accounts for 9.3% of the nations manufacturing production and employs a relatively high proportion (9.3%) of the total manufacturing workers in the country. Manufactured goods constitute over two-thirds (71%) of the states total exports.

The total labour market in South Australia is relatively small. In May 2002, total employment in the state was 694,500. Just over two-thirds (68%) of jobs were full-time and the officially stated unemployment figure was 6.6% (DEFESSB 2002). In reality, there is a portion of unemployed people omitted from the commonly reported figures. This portion of the labour market is referred to as the 'hidden unemployed', and when the real unemployment rate is calculated by adjusting for the participation rate, the actual unemployment rate in SA is over 9%. 'The South Australian real rate is significantly higher than the national' level and is 'also significantly higher than other mainland states - Victoria (7.2%), Western Australia (7.7%) and New South Wales (7.2%)…The official unemployment rate is likely to average around 9.2% over the next 5 years, while the real rate of unemployment could be in excess of 15%.'(Spoehr et al, 2002:2-4).

In addition, some areas of the state are known as regional hotspots and have persistently high rates of unemployment (Table 1) and according to Spoehr et al, (2002), 'we are witnessing the creation of a spatially concentrated 'underclass' in South Australia.

Table 1: Regional Unemployment Hotspots

	Local Government Area	2000 rate (%)	**2001 rate %**
1	Elizabeth ©	22.1	**21.4**
2	Enfield © - B	20.1	**17.8**
3	Munno Para ©	13.6	**13.1**
4	Enfield © - A	12.4	**11.4**
5	Thebarton ©	12.6	**10.4**
6	Adelaide ©	8.5	**9.9**
7	Salisbury ©	10.1	**9.7**
8	Willunga ©	10.4	**9.4**
9	Port Adelaide	10.5	**9.1**
10	Noarlunga	10.2	**9.1**

Source: DEETYA Small Area Labour Markets (Spoehr et al, 2002)

Young people in South Australia face grim labour market prospects. The full-time youth unemployment rate is 29.6% (May 2002) and is the highest in the nation. This is 6.6% higher than the national average (DEFESSB 2002).

According to Spoehr et al, (2002:2), a recent sustained period of growth in the national and state economies (December 1993 to December 2001), resulted in employment growth in SA of 44,000 jobs, an increase of 6.5%. However, this growth was well below the national level of 17.7% and was largely composed of precarious, part-time and casual employment. Spoehr et al, claim that 'the most concerning feature of the South Australian labour market is the collapse of full-time employment growth. Full-time employment grew by just 1.6% (7,600 jobs)' in this state over the period December 1993 - December 2001, compared to national growth of 11.9%. Part-time employment grew in South Australia over the same period and was notably higher than that of full-time growth (36,000 jobs or 17.6%) in the state, but was still less than half that of the national level, where part-time employment grew by 36.2%. Spoehr et al, conclude 'these trends are of great concern as they translate into lower quality and lower paid jobs for South Australians.' The authors determine that the 'reliance on part-time and casual job growth will fuel population loss and deprive South Australia the skills, dynamism and purchasing power necessary for revitalisation.'

To add to the concerns of Spoehr et al, a recent report from the VET Strategy Branch of DETE (2002:2-3) revealed that South Australia has 'a distinctly lower portion of the labour force possessing post-school qualifications compared with the national average' (Table 2).

Table 2 : Labour Force Educational Attainment: South Australia and Australia, 2000

Educational Attainment	South Australia	Australia
	Per cent of Labour Force	Per cent of Labour Force
With post-school qualifications	45.6%	49.8%
Degree or higher	14.9%	18.5%
Diploma or Assoc. Diploma	8.2%	9.1%
Skilled Vocational	13.2%	13.4%
Basic Vocational	9.3%	8.8%
Without post-school qualifications	51.2%	47.3%
Still at school	3.1%	3.0%
TOTAL	100.0%	100.0%

Source: ABS Cat No 6227.0 and customised tables (DETE 2002)

In addition, some of the programs attempting to address skill gaps in the SA labour market are failing. While there has been an increase of 164.8% in the number of workers being trained under the umbrella of New Apprenticeships (a combination of traineeships and apprenticeships) over the past five years (March 1997 - March 2002) (DEESSB 2002). The non-completion rates for these forms of training have also been rising and have averaged at a very high level of 44% for traineeships, and a significant rate of 23-30% for apprenticeships (DETE 2002).

Most South Australian workers received significantly smaller wage increases in the twelve months to June 2001 than most of their counterparts around the country. Over three-quarters (78.6%) of South Australian workers are employed in the private sector and almost half (46%) of them are in small business enterprises (Austats 2002(a)). The ABS reported that Private sector wages in SA (calculated on hourly rates of pay, and excluding bonuses) rose by 3% from June 2000-June 2001 compared to a 3.7% rise at the national level. Public sector workers in SA (21.4% of the workforce) achieved increases at the same level as the national average (3.7%)(Austats 2002 (a) and (b)).

The service industry sector accounts for the giant share (59%) of South Australian production and the majority (71.7%) of employment. Manufacturing industries currently produce 15% of the total output and provide for 13.3% of employment. The retail trade is the largest single employer in the state, accounting for 15.3% of employment. Manufacturing is next with 13.3%. Health and Community services come in third with 10.8% of the total employment. The fastest growing industries, in output terms over the past year have been Finance and Insurance (17.5%) and Accommodation, Cafes and Restaurants (15.2%). The Accommodation, Cafes and

Restaurants industry has experienced a high average annual growth rate of 8.6% for the past ten years (ABS 2002(a) : DIT 2002: DETE 2002).

Growth expectations, 'in the medium term, estimated by the National Institute of Economic and Industry Research for the Centre for Labour Research indicate net employment growth of just 12,500 jobs, between 2000 and 2006. This growth is expected to be in -

- Accommodation, Cafes and Restaurants - 23.5%
- Business services - 15.3%
- Health and Community Services - 10.2%
- Communications - 7.8%
- Retail - 6.4%
- Recreation and Personal Services - 5.4%
- Transport - 3.5%

(Spoehr et al, 2002:4)

There is no suggestion at this time of any coherent industry plan to redress the current sector dominance in South Australia and explore the possibilities for workers and the states economy by developing wealth creating manufacturing activities.

2.2 Current Position of South Australian Workers

Together with the high levels of unemployment in South Australia, the latest statistics available (August 2001) determined that 172,900 South Australians were employed on a casual basis representing almost a third (30.9%) of the current workforce. These figures place us as the second most casualised labour market in the country.

Given the fact that the service industry sector tends to employ a large proportion of its workforce on a part-time and casual basis, the notable dominance of the service sector in SA translates into a huge potential for employment growth to be in precarious employment. Jobs growth in South Australia over recent years has been overwhelmingly part-time and casual, and current projections are 'for more of the same' (Spoehr et al, 2002) leaving even more South Australian workers vulnerable to the disadvantages of casual work under the current industrial relations systems.

In addition, casual workers are offered less on-the-job training opportunities than full-time workers and are therefore less able to improve their skill levels without personal expense. Fees for vocational training, undertaken by TAFE and private providers, are now structured so that students have to pay significantly higher tuition fees. With current costs for courses, students' fees can be over a thousand dollars a year for a full-time course, and there is no provision for fee deferment as there is for university study. While many courses are offered after 5pm to

encourage the participation of working people, the up front costs are prohibitive for many.

Currently, South Australia compares favourably with national achievement in post-school qualification in the vocational qualifications groups (Table 2). Vocational education used to be an affordable means for low paid workers to up-skill and may explain South Australia's better comparable achievement in vocational education qualifications than in other areas. With the higher costs for self-funded training the comparative situation in vocational qualifications may fall. At best, with the current cost of vocational education, low skilled and low paid South Australians are further disadvantaged in the labour market.

It is obvious from the current predicament of the SA labour market that the Review must focus on redressing the imbalance of power in industrial relations in South Australia and thus assist fairer outcomes and safe work for the state's citizens. As is evidenced by the statistical profile of the labour market, workers in this state appear to be less skilled, lower paid and more vulnerable to market failures when compared to the national situation. The unemployed, young people and the thousands of people in precarious employment are particularly vulnerable and by all accounts the numbers of South Australians in those positions will increase unless access to decent wages and fairer, secure work is made available.

Content of the Submission

The UTLC Submission will address the following issues in relation to the Discussion Paper and the Terms of Reference -

3.1 Options to Ensure Fairer Industrial Outcomes

3.1.1 Award safety net - non award employees
3.1.2 Casual employees
3.1.3 Equity considerations
3.1.4 Representation
3.1.5 Vocational education and training employment arrangements

3.2 Improvements to Awards and Collective Agreement Making Opportunities

3.2.1 Awards
3.2.2 Agreements
3.2.3 Worker Entitlements
3.2.4 Commission powers in agreement making

3.3 Alterations to the Industrial Relations Court and Commission

3.4 Unfair Dismissal

3.5 Unfair Contracts

3.6 Improving Compliance with an Understanding of Industrial Issues

3.6.1 Inspectorate
3.6.2 Penalties
3.6.3 Employee Ombudsman

3.7 The State Relationship to Federal System

3.8 International Labour Standards

3.9 Fair Employment Tribunal

3. SPECIFIC ISSUES FOR SUBMISSION:

3.1 Options to Ensure Fairer Industrial Outcomes

3.1.1 Award safety net - non award employees

Recommendations:

(a) That the Objects of the Act be amended to include the provision of social justice, the raising of living standards and the rights of employees (as per the Queensland Industrial Relations Act 1999).

(b) That the definitions of 'employees' and 'employers' in the Act be amended to address the contemporary changes in the South Australian labour market. In particular, the problems relating to casual workers, contract workers, labour hire workers, sub contractors and owner drivers need to be considered.

(c) That the Act be amended to introduce provisions into legislation to protect the rights of outworkers and home workers. In particular, outworkers need to be protected by regulation of the industry (as per NSW Industrial Relations (Ethical Clothing Trades) Bill 2001 and per recommendations from TCFU). Homeworkers should be included in award coverage for the industries they reflect.

(d) *That the Act be amended to allow for the protection and portability of accrued employment entitlements and service in the event of employer insolvency or where work of one company is transferred or assigned to another company.*

The environment of industrial relations Australia wide and in South Australia has altered significantly over recent years. As the ALP statements on industrial relations claim, 'continuing federal legislative reforms deregulating the labour market and changes to the attitude of the state government as an employer has negatively and significantly changed the environment'. The environment is now more divisive and the ideals of competition and individuality are reinforced in place of cooperation and collectivity. Many Australian governments over recent decades have not taken a balanced and fair approach in industrial relations.

There has been considerable strong support for business agendas and an increased expectation that workers should absorb an inordinate proportion of the economic burden. The changed nature of employment and work has impacted negatively on individuals and communities. Workers' have struggled under endless restructuring

processes, increasing rates of redundancy and the loss of entitlements when firms go into liquidation. There have been many burdens for workers associated with prolific rates of precarious forms of employment and the constant battle to justify moderate wage increases. Collectivity and union participation has been actively discouraged, anti-union rhetoric has been rife and many industrial reforms have included anti-union laws. While it is acknowledged that the industrial relations system has to be responsive to modern economic realities and emerging industries, a civilised society must maintain a balance between market needs and the social good to ensure social justice and decent living standards in the community. The current arrangements are clearly unbalanced.

The UTLC agrees with the ALP statement "that the state wide industrial relations environment in South Australia should be based on cooperation and consultation between unions, employees, and employers and supported by a legislative framework that protects the rights of all parties. A cooperative, democratic and participatory approach to industrial relations will achieve the optimal outcome for workers, employers and the community as a whole while advancing the economic development of the state.' Hence these principles should be reflected in the Objects of the Act.

New forms of employment

One of the most significant outcomes of economic restructuring in Australia and particularly in South Australia has been the explosion of non-traditional forms of employment. Australia has one of the highest rates of casualisation amongst OECD countries and South Australia has the second highest national level of casualisation, currently at 30.6%. This rate has increased almost 10% in a decade and predictions are for 'more of the same'.

In the environment of corporate globalisation, business has actively sought to limit expenditure on labour as a means to maximise profit potential. Much of the so-called 'deregulation' of the labour market has been undertaken to assist that process. But the consequences for workers are now overwhelming. Many workers in SA are being exploited by not being correctly classified under current definitions. Exploitation is apparent in newly developed methods for employing workers. For example, those in Labour Hire firms where workers are engaged by an agency and placed with host companies who are 'clients' of the agency. In such circumstances employer-employee relationships can be deliberately blurred and many worker entitlements avoided by the confusion over which is the employer. In some cases the hire companies wrongly attempt to assert that the workers are self-employed. Confusion over employment relationships can mean firms are able to avoid WorkCover, unfair dismissal and other employer responsibilities.

For example the case of Slater vs WorkCover/Allianz Australia (Chiquita Brands Adelaide) CGU & Country Metropolitan Agency Contracting Services Pty Ltd (2002) SA WCT 27.

Similarly, workers who are employed as contractors, sub contractors or owner drivers can be in a situation where the actual requirements of the job do not fit the current definitions for those classifications and the subsequent conflict between the required role and the classification leaves workers vulnerable to lost entitlements.

The employer strategy to maximise the use of various forms of casual labour at the workplace has become an accepted practice in corporate globalisation. The position is explained as the logical means to make enterprises more competitive. Arguments in favour of 'flexiblity' have been talked-up and couched as essential by neo-liberal supporters. But this construction of the meaning of 'flexibility' and the subsequent use of excessive casualisation is ultimately biased and has been strategically designed to achieve the best profit outcomes for business.

The reality is that in the current environment of industrial relations, workers are employed as 'casuals' to support the maximum profit potential for business and the system permits this practice. Workers are being exploited if they are working regular hours each week, on rosters or on contracts on an ongoing basis and still being classified as casual to avoid the payment of leave and other entitlements that would apply if workers were hired correctly, as permanent employees, under current definitions.

This situation is clearly damaging to workers and is unfair and inequitable and demonstrates the lack of balance in the current IR systems. The consequences on individual workers and the community are becoming all too apparent and the definitions in the Act should be amended to address the vulnerability of this rapidly growing number of South Australian workers.

- South Australia has the second highest rate of casualisation in the nation.
- Jobs growth in SA for the past decade has been ten times higher for part-time work than full-time work and most part-time work is casual.
- Slow job growth projections up to 2006 are predicted for SA. The jobs are expected to come mainly from growth in the service sector and thus are more likely to be part-time and casual.

Outworkers and Homeworkers

Outworkers are a distinct group of very vulnerable workers. They are the most exploited workers in our society. The engagement of outworkers in Australia has increased in the past decade, brought about by a large pool of available labour and the strategic decisions by some manufacturers to be more competitive in the international trading environment (ie secure bigger profit margins).

- There is estimated to be more than 300,000 outworkers in Australia. These workers are very isolated from the general workforce because they overwhelmingly work in their own homes.

- Most are migrant women from non-English speaking backgrounds and many do not speak English.

- These workers are often paid as little as $1- $2 an hour and when they have work they often work for 12 - 18 hours a day, seven days a week to meet deadlines imposed by retailers.
- Outworkers are more likely to risk workplace injury because of excessive workloads executed in poor working.
- The imposition of tight deadlines may also involve the necessity to use the labour of children or whole families to be able to meet the demands of the employer.

> For a century this sort of work has been publicly condemned by civilised societies around the world and likened to a form of slavery, but still it flourishes in developed economies to provide bigger profit margins for business.
>
> Andrew Ross (1997:10) describes the situation of outwork in the contemporary textile and apparel industries as 'a showcase of horrors for the labour abuses sanctioned by the global free trade economy, where child labour, wage slavery, and employer cruelty are legion. Conditions reminiscent of the heyday of the sweatshop at the turn of the (last) century are being brought to light.'

Outworkers in South Australia are not only involved in the clothing trade. The practice of employing outworkers to aid production processes is also apparent in assembling electrical components and chopping vegetables.

The combination of circumstances that result in the effective exploitation of this group of workers are complex and cannot be addressed by simple solutions such as 'deeming' them as employees or providing award coverage. The Textile, Clothing

and Footwear Union (TCFU) and various community groups around Australia and internationally have identified the major discerning issues for outworkers and have lobbied governments to provide protective solutions for them. The New South Wales (NSW), Victorian and Queensland governments are all pursuing action to regulate the industry in order to protect these workers. The NSW government has introduced legislation in the Industrial Relations (Ethical Clothing Trades) Act 2001. The Queensland government has a Code of Practice and the Victorian government undertook a 'strategic audit' of the industry in 2000.

The UTLC acknowledges the grossly unfair working conditions facing outworkers and submits that appropriate research and action be pursued in line with recommendations from the TCFU and other informed community organisations in order for South Australia to purse regulation of the industry.

The UTLC endorses the recommendations in the TCFU submission to this Review and draws attention to the recent legislation in NSW that regulates the industry, the *Industrial Relations (Ethical Clothing Trades) Act 2001* and the Queensland *Code of Practice*.

Protection from Employer Insolvency

There have been many examples around Australia in recent times of workers protesting their lost entitlements after companies have gone into liquidation. Media headlines have captured well the anger and despair of redundant workers that have no prospect of recovering what is owed to them. Unions and supporters in South Australia and around the nation have protested the unfairness of a system that can leave workers in such a devastating position. Workers are now meeting strong resistance (Walkers strike 2002) in attempts to protect themselves through Enterprise Agreements and provide for industry Trust funds to ensure their money is safe. Once again the federal Government has supported the bosses and spoken out against worker action.

Examples of business collapse in SA in recent years

- Ansett
- Perry Engineering
- SA Ship Building Construction
- Steel Tank and Pipe SA

In the example of Steel Tank and Pipe SA, including SA workers were owed a total of $3.5 million. Initially, all entitlements were lost and interstate workers in NSW, WA and Victoria took industrial action for three weeks in support of SA workers. As a result, liquidators acting on behalf of the National Australia Bank were replaced by a voluntary administrator and as a result workers received their entitlements.

The need to provide protection for workers' financial entitlements in the event of business failure is obvious. The federal government has been slow to react and reluctant to act in the interests of workers. Their suggestion of only limited (capped) pay outs of entitlements in a national scheme is totally inadequate and unfair. It is a fundamental obligation for employers to pay employee entitlements in full. The money owed to workers by way of wages, accrued annual leave, long service leave, superannuation and other sundry claims should be safeguarded on an ongoing basis to ensure payment to workers if the company becomes insolvent.

The federal government needs to conduct the research to determine the extent of the problem and effects on Australian workers. Unions estimate that a staggering $400 million is lost to Australian workers each year when companies go to the wall.

Recent action by the Queensland government has sought to redress this inequity for workers in Queensland. That government has called on the federal Government 'to cease its attempts to cloud the issue and to block employee protection measures'. And goes as far as to suggest the then Minister was disingenuous 'by the attempt to link implementation of any scheme to provide limited protection of employees' entitlements with passage of the deeply flawed Workplace Relations Legislation Amendment Bill 1999.'

The UTLC submits that workers have waited long enough and provision should be made in South Australia to enable protective provisions to be included in awards and agreements.

3.1.2 Casual Employees

Recommendations:

a) *That increased job security should be included as one of the objects of the state IR Act.*

b) *That the definitions of employer and employee be broadened to take into consideration the changed nature of the SA workforce. This should incorporate casual workers, outsourcing, labour hire and sub contracting arrangements.*

c) *That there be a SA study of the use of labour hire in the public and private sector with the view to limiting the use of labour hire and increasing the availability of on-going and permanent work.*

In a national survey of AMWU members in 2000, it was demonstrated that job insecurity was the leading concern. These results have been reflected by responses from other union members and in ACTU surveys since that time. There is an abundance of evidence to show that the new workplaces are very competitive, jobs are precious and unemployment is a real prospect. Most workers know, currently there are, "seven unemployed for every job vacancy". This creates uncertainty, and anxiety not only in the workplace but in the family and wider community.

The use of casual employment has grown enormously nationally and at the state level over the last ten years. The definition of casual worker in the traditional sense was a truly casual position - one which had a salary loading, was short term in nature and was used for temporary work or short term vacancies.

The new breed of casual workers have replaced permanent secure work, often working for many years in the same positions with no guarantee of on-going employment. This has given rise to the description of many workers as "permanent casuals" which has led to a serious and general reduction in workers rights.

Most recently the burgeoning of the use of labour hire companies has made the situation far more precarious. This arrangement has meant there is a real confusion as to who the employer is, and who is responsible for the employee's conditions and future. In this way employers have been able to capture a disposable and flexible workforce without dealing with matters of industrial rights and responsibilities.

Workers who are casuals have even less security than so-called permanents and this makes them the most disadvantaged in the labour force. They can not make commitments to their future, they work extended hours, are fearful to reject extra overtime due to not knowing where their next job is coming from. The family commitment of getting a home loan is severely curtailed, financial pressures and along with work pressures claim their toll on family relationships.

A 35 year old skilled fitter in South Australia and family are currently experiencing the ramifications of what it means to be seeking work today. This worker has children, enjoyed leisure pursuits such as playing a musical instrument and sport.

> My name is Mick Palmer and I have worked in the casual/labour hire industry for the past 5 years. In that time I have applied for countless permanent jobs, trying to gain some sort of consistency/job security in my life. Because of the lack of success/permanent jobs out there, I have encountered a very unpredictable financial journey. Paying bills on time is almost non-existent, and planning holidays things such as a family holiday is very difficult. The only thing that is consistent in my life is the strain on family relationships. I am either looking for work or working so many long hours that there is very little quality time to spend with my family. Simple tasks such as checking out the mail box or coming home after seeking employment cause a lot of stress and anxiety to me, not knowing if my wife is going to react to more bills and having to tell her that I couldn't find a job. I have not handled this sort of lifestyle very well in the past and have often got very angry and depressed. These reactions only make things worse and I hope one day to be able to find a job that I can rely on to provide a stable life for me and my family.
>
> (Mick Palmer 2002)

The widespread use of casuals has seen a rise in workers competing against each other and workers doing the same job for different wage rates. Casuals hope to be made permanent and the permanents frightful of losing their job if they do not comply with what the boss wants.

Their compliance undermines union activity and allows employers to seek agreements that seek to maximise flexibility and the capacity to hire and fire. Workers feel there is an expectation that they must work overtime when required and at short notice and remain on the job until it is finished in some cases without payment.

Casuals are used extensively in the Labour Hire Industry. In a recent AIG survey it was found that 97% of labour hire workers were casuals with many being paid below site rates, below industry standards and in some cases below award base rates. A feature of the labour hire firm is to use low wages as their major incentive to supply labour to a client.

The control bias in favor of employers is supported by the lack of a contractual relationship between client, host firms and the worker. This bias can be seen in the critical area of OH&S. Some labour hire firms assume some of the responsibility by checking out the safety regime on the client site, others are in neglect of even this. In some cases it is agued by authorities (NSW WorkCover) that OH&S is the responsibility of the host employer. This is a clear problem for a casual worker who has no redress of a breach to OH&S, and is also problematic for ascertaining liability where there has been a breach of regulations.

The use of casual labour hire workers by employers is largely motivated by flexibility especially in the risk management area. Without exposing themselves to unfair dismissals claims they can "hire and fire" if they do not like a worker they simply ring the labour hire firm for a replacement, or they contact another labour firm for a replacement. Other advantages to employers include, capacity outsourcing, specialised sub-contracting, cost reduction and importantly contracting out IR problems. It is always useful for an employer to threaten core workers with further outsourcing of their work to a labour hire firm. It is of little wonder employers prefer casual workers with either very little award provisions or in some cases none at all.

A witness at a recent Senate inquiry into a Workplace Relations Amendment Bill gave evidence explaining a casual worker's disadvantage in the Australian Labour Market:

> Ms Maloney was employed by ADECCO, a labour hire firm, and worked at the GUD factory at Sunshine in Victoria. In giving evidence she gave an account of being dismissed for giving a fellow worker a T-shirt (she was accused of selling T-shirts at work, but the accusation was false and the union representatives on her behalf won her job back). When asked how she felt about the incident, Ms Maloney said, "*its not fair being a casual that's how you are treated, you get used to it*" (transcript of proceedings p 595)

A serious consequence to casual workers and indeed the national economy is the lack of skill training afforded casuals. The serious depletion of skills in areas such as maintenance is being caused by the loss of skilled and trained permanent workers laid off and replaced by casuals. Short term efficiency gains for companies are clearly putting the national interests at risk as skilled workers are encouraged to take redundancy packages and replaced by casuals. The casual worker is being forced to shoulder paying and seeking the training they need, if they are to remain in the labour market. Therefore the training component with the explosion of casualisation is both disadvantageous to workers and the national interests.

Casual work is not evenly distributed amongst the working population. Women and young people are much more likely to be casual workers. Stresses of casual work on the fabric of family life can be seen in the precarious nature of "Australian Women's Place" in the labour market. In (ABS, Cat. no. 4422.0)

- Women make up 61% of all casual employees
- 32% have children under the age of 14 years old
- Within the above group 57% of mothers worked part-time and 35% casual
- Fathers worked 5% part-time and 11% casual

Women do four times the amount of housework as men, three times as much in cooking meals for the family and eight times as much laundry. This is not withstanding the role of primary carers for young children. In addition women are by far the lowest paid workers in the community. The combination of low pay and job insecurity for women workers places undue burden and stress on family life.

The percentage of young casual workers is 44.5% (ABS 1999). Nearly one in two young people are employed casually, twice that of the rest of the labour force. Because of this, young workers are particularly vulnerable to exploitation.

In South Australia those hit hardest by unemployment are in traditionally working class areas. The Northern, Western and Southern districts of Metro Adelaide average employment rates are 11.9%. However in the City of Elizabeth present unemployment rates are 22.1%.

South Australia is second only to Queensland as the most casualised State labour market. When it is considered that 66% of job increases have been casual and 89% of those jobs lasted only 12 months, it is areas such as Elizabeth that we see people locked into a cycle of rotating between short term casual work and unemployment.

What this makes clear, particularly in South Australia, is that the argument that casual work leads to full-time employment is false. What is also clear is that unemployment discriminates on the basis of where you live, how old you are, your gender, and profoundly on the basis of education and skill.

In the Federal seat of Bonython that covers the Cities of Elizabeth and Salisbury the nexus between low wages, unemployment and poor education and training is clearly seen. (1996 Census results)

• Labour force of	51,991
• 43,588 employed	8,403 unemployed
• Tertiary qualifications	5,163 or 5.7%
• Trade qualifications	12,083 or 13.3%
• Those with no qualifications	64, 754 or 71%
• The weekly family income under $500	13,063 or 42.8%
• Weekly family income over $1,500	1,074 or 3.5%

Casual workers are now a permanent aspect of the SA workforce and their access to the industrial relations system needs to be of equal status with permanent workers. Recent full bench decisions of the federal and the state commission in relation to the AMWU (federal) and the ASU (state) have identified clear issues of which the SA IR

system should take heed. In addition the recent Queensland Commission decision to increase the casual loading to 25% is a significant step forward.

These decisions are an acknowledgement that casual work should not be used as a cheaper replacement for permanent work, and that the class of workers used as "permanent casuals" was unacceptable. Workers should have the right to become permanent if the job is on-going and they have been in it for a period of time.

If the state industrial system is to promote fairness for all South Australians then the Objects of the Act need to incorporate employment security as per the Queensland IR Act. This will ensure that unions can more effectively argue and secure improvements for casual workers in awards and agreements. This would include mechanisms to ensure that casual work is not being used as a cheaper replacement for more secure work, access for casual workers to permanent work as well as benefits and entitlements while they are working as casual employees.

The definition of an employee and employer under the state Act is currently a major problem for SA casual workers generally but especially for workers who are employed by labour hire companies. Employers have been able to avoid responsibility for employees by shifting parts of their operations to labour hire companies or by casualising the workforce. The current definitions of the state act allow these employers to argue that they are not the employer of certain employees, thus avoiding any responsibility for them, their industrial conditions or their safety.

The state act also needs to better reflect the current reality of the SA workforce - that it is highly casualised and incorporates labour hire companies as well as providing mechanisms to increase job security as a major objective of the SA industrial relations system.

The high level of job insecurity in South Australia has a detrimental effect on the state and on the confidence and engagement of the workforce. It negatively impacts on families and provides little future for our young people.

It is also well documented that insecure employment leads to skill shortages, movement of workers to other states and countries where there is more secure employment, high workforce turnover and less loyal employees.

If we are to develop as a state, we need better job security to develop and keep skilled workers and create a climate where employees see a future for themselves and their children in the state and are willing to commit to its development.

What we need is an IR system which seeks to create more job security but is also able to properly address the industrial issues of precariously employed workers.

3.1.3 Equity Considerations

Recommendations:

(a) That the Objects of the Act be amended to include:

- *the prevention and elimination of discrimination,*
- *the provision of equal pay for women and men for work of equal or comparable value,*
- *to allow for balancing work and family life,*
- *to acknowledge and accommodate differences between Indigenous culture and the IR systems.*

(b) That the Act be amended to address the particular needs of:

- *Young workers; including the abolition of junior rates of pay and ensuring equal pay for work of equal value for young workers.*
- *Non-English speaking workers: including that industrial relations information and information about workers rights and responsibilities are available in a range of languages, and ensuring NESB workers have access to English language lessons as part of awards and agreements and they be linked to general skill development.*
- *Workers with disabilities: to allow for special measures to encourage the employment of people with disabilities under the Act such as the ability to vary award wages and conditions that take into account disability benefits, capacity of workers and the nature of the disability.*
- *Women: in regard to pay equity, include principles under the Act that provide for the Commission to consider applications to investigate inequitable arrangements between classes of occupation in relation to pay equity (as per recent inquiries in NSW and Queensland).*
- *Rural and regional workers: including the need to acknowledge and address the disadvantage of distance from the CDA in relation to time limits on applications and the institution of various procedures under the Act and access to relevant information, education and advocacy services.*

<u>The Prevention and Elimination of Discrimination</u>

Discrimination against any Australian on the basis of their age, gender, sexuality, race, physical or intellectual impairment, marital status, pregnancy, religion, political belief, union membership or union activity is illegal under federal and state law. The importance of adherence to both the spirit and practice of the law is essential to the success of a balanced and effective industrial relations system. Therefore the Objects of the Act should be amended to make a strong and precise statement

concerning the prevention and elimination of discrimination in employment (see Objects of Queensland Act 1999), thus ensuring that the legal requirements are reflected in all aspects of the IR system in SA.

The Provision of Equal Pay for Women and Men for Work of Equal or Comparable Value

Despite the supposed introduction of 'equal pay for women' over thirty years ago, the reality is that only those women who worked in jobs that were the same classification as men under the same award were able to benefit directly from the change. The majority of women's work, particularly that classified by the patriarchal systems of industrial relations as 'low-skilled', has continued to be undervalued in the paid workforce and has resulted in continuing lower rates of pay for women. Comparing the value of women's work to that of men's beyond the identical classifications has proved to be a very vexed issue and has left women financially disadvantaged in society.

Recent pay equity investigations in NSW and Queensland have verified that women's work has continued to be undervalued in the workplace as a result of social attitudes towards women which reflect a gendered division of labour in both the family and paid work. The lack of meaningful intention to eliminate this form of discrimination against women has been exposed in the recent investigations of the two inquiries. The inquiries drew many identical conclusions about how women's work was undervalued. In some of the industries investigated, women were seen as having 'attributes' rather than 'skills'. There was a lack of work value exercises in the Commission and an overall lack of recognition of women's qualifications as well as their skill levels. Conclusions revealed that women's work had more limited career paths and female dominated occupations were less likely to be paid over award payments.

There is no reason to expect that the South Australian position is any different. Pay equity for women in South Australia is an issue of social justice and is long overdue. Therefore the Objects of the Act should be amended to state the principal of equal pay for work of equal or comparable value and therefore facilitate actions to address the long-standing inequity. In addition, the outcome of the Review should provide recommendations to initiate actions for the effective removal of this particular form of gender discrimination.

To Allow for Balancing of Work and Family Life

Historically our society has expected women to be the primary homemaker and child minder to sustain families. This has meant that any participation in the paid workforce translated into a double burden of work for women. Increasingly, society

is adopting a more realistic expectation of women and now women and men are more likely to share in the daily responsibilities of home and children.

Notwithstanding this welcome social change, economic restructuring and the prevalence of corporate globalisation have altered many conditions in the workplace. Now workers are expected to be more 'flexible' in their agreement to working hours. What had been understood as standard hours of work have all but disappeared and now long shifts, split shifts, double shifts and seven-day rosters demand workers give primacy to the needs of the employer. In addition, high unemployment levels and the casualisation of work have created severe pressure on workers to comply with the employers' expectations. This has created tensions between a family's domestic, community and workplace responsibilities. To relieve these tensions workers dilemmas must be acknowledged and addressed. The industrial relations system should provide a means of balancing work and family needs in the interest of society as a whole. Therefore the Objects of the Act should stipulate the validity of this issue.

<u>To Acknowledge and Accommodate Differences between Indigenous Culture and the IR System</u>

Aboriginal and Torres Strait Islander people are extremely disadvantaged in the Australian labour market. Two centuries of experience of individual and institutional racism has marginalised ATSI workers and denied indigenous Australians social justice. Unemployment rates for indigenous people are dramatically high despite various programs designed to assist employment strategies. A contemporary industrial relations system must acknowledge the special disadvantage suffered by indigenous people in the labour market and accommodate cultural differences that compound employment issues.

The Objects of the Act should acknowledge the special circumstances of indigenous people in the industrial relations system and the outcomes of the Review should provide recommendations to initiate the identification of cultural differences between Indigenous culture and the IR system and mechanisms to address the same.

<u>Young Workers</u>

Young workers are a disadvantaged group in the South Australian labour market. The youth labour market in this state has the highest full-time unemployment rate in the nation. Corporate globalisation has caused a collapse in many of the local manufacturing areas that previously provided full-time work for young adults. Consequently, most young workers are now found within the vast numbers who are employed in precarious casual work on a part-time basis in service industries. A

recent survey of young casual workers revealed that a high proportion of young workers lacked knowledge of their rights and entitlements as workers.

Almost half of the young people surveyed (47%) never received any written conditions of their employment. As a result, almost a third (30%) did not know the detail of their entitlement to work breaks. Just over half (55%) did not know the correct rate of pay for their job and almost two-thirds (61%) of the participants had worked while they were sick. Nearly twenty per cent (19%) were not receiving pay slips and a third (33%) were working unpaid overtime. Most (75%) of the young workers reported injuries to management but a significant number (22%) suffered repercussions for admitting the injury. Forty-one per cent (41%) had experienced repercussions for refusing shifts and more than sixty per cent (63%) received notice of one week or less of shifts when dismissed. A quarter of these young workers (24%) expressed the need for permanent work and well over a third (41%) wanted more hours of work (Australian Young Christian Workers).

Historically employers have been allowed to pay young workers a lower rate of pay than adults for doing the same work. The rates are determined solely on the age of the worker and not related to the specific skill level required to perform the job. The industrial relations system has endorsed the payment of 'junior rates' of pay to workers under 21 years of age.

The UTLC submits that this form of age discrimination is another relic of labour market segmentation and inequity and should be abolished. This form of discrimination is not unlike the gender discrimination that has devalued women's earning capacity in Australian society. It classifies the worth of young workers on an arbitrary basis that is totally unrelated to the level of skill required to do the job. The UTLC submits that this form of age discrimination in the workforce should be removed and young workers be paid in line with the equity principles of equal pay for equal or comparable work.

<u>Non-English Speaking Workers</u>

In addition to protection from discrimination labour market participants from non-English speaking backgrounds need recognition of language difficulties. Workers are seriously disadvantaged in the labour market and at work if they cannot read and write English. Job opportunities and promotional opportunities can be lost because information in relation to such opportunities is not offered in other languages. In addition, those with lack of language and other cultural understandings of Australian society are disadvantaged in accessing help for problems experienced when seeking work or during employment. Traditionally, migrants tend to seek assistance from members of their own communities and community organisations rather than approach an institutional organisation for help.

The UTLC submits that to facilitate a fair and equitable industrial relations system labour market information must be available in languages other than English and be provided to community organisations that support migrant groups. In addition, workers from non-English backgrounds should be able to access English language lessons at work as part of their general skills development contained in awards and agreements.

Workers with Disabilities

The aim of legislation in support of people with physical and intellectual impairment has been to facilitate their participation in society to the greatest extent possible. The intent has been one of enabling disabled people to achieve the best possible individual outcomes. Participation in the workforce is a significant issue for the disabled and can help alleviate social isolation and financial hardship. For disabled people to participate in the labour market the additional difficulties and expenses related to their disability needs to be acknowledged and catered for in their conditions of work. While disabled people are restricted in the types of work they can apply for in consideration of their disability, there is no need for them to suffer further disadvantage in comparison to other workers doing similar work.

The UTLC submits that flexibility in varying award wages and conditions to take account of the additional financial and physical burdens of disabled employees can help minimize the level of disadvantage experienced by this group of workers in the workplace.

Women

As stated above in the section on the provision of equal pay for work of equal or comparable value, the historical labour market segmentation and the devaluing of women's work have seriously disadvantaged women. It is timely and entirely appropriate that women workers be afforded justice in the industrial relations system and the Commissioner considers applications to investigate inequitable pay rates between classes of occupation. The results of centuries of devaluing female labour have been socially and financially damaging to many women and children. Recent investigations in NSW and Queensland have identified the barriers to pay equity in the federal and state systems and it is safe to assume that similar circumstances have been limiting to South Australian women.

The UTLC submits that the Act be amended to include principles that provide for the Commissioner to consider applications to investigate inequitable arrangements between classes of occupation in relation to pay equity (as per recent developments in NSW and Queensland).

Rural and Regional Workers

Rural and Regional people are disadvantaged by time and distance barriers when participating in the labour market. Access to education, relevant information and assistance are all limited by geographical distance. Workers have less ease of access to the industrial relations system and advocacy services.

The UTLC submits that the time allowed to lodge applications in the commission needs to be more flexible to accommodate workers who live or work in regional and remote areas and cannot easily or quickly travel to the city and have to rely on mail services. In addition, locating assistance from a union or an alternative advocacy service maybe more time consuming and delay the process of applications.

3.1.4 Representation

Recommendations:

a) *That the objects of the SA industrial relations act include the encouragement of representation of workers by unions.*

b) *That the ILO conventions 87,98,135 and 154 be reflected in the Act. In particular the freedom of association rather than the current wording of the object "absolute freedom of association which implies freedom from association to enable workers to engage in collective bargaining.*

c) *That unions be re-instated as the prime representative bodies of workers in South Australia, particularly in relation to bargaining as existing voluntary associations with a long history of being effective in industrial relations.*

d) *Limit and regulate the use of bargaining agents.*

e) *That a legal democratic framework is developed that enables unions to incorporate delegate rights into awards and agreements.*

f) *Increase the rights of unions to have at least the powers of the inspectorate including the inspection of all employees wages and conditions.*

g) *Allow for unions to enter workplaces where they believe workers may be being exploited, whether or not they have members at that workplace.*

h) *To allow unions the right of entry to inform workers about union membership.*

i) That the names of employees not be a precursor to entry of a union to a workplace.

j) To allow for union meetings to be held in the workplace.

k) That union encouragement provisions be included in the Act as per the Queensland IR Act.

l) That Section 151(2) be amended to enable union officials to represent members in the Commission & Court.

Globalisation is continually imposing increased challenges on workers through the continual drive for efficiencies by employers. A "globalisation" that does not engage working people or the community. It is dominated by three unelected organisations, the World Trade Organisation (WTO), the International Monetary Fund (IMF) and the World Bank. Decisions are made by these organisations that have profound effects on working people around the world.

Millions of workers in developed countries have lost their jobs, in Australia over a 100,000 manufacturing workers since 1996, this has resulted in massive unemployment, eg in Australia there is seven unemployed workers for every job vacancy. In the last decade there has been an increasing shift of manufacturing to developing countries, textile and footwear, electronics, car components, oil and heavy engineering products to name a few.

Some of these countries do not enact ILO conventions and use slave and child labour, also free democratic unions are not tolerated. They also impose high tariff regimes and free trade zones, for example China. Low labour rates, and passive non-union work forces are taken advantage of. For example in Mexico once a low wage country that was successful in attracting jobs from the USA is now losing the jobs to much cheaper labour in China.

At the workplace there is job insecurity, an increase in casual and part-time work, heavier workloads, longer hours, smaller core workforces and increasingly aggressive employers. Workers are repeatedly being asked through efficiency drives by employers that "we must be able to compete globally" this has developed into "a race to bottom" of wages and conditions and worker safety.

The tensions arising from work stress at the workplace has resulted in major health and financial problems. There is research at national and international levels that show sexual and racial harassment has risen at the workplace, also there has been an increase in bullying. In a study undertaken at the University of South Australia by Rose Boucaut in 2001 it was found that:

Workplace bullying is a significant and complex international issue that presents a challenge for organisations to manage.

> This interest in workplace bullying arises from new ideas of fairness and justice that have become accepted in a changing multicultural, multiracial Australian society with equality between the sexes and across age levels as well as across different racial and cultural groups.

These are the increasingly complex and demanding issues that union delegates have to face and are expected to handle on behalf of members and union. Therefore in this global environment it is essential that a democratic IR framework is established which allows for and protects union delegates in carrying out their duties and increasing responsibilities at the work place.

It is unions who are the counter weight to corporate power and the corporate power agenda in society more generally. It is therefore important that within this framework delegates cannot be exploited through denying and restricting their potential to be critical learners and thinkers. If this essential human dignity is not recognised then this statement sourced from the South Australian ALP "Industry and Innovations Directions Statement" is no more than empty rhetoric:

> Labor will promote high performance work systems, recognising that to innovate successfully, companies need to involve their workers as partners in change. Therefore, Labor's approach will also enshrine a partnership between industry, workers and the community.

Further as a legitimate and legal organisation in Australian society and a major stakeholders in job creation it is essential that delegates are part of decision making at the workplace. If the interests of South Australians are to be best served through industrial development, then it is essential that the skills and knowledge of workers and their unions be maximised.

The relevant ILO conventions which Australia has ratified in support of this are:

1. C87 Freedom of Association
2. C98 Right To Organise and Collective Bargain
3. C154 Right to collective bargaining
4. C135 Workers Representatives Convention

Freedom of association must mean a genuine association, not freedom from association. Therefore the current object in the SA Industrial and Employee Relations Act 1994 (that protect worker's rights not to join a union) is not in the sprit of ILO.

Workers can decide not to join a union but the encouragement of individual approaches to industrial relations is a strategy which leads to poorer working conditions and fewer rights for workers. It is clearly demonstrated that workers who are part of unions are paid more and have better conditions than those who are not. Therefore the rights of workers to join together in unions and bargain collectively directly relates to the aim of making a fairer industrial relations system for South Australian workers.

> *C87 Article 2) There are five key articles which include the right to establish, join organisations, elect their own representatives in full freedom, organise and formulate their own programs, including collective bargaining.*
>
> *C98 has a raft of articles that support the principle of workers enjoying adequate protection against acts of anti-union discrimination in respect to their employment.*
>
> *C154 article2) recognises the obligation to further achieve recognition of the right to effective collective bargaining. It determines and regulates working conditions, relations between employers and workers and/or regulating relations between employers or their organizations and a workers' organisation or workers organisations.*

These conventions clearly set out the right of workers to join a union and for delegates to carry out their union duties without victimisation.

The encouragement of workers to join together in unions is in line with these conventions. Preference for unionist clauses and closed shops are no longer part of the Australian Industrial relations system, however, the pendulum has swung too far the other way. Employers and industrial relations have more recently actively worked against the ability for workers to be part of their union. The ability to include union encouragement clauses in agreements and awards exists in other state jurisdictions. For example policy arising from a full bench decision on November 1st 2000 of the Queensland Commission led to the development of a schedule which includes: -

"At the point of engagement, an employer to whom this award applies shall provide employees with a document indicating that a statement of policy on union

encouragement has been issued by the Queensland Industrial Relations Commission..”

In relation to the role of union delegates this schedule also states:

“Union delegates and job representatives have a role to play within the workplace. The existence of accredited union delegates and/or job representatives is encouraged.”

It also provides for the encouragement for employers to provide the ability to deduct union fees from wages.

To enable unions in South Australia to formulate and organise, the role of the elected delegate is paramount. Therefore in the exercising of these fundamental rights in the sprit of ILO conventions, delegates are to be afforded the following rights and responsibilities:

Delegate’s rights from employers:

- A delegate to have protection from victimisation and this right to be expressed in prohibiting the employer from dismissing the delegate or from changing his/her department or shift or in any other way seeking to separate the union delegate from the members that elected him/her without first consulting with and securing the agreement of the union concerned who shall consult with members on the job.

- The right of an accredited delegate to approach, or be approached by a member for the payment of union dues or any other payments or to discuss any matter related to the member’s employment during working hours.

- The right of delegates to call meetings and for members to attend these meetings on the job at any time.

- The right to paid time to research and prepare prior to all negotiations.

- The right to be treated with respect and without victimisation by employers.

- The right of a delegate employed in one department to move freely into other departments for the purpose of consulting other delegates during working hours. To negotiate with management together with other delegates on behalf of all or part of the members and on any matters in accord with union policy affecting the employment of members.

- The right of a union workplace committee or combined delegates workplace committee to hold monthly stop-work meetings of members on company premises during working hours without loss of pay. Executive members of these committees be authorised to attend a weekly committee meeting of not less than (2) hours in working hours without loss of pay.

- The right of a delegate to have easy access to a telephone, and computer. To have, in vicinity of work area suitable furniture to keep records, union literature, awards, changes in legislation , membership lists, receipt books etc.

- The right of any union office bearer to have paid time of work paid by the employer for union training and education purposes. This includes an assurance that employers will not undermine such leave by changing rosters or victimising the delegate in any way for their attendance.

- The right of a delegate to have control of the notice boards for the purpose of informing members of meetings and union policy etc.

- The right of a delegate to have all agreements and arrangements set out in writing, that would include the agenda, and terms of reference of any meeting called by the employer.

- The right to access and support from union officials electronically or through "right of entry" of such an official.

Right of Entry

The Industrial and Employee Relations Act 1994 Section 140 gives right of entry to a workplace by an official of an association (union) at which one or more members of the association are employed.

The Act's provision increases the difficulty of access for unions to workplaces, employees and members. In small workplaces where the employers personally know employees then workers may be intimidated and not offer an invitation to an official.

This also breaks the confidentiality between the union and a member, which could result in the discrimination of that member by an employer. For example in the printing industry 85.3% of workplaces employ less than 20 employees.

The Act assumes that workers are aware of their entitlements and are able to detect a breach and have evidence establishing a breach. This ignores the fact that many workers have limited literacy skills, are often unable to record a breach and are unaware of existing entitlements. There is also evidence to suggest that employers

are not aware of award provisions, therefore right of entry by union officials can also safeguard the employer from committing a breach and prosecution.

The Act allows for the inspection of documents and records to those relating to union members, this in itself allows for breaches in alleged discrimination in wages and conditions of non-union workers to go undetected. These restrictions are entrenching award breaches in non-union workplaces and curtail existing union rights.

In a recent case in South Australia under the SA Employee Relations Act the LHMU were refused entry by the Hilton Hotel Group.

The union wished to meet the workers regarding the progress of an EBA in which the union did not support the company's proposals. The union therefore arranged to conduct a ballot over the period of 26-27 July 2002 to seek support from employees. The company threatened application of agreement registered in the Federal Workplace Relations Act if employees supported the union's position.

Union officials initially were to be given entry to speak to employees between 5:00 pm – 7:00 pm on Monday 22nd July 2002 and between 12 noon – 2:00 pm on Tuesday, Wednesday and Thursday 23rd-24th-25th July 2002. A separate area was to be given and set aside between these hours, the area would be sign posted and the union agreed to confine its activities to legitimate union business.

The company considered union documents to contain incorrect information likely to mislead and/or deceive employees and requested that they be retracted and correction notices be issued. If the union failed to do so by Tuesday 23rd July the company would not consider itself bound by to the above right of entry agreement.

After a voluntary conference, the Commissioner and the two parties agreed on a compromise regarding entry and the union to re-issue the document if not actually retracting the intent, but explaining the reasons for it in an amended form.

The Hilton replied on 24th July that the union could enter on the 24th and 25th July 2002 where a room will be provided. Further the union must provide the Hilton with a list of employees who have requested to speak to the union and the Hilton will do its best to inform employees of and permit them to meet with the union.

The new revised number of meetings and times by the Hilton gives less access for the union to meet with all the workers. The right of entry is reduced from 4 to 2 days and there is no access to workers who work the late shift due to the provisions for a meeting between 5:00pm – 7:00pm being withdrawn. The request for names of those workers who have requested to speak to the union is intimidatory and the

employer's request that discussions take place in a room designated by them allows further for anonymity to be further compromised.

This raises the question of what employees do and where do they and their union go when an employer exercises this kind of power. An application to the commission for enforcement are slow, costly and ignore the reality of employees who seek assistance from unions.

As Commissioner Dangerfield recommended in the Hilton v LHMU case:

> Rather than both parties becoming involved in a complex legal argument on the one hand, whether or not statements in a union publication(s) are technically inaccurate or misleading, and on the other, whether the union's right of entry should in any way be effected by technical accuracy or otherwise of the publication(s) it is in the interests of both parties to take a pragmatic view of the situation and find a positive basis for moving forward.

Enshrined in ILO C87 and C98 is the right for workers to join unions, elect delegates and organise, provisions that support workers for having full protection against anti-union discrimination in respect to their employment. The present SA IER act clearly is in breach of these ILO conventions in particular Sect 140 relating to powers of entry and inspection for union officials, in comparison to the powers of "inspectors" who have general access, unions, members and potential members are clearly discriminated against.

<u>Representation in the Court & Commission</u>

The UTLC seeks to remove Section 151(2) from the state Act. This clause limits people from representing others before the court and commission if they have been struck off the roll of legal practitioners or is not entitled to practise the profession of the law because of disciplinary action taken against them. Representation from unions is most often provided by union industrial officers or other union officers who have no formal qualification in the law. It seems odd therefore that a officer of a union is not able to represent their members if previously they had been legally trained but were struck off or had disciplinary action against them. This restriction does not apply to a non- legally trained representative.

The UTLC seeks to have section 151 (2) amended in order not to apply to union officials. This would make it fairer for all union officers representing members, regardless of their background. Unions have a good record of ensuring that their member's representative are effective and act in the interests of their members. This clause has unfairly targeted individuals who have not been able represent members even though they now work in unions.

3.1.5 Vocational Education and Training Employment Arrangements

Recommendations:

a) *That trainees be defined as employees under the Industrial Relations Act.*

b) *That the Industrial Relations Act be able to enforce decisions made under the VEET act in relation to discipline, dismissal, and termination as well as other industrial issues such as underpayment of wages, changes to shifts etc.*

c) *That high quality information be provided in schools for students who are also working as trainees or on work experience and for those about to leave school for employment as a trainee.*

The high levels of youth unemployment in South Australia (29.6 %) are not only the result of a failure in creating "real jobs" but also the result of continued attacks and opposition of structured training programs.

Reforms started in 1988 to introduce more flexibility into training and apprentice programs were intended to create more jobs, particularly for young people by encouraging employers through "user choice" arrangements. That is, it allows employers and employees to choose the training provider and method of training that best suits their needs.

These reforms are consistent with the free market ideology that is driving the global economy. Gone is the monopoly of TAFE which was the sole training provider, gone also is government regulation regarding the method of training delivery and who is the training provider. All the providers including TAFE have to compete with other private training providers. When it is considered that the bottom line for private companies is making financial gain, the beneficiaries are private training providers and employers.

For example Federal Government financial commitment to training between 2002-3 is $1.9 billion. The total funding over the four years up to 2005-06 will be $8 billion. This is broken down to include some of the following specific programs incentives for employers:

- *$1,100 incentive per employee for employing IT and emerging high skill occupations new apprentices*
- *$750.00 incentive for employing a new apprentice while still at school*
- *$750.00 additional incentive for employing a new apprentice within six months of completing year twelve. (Federal Press release July 2002)*

On top of these incentives Registered Training Organisations (RTO's) receive Federal Government funding for training.

The "real gains" or outcomes that create full-time employment for individuals and a skill base for the national interests are secondary to the short term interests of the private sector. A large number of programs instigated by Federal and State governments under VET would be better labelled as labour market, job creation and corporate welfare initiatives.

There is plenty of evidence to show that although the reforms in apprenticeship/trainee programs show potential the present system favours employers and training providers.

In a recent report prepared in South Australia by Sue Ellis in 2000: "Traineeships: A Cheap form of Labour" it was found -

> The State and Commonwealth's role and responsibilities are unclear. Government departments responsible for administrating and managing the system lack resources. There is no systematic approach to auditing and monitoring of training providers and employers. Employers use traineeships to reduce labour costs. Trainees have no protection against unfair dismissal, are not adequately supervised by employers. Finally the system for resolving disputes is not appropriate or effective and the committee responsible for resolving complaints can only deal with matters relating to the contract of training agreement.

One glaring anomaly is the practise by employers not to provide trainees with skills to obtain future employment. An emerging trend in metal trade apprenticeships has been the reluctance and prevention of employers to allow apprentices to attend rostered TAFE training, usually at none or very short notice.

TAFE have brought this problem to the prevalent authority and were advised that they should take a more flexible approach. That is compliance to the employer's commercial interests. For example TAFE were told by the authority that they should "go to the place of the apprentices employment and do-on-the-job assessments and that apprentices could do the modules they missed the following year/years".

This preference for putting commercial interests before the apprentice does nothing to suggest that "user choice" is working fairly for both parties. It is not "a fair go" for young people on number of issues:

- *Apprentices' not completing and passing appropriate modules for the year may not be entitled to wage increases normally due to at the completion of each year. This would also give also give offending employers a commercial advantage.*
- *Apprentices who have their training deferred would find it harder to find an employer whom they could finish their trade with as the new employer would have to shoulder an unfair proportion of the apprentice's training costs.*
- *Workplace assessments does not usually take into account academic requirements of the trade.*
- *Lower academic standards associated with previous trade training systems devalue tradespersons and the trade.*
- *The re-rostering of classes and reduced class sizes reduce the efficiency of TAFE to meet it's budgets as extra classes would need extra funding.*

The national interests dictate that training has to be portable, and indeed public funding in the form of incentives and subsidising TAFE education, apprentices wages, and private subsidy comes with that responsibility. The narrow commercial interests (as shown above) is clearly contrary to the apprentice's and national interest. Further, those employers who do send their apprentice's to rostered training are being put at a commercial disadvantage by the offending trend of using apprentices as a cheap source of labour.

Further proof of employers benefiting at the expense of the apprentice/trainee comes in the form of models being removed from TAFE responsibility to the employer's. They are three important modules, Communications, Industrial Relations and OH&S representing 120 hours. Some larger employers do have the capacity to do them but small to medium sized companies do not have the qualified and experienced educators to do them. Due to the lack of accountability and transparency it is suspected that the 120 hours is transferred to production needs.

The South Australian Working Women's Centre highlight the commercial values of private training providers:

> Providers have no obligations to monitor or assess the training and receive funding from the Commonwealth Government for each trainee signed up. The system is about getting bums on seats.

In a Torrens TAFE Valley submission to the Senate Inquiry into the Quality of VET in Australia they made two telling statements regarding employer abuse of the system. Once again from the Sue Ellis report.

There is evidence to support that the recent media reports that many of the new apprenticeship places taken up have been conversions of existing employees into 'trainees' allegedly to qualify for the government subsidies these programs attract.

New apprenticeships become simply a perennial governmental subsidy to the organisation, a means of shifting the cost of training onto the government, rather than encouragement for the creation of new employment and training opportunities.

This appalling misuse of public funds is further supported by Senator Kim Carr who in letters to the ACTU Executive in May 1999 observed that:

Documentary evidence has emerged that through the Senate estimates process to show widespread misuse by employers of vocational educational subsidies. It is becoming apparent that in recent times, training subsidies are being used more as wage subsidies. In the first four months of this year, some 24,000 new apprenticeship commencements were actually existing employees.

Trainees however unlike apprentices, are not indentured for a four year period and do not specialise in a particular skills, therefore they are subjected to low levels of wages. Some industry awards such as Metal provide for no loss of wages to anyone who is employed prior to becoming an adult apprentice. However this is not always the case and adult employees taking up a traineeship do take a loss in wages. Also for those young people out of school for more than 5 years wages are even lower. Once more there are clear indications that employers are encouraged to take on the long term unemployed and young people through the new apprentice system as a way of reducing labour costs.

South Australian Legislation

The South Australian Vocational Educational and Employment Act (VEET) provides the legislative basis for promotion, delivery and dispute resolution in respect of vocational education, employment and training. It also creates a number of statutory bodies for the effective development and delivery of VEET.

However the Act is designed in regard to employment and employment related issues to take away trainee and apprenticeships rights. For example over two thousand Contracts of Employment are terminated each year "by mutual consent" and only six matters have gone before the statutory bodies of ARC and DRC. This indicates although there is a system in place to deal with trainee complaints it is under stress and access to it is not widely known amongst trainee and apprentices.

Further the VEET Act has jurisdiction over the South Australian Industrial and Employer Relations Act 1994, as confirmed by the recent (Kelm, Bibby V Quality Lodges Decision).

Two people after being offered a joint contract of employment and individual contracts of training for a level 4 in front line management complete an extended probation period and then terminated without notice.

This after the employer is not approved in the vocation to which the contract relates and therefore the ARC does not approve the contracts. The contract of training specifies an Award as providing for terms and conditions of employment, however the contract did not specify which award.

There was also no credits for prior learning despite both trainees having degrees in teaching and related disciplines. The director of the Registered Training Organisation (RTO) commented, "we do not believe in that" at the DRC hearing.

There was no ARC approval or notification sought for a months extended probation and no training was given. Nor was notification of termination provided to ARC.

This case went before the SAIRC and Commissioner Dangerfield found that there was no jurisdiction under the VEET Act to hear the matter. The DRC conducts a formal hearing and determines the termination of Contracts to be unlawful. Further the DRC terminates the contracts by consent of the parties and orders the consideration arising from the contracts be paid up to the date of termination by the DRC.

This employer has had 14 trainees with only one traineeship completion.

The VEET Act also makes provision for complaints and disputes to be taken up by individual trainees. Considering that Industrial Relations training is the responsibility of employers and most trainees are young and inexperienced this is a daunting task. Further, unions who represent trainees have no powers under the Act to initiate on behalf of the trainee.

There is an urgent need to reform the system of training and apprenticeships in South Australia in order to ensure that the system of training is not a labour market programme, that trainees are not used as a cheaper form of labour and that there is a real link between training and employment. The industrial relations arena is only one part of this reform but an important one.

Trainees need to be classified as employees under the Industrial Relations Act in order to have access to the processes available to all workers.

In addition, the level of understanding of their rights and entitlements is extremely low and they are often in an extremely vulnerable position in the workplace. There is a need for a function to be created either within the industrial or the VEET jurisdiction to provide information and advice to those participating in the VET sector as employees. In the past this need was able to be better managed because traineeships required union support and union involvement as part of the training programme. Union membership and involvement would significantly improve the status and situation of trainees but unions have found it increasingly difficult to identify, organise and support these people. Creating an advocate for trainees who was linked across the union movement generally, would allow for these issues to be dealt with without trainees individually having to identify which particular union they should belong to.

In addition there is also an urgent need for students at school to be provided with high quality information to students involved in VET about their rights, responsibilities and the role of unions including encouragement to be part of the appropriate union.

3.2. Improvements to Awards and Collective Agreement Making Opportunities

3.2.1 Awards

Recommendations:

a) *That a strong award system form the basis of the SA industrial relations system.*

b) *That the making of new awards in emerging industries and where there has been no award coverage is encouraged. This could include the undertaking of research and investigation about current award coverage in order to identify areas where awards need to be developed.*

c) *That there be regular reviews and updates of all state awards by the industry parties in order to ensure they include recent decisions and reflect community standards. This would have to be resourced by the state government and involve unions, employers and the Commission. This would be a recognition of the large number of employees covered by state awards in South Australia.*

d) *That a mechanism be available which allows for the automatic flow on of matters such as the state wage case to all state awards rather than the current time consuming labour intensive approach of modifying each award.*

e) *That the ability to develop and include model clauses for state awards and this to be used in the award review process and to assist the development of new awards.*

f) *That provision be made to govern the transmission of award and agreement entitlements when a business or part of a business is transferred or assigned to a new owner.*

g) *That the concept of allowable matters for awards and agreements be opposed.*

A strong award system should form the basis of the south Australian industrial system. It is generally recognised that awards provide the best protection for all workers and ensure that workers with little collective strength can be assured of a basic entitlement to wages and conditions.

The current emphasis on the making of agreements in the state act has not led to a significant increase in agreements making. There are currently 175 state awards and a likely need for more in areas where there is no award coverage. A larger proportion of South Australian workers are reliant on awards than any other state. Agreements should build on the safety net base of the award system as this provides the best and most secure arrangement for employees.

Because of the changing nature of the South Australian workforce, new and emerging industries are forming without state award coverage e.g. call centres and some parts of the information technology industry.

Some of the new industries are highly casualised and sometimes dispersed.

Unions have also found many employers in these industries uncooperative in providing access for unions to workers and workplaces so they can do the necessary work to establish new awards.

The state industrial relations system should be designed to encourage the making of new awards. This is currently not the case as there have been very few examples of new awards being made in the last ten years. An audit of the SA workforce and its industrial protection could form the basis of this work so that unions could more easily identify workers and industries and be able to take on legitimate role in assisting to create these new awards.

Because of the nature of the state act, where awards need to be varied individually with each state wage case and test case decision, many awards are out of date and do not reflect current community standards.

This is because the process of varying awards is extremely time consuming and labour intensive for unions and employer associations.

There needs to be a mechanism which allows for an automatic flow on of these decision into each award without having to vary them individually. This will enable workers to receive the benefits earlier, and ensure that some workers do not miss out on receiving the benefits of these decisions.

The award review process currently in the state act is carried out by the commission with specific criteria and without mandatory involvement of the industry parties. In practice this process is work intensive and requires unions to re-argue parts of established awards as part of the review process in the context of extremely narrow criteria. It is not designed to update awards, to align with state and national decisions or to reflect community standards. In fact it could lead to awards conditions being reduced.

Review of awards is vital if we are to ensure that workers covered by awards gain the conditions that have been achieved through Commission decisions and reflect community standards.

These reviews should be regular, require the mandatory involvement of unions and employers are resourced by the State Government so it can be done effectively, speedily and universally to ensure that all groups of workers were included.

The development of model clauses could assist with the process of the development of new awards but also in the process of award review and to ensure consistency between awards.

There is a significant discussion elsewhere in our submission about the implications for workers of corporate restructure and collapses. This is a new and important issue which has emerged as a major concern for workers. in the current work environment it has been more common for employers in both the public and private sectors to outsource aspects of their work to labour hire, or to other companies. The state act needs to address this issue with an insertion of a transmission of business provision as per the federal workplace relations act so that award entitlements are transferred to a new business "owner."

The introduction of "allowable matters" in the Workplace Relations Act has led to less protection of workers conditions and was designed to undermine the ability for unions and employers to include a range of industrial matters into awards. South Australia has not experienced problems arising form the current more flexible definition of an industrial matter and we see no reason to reflect the federal act in this area.

3.2.2 Agreements

Recommendations:

a) *That unions be asserted as the fundamental employee representative and bargaining agent.*

b) *That the introduction of individual agreements be rejected and collective agreements be the only form of agreement allowable under the state Act.*

c) *That agreements be allowed between multiple employers and across industries.*

d) *That the process to define an enterprise be changed so that the position on definition is agreed between both unions and employers prior to*

bargaining. If no agreement on definition can be reached, then the definition be resolved by the Commission.

e) That processes in bargaining that are time consuming, unnecessary and undermine the ability for unions to use their own democratic decision making processes to consult with members, be removed.

f) That the ability for individuals and groups of workers to make agreements without the involvement of the appropriate union and for a group of employers to exclude other legitimate unions from the bargaining process, be removed.

g) *That terminology be changed to reflect the emphasis on collective agreements and the fact that they are not limited to one enterprise.*

h) That statements to ensure consultative processes between employers and unions are included in agreements.

i) That the concept of good faith bargaining be introduced.

j) That the ability to introduce bargaining fees is provided.

The SA industrial relations system has not gone down the path of the federal government and other states with the introduction of individual agreements. We should continue to maintain collective agreements as the only agreement making process in the state.

The promotion of AWA by the federal government has been found to offend the ILO Convention 98 (ILO Committee of Experts, November-December 1997 Session).

Recent evaluation of Australian Workplace agreements and their operation has shown that they do not reflect a free choice between an employee and an employer as they are frequently offered as a choice between an individual agreement or a job.

Other research has shown that AWA take is extremely low, and that inferior conditions to awards and collective agreements are common.

In a recent ACIRRT report into the Western Australia Individual Workplace Agreements (IWA's), the WA employment protection Minister, John Kobelke said that the IWA stream was "a damning expose" of how the agreements are used to undercut award rates. The report containing case studies on the contract cleaning, shop and warehouse, security and restaurant and catering industries, found IWA's had delivered "more detrimental" than positive outcomes to workers. John Kobelke adds, "It appears that IWA's have been used by employers as a means of changing

a number of key award provisions and are more likely to be used by employers to gain an advantage in industries that are highly competitive."

More recently the federal employee advocate has been found lacking in his application of the no disadvantage test to AWA's. A large number of AWA's have been found to severely disadvantage workers when compared to conditions and pay in awards and agreements. South Australia should continue to reject the individual agreement path if we wish to be a state which is interested in cooperative, democratic and fair industrial relations and in raising the living standards for SA workers.

Although collective agreements are the only form of allowable agreements under the state Act the emphasis of agreement making is on single enterprises and workplaces and it doesn't allow for agreements to be made across industries and with a number of employers.

This has meant in some areas of the community, workers have not been able to gain consistency between workers working in the same area of work.

The childcare industry is a case in question. There is a federal childcare award. However, if employers and employees wish to make a state enterprise agreement which sits above the award, then the state system requires this be done in each individual centre. The management committee of a childcare centre is the employer of the staff. These people are volunteer parents with little or no industrial expertise. This has led to a great deal of reluctance of individual centres making agreements and therefore the denial of childcare workers to be able to gain additional industry agreements which build on the base award.

The childcare industry is regulated through federal government policies and funding arrangements. It is therefore sensible to be able to treat this as an industry for the purpose of industrial relations and the making of agreements.

This approach could also apply to community organisations, franchises, small business, etc. It would make agreement making more possible for small workplaces to be included in the agreement process and for workers in these small workplaces to benefit from agreements which generally contain improvements on award conditions.

If the Act was to be amended in this way, the terminology of enterprise agreements would need to be changed to reflect the possibility of making agreements across more than one employer or workplace. We suggest the term industrial agreement.

The object of the current Act, in the making of agreements at an enterprise or workplace level, with bargaining occurring between employers and employees with the aim to improve flexibility, efficiency and productivity.

There is no object about economic advancement and improved living standards for employees or the fundamental role of unions in the collective bargaining process, as enshrined in ILO Conventions.

Unions should be inserted into the act as the fundamental bargaining agent in the process of the making of industrial agreements. There should be a recognition that the role of unions is to be a vehicle for the voice of employees and when bargaining occurs with unions, that it is up to those unions to manage the consultation and decision making process within their own structures.

This will not only follow the practices of a number of other state jurisdictions and the federal jurisdiction, but also make the state agreement processes more manageable, democratic and streamline.

In practice, the Commission, particularly when dealing with large enterprises, has tended in recent times for these particular reasons, to use the union as the fundamental bargaining agent. This is probably due to bad experiences in the early days of the State Act in 1995, when the agreement process involved large government agencies, in particular the education area. This involved taking on practices such as sending agreement offers to every employee individually, attempting to negotiate in single bargaining centres with a large number of individuals and allowing for individuals or the employee ombudsman to sit at the bargaining table with equal status with unions who were representing thousands of members. These approaches were ideologically driven and extremely foolish.

However, in some instances they still apply. Section 75 of the Act specifically excludes unions from the making of agreements unless notice has been given to the employees as required by regulation or the union is authorised in writing by the majority of the employees to act on behalf of the group. Once again this has caused conflict in some instances between employees and employers about who is to represent employees in the bargaining process and has required unions to ballot their membership to demonstrate that they wish their union to bargain on their behalf. This is unnecessary as workers become members of unions with the full knowledge that a fundamental role of the union is to bargain on their behalf.

The ability for employers to exclude unions from bargaining is possible under the current act. This possibility should be removed. It is generally used when employers do not wish their employees to have access to proper representation or expertise that unions can offer. It often leads to undermining workers conditions of employment.

Another factor which causes conflict is the definition of the enterprise. Sometimes a large amount of time is spent in dispute on this matter alone, before bargaining can occur. The fact that the employer can determine the enterprise has led to this provision being used quite oddly by the state government as employer. In some Government agencies, the enterprise has been structured differently with each round of bargaining for no real reason.

Our proposal that this matter should be agreed between the parties with the ability for the Commission to decide the matter in the case of a dispute is a much fairer and sensible approach.

The Industrial Relations Act should encourage the inclusion of good and consultative processes in the making of agreements and as elements to be included in agreements.

The concept of good faith bargaining is fundamental to the bargaining process. The goal is for employers and unions to negotiate by dealing in good faith with mutual trust and confidence.

In New Zealand, good faith bargaining has been introduced as the basis of their recently reformed industrial relations system.

The fundamentals of good faith bargaining require that during bargaining parties must meet, provide access to information, engage in meaningful negotiations. It also means that employers allow for unions to be able to call meetings of members, consult with members and involve members in the process of bargaining.

The concept of good faith bargaining could be part of the South Australian industrial relations system. This would assist in the bargaining process and also stop the practice of some employers refusing to bargain, refusing to negotiate once an offer has been made or refusing to allow for the processes of members consultation and involvement to occur during the bargaining time.

In addition the process of ongoing discussion between unions and employers about arrangements and workplace issues is best dealt with by including in agreements processes of consultation. This can ensure that disputes do not arise during the term of an agreement and that changed circumstances can be taken into consideration and negotiated during the life of an agreement.

Requirements for employers to consult with unions about workplace change is good industrial relations and provision for this should be included in the act.

In July 2002, the full bench of the Federal Court ruled that it was possible for bargaining fees to be inserted in agreements (Electrolux case). The Court decided that unions and their members can pursue enterprise agreements which may include provisions such as a fee for the bargaining service that the union provides.

Both union members and non-members in a workplace have a say in a democratic vote on enterprise agreements, including any containing fee-for-service clauses. The agreements must also be approved by employers and the Australian Industrial Relations Commission, which ensures compliance with freedom of association laws.

Unions have a legal obligation to negotiate enterprise agreements which apply to all employees in a workplace - union members and non-members alike. Unions support this approach because it prevents discrimination. But where the benefits of union negotiated agreements apply to all employees, and there is a significant cost to unions in the bargaining process, surely it is fair enough to ask the non-unionists for a fee for the service provided. After all, the union members pay for the service through their membership fees.

Unions accept that their principal responsibility is to attract and recruit employees as members. The bargaining fee is not a substitute for union organisation - it is not unionism by the 'back door'. But unions do deliver very substantial benefits for non-members covered by union negotiated agreements, and it is only fair that non-unionists who are prepared to accept better pay, job security, health and safety and other benefits from bargaining agreements may be asked to contribute, like their other workmates, to the cost of negotiating the agreement.

Union pay rises last year averaged 4.6% compared to only 2.2% for the Howard Government's individual contracts (AWA's), according to the latest independent figures from the Australian Centre for Industrial Relations Research and Training.

Union members are far more likely than non-members to be entitled to annual leave (89% vs 72%), sick leave (90% vs 72%), and long service leave (85% vs 62), according the Australian Bureau of Statistics (ABS). The benefits of union-negotiated agreements are reflected in the ABS data showing that union members on average earn $99 a week, or 15% more than non-members.

Arising from this federal court decision it is appropriate that the state industrial relations system allow for the insertion of bargaining fees into agreements in the South Australian jurisdiction.

3.2.3 Workers Entitlements

Recommendation:

a) *That the South Australian State IR Act be amended to enable the inclusion of trust Funds in awards and agreements*.

Liquidation has for thousands of Australian workers resulted in the lose of millions of dollars of their hard earned entitlements, long service leave, super, severance pay and holiday pay, totaling $400 million dollars of worker's entitlements every year.

Losses have occurred due to Company Bankruptcy, Fraud and risks associated with transmission of business.

In South Australia, Perry Engineering employees did not receive anywhere near their full entitlements, and at SA Shipbuilding Construction workers initially lost all their entitlements that were only recovered after a three week strike involving interstate workers.

In Australia there was no protection of workers entitlements prior to 2001. The Federal Government in June 1999 opposed any support for the Oakdale mineworkers and defended the ability of employers to use employee's entitlements for cash flow purposes. Under pressure Federal Government introduced legislation to enable Oakdale mineworkers to be paid full entitlements from industry long service funds.

In January 2000 the Prime Minister's brother Stan Howard the chairman of National Textiles placed the company into receivership. Workers entitlements where unlikely to be paid. In February 2000 Stan gets special additional Federal funds to provide 100% entitlements for National Textile.

No other worker in Australia had ever received this support from a government.

In September 2001 the government announces that a special entitlements scheme will apply for Ansett workers. The government also announces a new travel tax on all airline passengers to fund the scheme.

Also in September 2001 the Federal Government announces a national scheme that does not protect 100% of workers entitlements. Redundancy payments are capped at 8 weeks and entitlements are capped at $20,000, the full burden is placed on the taxpayer to meet the costs of employers.

The scheme, General Entitlements Redundancy scheme (GEERS) has a number of pitfalls:

- It is funded by the taxpayer.

- If another collapse similar to Ansett occurred whereby $700 million in entitlements is owed, it will not be an economically viable option and will represent a significant drain on public funds.

- It is implemented through administrative arrangements not legislation therefore it is subject to change at any time.

- The application of the insolvency test to eligibility for payments will continue to have an unjust effect where no insolvency practitioner is formally appointed. The insolvency process can also cause considerable delay.

- Redundancy is capped at 8 weeks pay. The justification is that 8 weeks is the community standard. This is not the case as 8 weeks is a minimum award provision, many agreements are far better and more in line with present day community standards.

- The scheme will not top up any payments the liquidator may make i.e. the 8 weeks redundancy is all an individual will be eligible for.

- Only covers a maximum of $20,000 and workers must apply for a grant with no guarantee that it will be accepted.

- Limited entitlements – long service leave not included and only paid for insolvency.

- Why should the taxpayer pay.

This scheme failed to provide thousands of Ansett workers with full redundancy entitlements, for example George Kerry had been an employee for 29 years and stood to lose $80,000.

The problem is accrued workers entitlements are held by employers.

Workers accrued entitlements are used by the employer as an interest free loan and paid by the employer either when leave falls due or when the worker leaves employment.

Employers use the workers entitlements for general funds that maintain their cash flow without considering their worker's rights.

Employers claim that not being able to use entitlements as cash flows will increase operating costs and increase labour cost.

The Federal Government is presently supporting all arguments by employers led by the Australian Industry Group (AIG) against Industry Trust Funds. The AMWU led a campaign from July 2001 to improve workers entitlements through seeking agreements that included "Manusafe". High profile national disputes at Tristar, Maintrain and recently at Walkers in SA were subject to a Federal and AIG disinformation campaign.

Employers are united against Trust funds, for example in SA the Engineering Employers Director Steve Myatt in an article in the Advertiser branded the scheme: "Flawed costly and unrealistic".

On the other hand Ian Curry of the AMWU in the same article which referred to the standing down of 4,000 workers at the SA GM plant due to the Tristar dispute made these telling remarks:

> For many years employers have had the benefit of an effective, interest free loan by being able to use employee entitlements, and as financial pressures mount, the employer can dip into the well once to often. When they go belly up our members entitlements are at serious risk. Its bad enough to be thrown out of work to be thrown out of work and not receive your minimum legal entitlements is just an absolute disgrace.

John Camillo the AMWU State Secretary in SA went on to say:

> Over the last two years I've seen too many people lose everything – lose their houses, lose their marriages and, in some cases, our members have committed suicide in regards to what has happened to them losing everything.

Despite this the campaign has placed workers entitlements high on the political agenda. The present government tried to gain credibility and nullify entitlements as a political issue by introducing the taxpayer funded "quick fix" scheme GEERS. This quick fix scheme is not supported by any State ALP government however the November 2001 election loss left the ALP in limbo, and the Trust Fund option remains the best for unions to protect workers entitlements.

Recently in SA, Walkers a car components manufacturer announced that it would not after agreeing previously in a EBA clause to pay workers entitlements into an agreed Trust Fund. After 11 days on strike the workers won a $4 million bank guaranteed, and once again the workers came under enormous pressure from the

Federal Government and the media for halting car production. However as Scot Millar an AMWU delegate said:

> When the company announced that the government entitlements scheme (GEERS) would suffice it was on for young and old then because our members new the government scheme would not guarantee all entitlements.

Two Federal Court decisions have confirmed that trust funds generally and "Manusafe" can be pursued through bargaining and that protected industrial action can be taken in pursuit of these claims.

The funds not only have the capacity to protect workers entitlements but have cost savings for employers. It will reduce company liability therefore easier to obtain finance and there will be minimal impact on employer administration. Importantly as the funds are invested the surplus will grow to produce self-funding in the medium to long term and inject funds into targeted industries to create skilled jobs.

Further gains will able equal representation on the board of the Trust for employers and unions. The misinformation propaganda by the AIG and the Federal Government is that the Trust Funds are nothing more than a "union slush Fund"- not so, there are six empty seats on the board for employers to fill and represent their members.

Industry Trust Funds are the best option for workers entitlements protection, while at the same time being cost effective for employers and with the potential of adding to the national interest.

3.2.4 Commission Powers in Agreement Making

Recommendations:

a) *That the powers of the Commission in agreement making be increased*
   - *to ensure good faith bargaining.*
   - *to intervene in disputes over the application of agreements.*

b) *That the Commission be able to intervene to ensue employers cannot use the threat of cancellation of agreements to awards during bargaining.*

c) *That the provision in the current Act for employers to rescind agreements to be removed and that the Commission be able to cancel agreements in the public interest.*

The principle of agreement making is that the parties to the agreement should be the only ones able to vary the agreement by mutual consent or by arbitration arising from a dispute. This is effective when good faith bargaining occurs however the UTLC believes there is a need to strengthen the powers of the Commission in relation to bargaining in order to ensure that unions are able to represent and advocate for the interests of employees in the process of bargaining. The powers of the Commission could be usefully increased in relation to the objective of good faith bargaining to bring parties together and to ensure that bargaining is carried out in good faith.

Unions frequently experience problems with employers not implemented agreed matters and have no recourse under the Act. The recent Walkers dispute was a case of an agreement not being implemented although this was dealt with in the federal jurisdiction. It would be beneficial for the Commission to deal with these matters.

In addition, the canceling of agreements and the initiating of bargaining is the prerogative of the employer. When the employer does not, or will not end agreements it often leaves the current agreement in place for long periods of time and conditions contained in them do not keep employees up with community standards. In these cases the Commission should be able to intervene in the public interest to cancel agreements and order the commencement of bargaining.

In a different situation, it has become a recent employer strategy to use their ability under the act to cancel agreements as a threat in a bargaining dispute. This has happened in relation to the Adelaide University dispute staff agreement dispute involving the LHMU and the ASU. It has also occurred more recently with the AWU at the Brighton Cement dispute. Carrying out this threat would mean that workers would revert to the base award. This would result in a significant reduction in wages and conditions, especially since these industries often have bargained successive agreements which have substantially improved conditions above the award.

3.3 Alterations to the Industrial Relations Court and Commission

Recommendations:

a) *That conferences be broadened to be able to involve people who are not covered by awards. e.g. unfair contracts, outworkers.*

b) *That mediation be defined as a term under the act, its status clarified and commissioners be given formal training in mediation.*

c) *That the court and commission continue to operate together.*

d) That the jurisdiction of the Commission be expanded to include the underpayment of wages and its resources be increased as part of this change.

e) That the nominations of Commissioners to the Minister for appointment from unions and employers be secured in statute for the sake of ensuring a balance commission between the interest of employees and employers.

f) That six year terms of commission, with the limit of two terms and the retirement age of 65 be maintained..

g) That time for appeals be extended to 21 days in line with the federal act.

h) That the processes involved in the area of awarding costs be maintained.

Process of Resolving Disputes

In relation to the question as to whether there are better mechanism to resolving disputes, our view would be no. However, this may be supplemented by mediation. Section 197 of the Act allows this to happen although this has been infrequently used.

- Mediation should be defined as a term under the Act.
- Some consideration should be given to whether the outcome of the mediation has a status under the Act. At the moment it does not and this has hindered no doubt its usefulness in a broader fashion.
- Commissioners should have formal training in mediation.

Structure of the Court and Commission

There is little benefit in establishing the Court and the Commission as separate entities. The question as to whether the Commission is more user-friendly is a function of where and with whom it is located. This issue goes more to its operation and procedures. In addition there is merit in having the Court and Commission work together simply from a point of view that there are benefits from the use of registry and library and other facilities in the Commission.

As to whether the Commission can become more user friendly needs to be separately explored. It is our experience is that the trend has been one of greater

complexity with an increase in the use of lawyers as a way of representing parties. I believe this trend is not appropriate for the Commission in the future.

Jurisdiction of the Industrial Court and Commission

There is merit in expanding the jurisdiction of the Commission particularly in the context of under payment of wages cases. However in saying this it would seem that the consequence will be a significant increase in the workload of the Commission and to that extent the government will need to consider whether the number of Commissioners is appropriate.

We would also argue that if the jurisdiction was to be increased in the Commission this would need to take into account matters such as the issues that relate to unfair contracts. This needs to be considered in the context of broadening the Commission powers in relation to unfair dismissal.

Appointment and selection of members to the Industrial Court and Commission

This is an issue that has been of concern to the UTLC in the immediate past. Whilst the Act makes it clear that a consultative process is required, there seems to be no obligation on the government having done the consultation to actually appoint a nominee from the UTLC. While one nominee was appointed in the last round, a person who was not nominated from by the UTLC was also successful. The intention of including key industrial parties in the Act as part of the selection process for commissioners is surely to ensure they are acceptable to key parties and so that a balance of commissions can be maintained. The UTLC as the peak body of the SA union movement ensures that our nominees are acceptable to the movement as a whole before nominations are made. This process needs to made more secure by statute to ensure that political interference of this kind in the appointment of Commissioners cannot easily occur.

For the reasons above we are not be in favour of advertising for Commissioners and would prefer to see the Act used as the primary mechanism for nomination.

Term of Appointment

It is important that Commissioners act independent in their role under the industrial relations act. They also need to be in touch with the issues and the reality of the workforce which is rapidly changing. For these reasons we support the continuation of the current length of terms and age limit for state commissioners.

Appeals to the Full Bench of the Commission

We have no major concerns with current arrangements in this regard. We would merely make the point that the time of appeals should be extended to 21 days rather than 14 days. This is the same as the Commonwealth. We would also say that there should be a requirement that a Full Bench hearing be convened quickly and that the issues be heard expeditiously.

3.4. Unfair Dismissal

Recommendations:

a) *ILO convention 158 be referred to in the objects of the act but also used as the basis of the entire section on unfair dismissal.*

b) *No worker should be excluded from the unfair dismissal provisions including casuals, employees of small business, those on probation and trainees.*

c) *Employees on contracts for specific rimes or for specific tasks should be protected from unfair dismissal.*

d) *The cap on salary be increased to $85,000 for the purposes of access to the jurisdiction.*

e) *Maintain the emphasis on ILO convention 158 in the definition of harsh, unfair, unjust or unreasonable but expand it to also include "an invalid reason" as per the Queensland Act.*

f) *Make one of the definitions of unreasonable to include lack of notification, warning, performance management and opportunity to respond.*

g) *That non-renewal of contracts for reasons which would be considered as discriminatory in other employment contexts be considered under unfair dismissal processes. eg pregnancy.*

h) *The definition of remuneration for the calculation of any monetary award include to total value of earnings including overtime, bonuses, allowances and salary packaging arrangements.*

i) *The time requirements for lodging unfair dismissal claims be expanded to a month with an ability for the Commission to accept "out of time" claims in certain circumstances.*

j) Primacy be given to reinstatement unless this will disadvantage the employee.

k) The limit of compensation be deleted.

l) There be a provision included for compensation for hurt, humiliation distress etc arising from unfair dismissal.

m) That injured workers be protected more adequately from unfair dismissal.

A key element in the current industrial relations climate in Australia is the desire by some employers to create a disposable and 'flexible" workforce. This is largely reflected in the high levels of casual employment but also in the recent moves by state and federal conservative governments to undermine or remove the ability of workers to access rights not to be unfairly dismissed.

It is surprising therefore to note that the Australian government has ratified the ILO convention 158 on the Termination of employment and that the state act specifically refers to it.

The right of all employees to be protected against unfair dismissal regardless of their status is enshrined in this convention.

Article 4

"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."

Article 5

"The following, inter alia, shall not constitute valid reasons for termination:

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

(e) absence from work during maternity leave.

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination. "

The right of all employees to proper process and the right of appeal against dismissal is also enshrined in this convention.

Article 7

1. The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Article 8

1.A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

It is therefore not in keeping with this convention to limit who has access to unfair dismissal action within the Act. Workers on probation, casuals, trainees and other groups who are excluded under the general exclusion provisions of the current act should be able to access unfair dismissal. There should be no general exclusion provisions under this section of the act.

The issue of whether small business should be excluded from unfair dismissal procedures is very clear. No business, regardless of its size should be subsidized on the basis of limits to the rights and conditions of its employees.

The current view of the federal government that small business should be exempt from unfair dismissal provisions because it limits employment has substance. It is purely a convenient public line designed to justify a reduction in the rights of workers and is in total contravention of the convention which the government ratified.

This view is not necessarily shared by the small business sector. A poll conducted by the ACTU in the western suburbs of Adelaide in February 2002 of 100 small businesses showed the main reason for not recruiting people was that they either didn't need any or that there was insufficient work. High employment costs were

only cited by 21% of respondents and only one citing concerns about dismissing staff.

The rights of workers when, in the view of the employer, their work has been completed or when their contract has expired to have access to unfair dismissal is denied in the current state act. Workers who hold a realistic expectation that the work they are performing will be continued they should not be subject to dismissal unless there are reasons related to their conduct or performance. Employers have used this provision to unfairly dismiss workers and then continue the work with another employee. The Act needs to provide access to unfair dismissal proceedings for employees whose employment has been extended (for whatever reason) beyond the expiry date of their initial contract; or whose termination occurred at the expiry of the initial contract and who had a reasonable expectation of continuing employment.

Although the right of access to unfair dismissal for all workers is provided for under the ILO convention 158, for practical and equity reasons access to the unfair dismissal tribunal should be prioritized towards those who are low paid and have no ability to use their own lawyers. Therefore the current cap on remuneration should continue but be increased to reflect movement in wages to $85,000.

The current definition of remuneration is inadequate in the act. A number of occupations have systems of bonuses, commission payments and salary packaging arrangements which contribute to income. These need to be taken into consideration when determining compensation for unfair dismissal.

The ILO convention 158 is a broad guideline in determining the definition of harsh, unjust or unreasonable, in the current act with the onus of proof on the employer and the consideration of evidence to determine the matter. The Queensland act adds another factor, "for an invalid reason" which specifies aspects of the ILO convention but also other reasons including protection from dismissal for when an employee makes a disclosure under the whistleblowers act. These provisions should be considered.

The ILO convention specifies that a person cannot be terminated for reasons related to their performance before they are provided with an opportunity to defend themselves against these allegations. It seems reasonable therefore to insert into the state act the requirement that a process of notification, warnings, performance management and opportunity to respond to allegations be put in place by the employer before dismissal.

The current aspect of the act which disallows inadequate redundancy payments to be used to define harsh, unjust or unreasonable should be amended. This is especially important considering the precarious nature of the SA workforce and recent concern by unions over the treatment of workers in the light of corporate collapse.

The existing requirement for the application to be made in 21 days is sometimes difficult for particular groups of workers. This applies especially for rural, remote and non- English speaking workers. The benefit of having a reasonably short time frame is important so that reinstatement is more possible and evidence is fresh. An extension of the time to a month would be effective with the provision for the Commission to accept applications "out of time" if there were circumstances that justified this.

The estoppels provisions of the unfair dismissal provisions severely limit the ability for workers to access unfair dismissal if they have sought remedy in another jurisdiction. It is possible that workers may be unfairly dismissed and have a workers compensation issue or wish to lodge a compliant with the equal opportunity commission. It is not reasonable that a worker cannot seek redress for unfair dismissal if they are dealing with another aspect of their dismissal. This issue could also be addressed by a mechanism which set employment rights as the basis for proceedings and enabled commissioners to work across jurisdictions. This proposal is discussed later in our submission.

The filing fee is a limiting factor for low paid workers to access their unfair dismissal rights and should be removed.

Reinstatement to employment is not emphasized as the prime object for unfair dismissal under the current act. Although there are specific problems with a focus on re-instatement, it is by far the best remedy when the employment is on-going or secure. A job is better than a pay out in the current economic climate and a focus on reinstatement acts as an incentive against unfair dismissal.

This can be mis-used by employers who wish to avoid compensation. If the relationship between the worker and employer has been damaged severely or where the situation has become untenable for the workers to return, reinstatement should not be used as an avoidance mechanism for compensation because the employer knows that the worker will be likely to leave voluntarily.

The current limit on compensation should be removed. In addition there should be the ability to provide for compensation for non-economic loss arising from a successful unfair dismissal case. The loss of employment can often cause hurt, lead to inability to gain further employment or cause great distress that can take a long time to recover from. This should be able to be compensated for as all of these circumstances can lead to further reduction in income arising form the dismissal.

The current act does not adequately protect injured workers from unfair dismissal. Workers who have lodged claims under the Workers Compensation Act and have been dismissed cannot have their claims heard for unfair dismissal until their workers comp claim is determined. The act should be amended to enable reinstatement regardless of the processes under the workers compensation act. This

issue also draws attention to the need for some provision for the ability to deal with matter across acts that relate to matters of employment.

3.5 Unfair Contracts

Recommendations

a) *That the SA Act allow for the issue of unfair contract to be dealt with by the Commission.*

A gap exists in the current legislation, which affects a growing proportion of the states workforce. In particular we argue that the time has come for government to consider the place of an unfair contracts provision in the relevant legislation of the South Australian jurisdiction.

In states such as New South Wales and Queensland such provisions already exists. In Queensland the *Industrial Relations Act 1999* defines employees very broadly and includes in that definition persons working under a contract for Labour only or substantially for Labour or a person who is member of a class declared to be an employee under section 275 of the Act. In other words the Act takes a broad view of a worker or an employee and is not restrained by somewhat artificial distinctions between employee and contractor.

In New South Wales section 106 of the Industrial Act gives the power to the Commission to determine or set aside what are said to be unfair contracts on the grounds of unfairness. Whilst there has be some controversy about the reach of the Act it does provide the Commission with a ready avenue to resolve disputes which would otherwise have to be dealt with in a more traditional and costly form.

In South Australia the current Act (*Industrial Employee and Relations Act*) is framed in such a manner as to exclude those people or those persons who are contractors from accessing the unfair dismissal and under payment of wages provisions. These provisions have proved themselves highly useful in the context of unresolved disputes that affect employees and employers, however it is our contention that they need to be updated in light of the growing number of persons who do not fall within their provisions. Preliminary research by the Association indicates that in 1998 in Australia as a whole there was some 265,000 persons who were employed on the basis of contracts.

Although this is in a workforce of 8 million and more research needs to be done as to what applies exactly in South Australia it is our experience that this is a growing area of the Labour market. In relation to employment categories such as engineers, scientists, managers and pharmacists, IT professionals and vets it is fair to say that we are frequently called upon to assist members in relation to disputes that arise in relation to their contracts and this can often prove to be costly and time consuming.

Currently unresolved issues do not have a forum in which they can be readily dealt with. Consequently the Association argues that an unfair contracts jurisdiction could go a long way to enable those employees to have their rights determined, in a low cost non-technical jurisdiction such as the Industrial Commission.

This review provides an invaluable opportunity for the government to consider how well industrial legislation deals with a rapidly changing labour market. Since the 1990's the trend towards deregulation of labour has inevitably produced winners and losers. In order to apply concepts such as equity and consideration of fairness in relation to these matters, we believe that the time has come for this form of employment to be properly regulated. We understand that a number of other parties in the industrial system are raising similar issues in their industries.

3.6 Improving Compliance with an Understanding of Industrial Issues

3.6.1 Inspectorate

Recommendations:

a) *That the inspectorate be strengthened to be able to inspect where there is suspected exploitation and non-compliance of agreements and awards and where reports of this have been made by unions. They should not be restricted to investigating specific complaints by individuals.*

b) *That the inspectorate should also be able to do industry wide and company inspections.*

c) *That the power of the inspectorate be re-instated to require that employers calculate unpaid wages, provide a certificate of their calculation and evidence of previously unpaid wages.*

d) *Inconsistencies between the inspectorate under the long service leave Act and the industrial relations act be addressed.*

The current wording of the Act restricts the inspectorate from investigating situations unless there has been a specific complaint. The areas of employment that require the most vigour in investigation and inspection are the ones least likely to generate individual complaints. Workers who are exploited and in precarious work are most fearful of complaining. They are likely to lose their work or suffer some form of victimization.

The inspectorate needs the opportunity to investigate workplaces when they suspect non-compliance. Some industries have been shown to be more exploitative than others e.g. call centres and outwork. The inspectorate should have the power to

make general inspections across industries to enable them to determine if it is an individual employer issue or one that is common across a number of workplaces in an industry.

3.6.2 Penalties

Recommendations:

a) That the penalties for non-compliance of the Act be significantly strengthened including a general offence against the provision of the act.

b) Include a provision to prosecute individual officers of corporations responsible for non compliance (as per the NSW Act).

c) Reintroduce the ability for unions to recover fines if they initiated investigations which resulted in penalties to the employer.

3.6.3 Employee Ombudsman

Recommendations:

a) The Ombudsman's position be renamed to the Industrial Ombudsman and the role changed to -

- *Investigating and reporting on the objects of the Act.*
- *Investigation complaints of misuse or non compliance with the Act.*
- *Researching key industrial issues in order to inform future reform of the Act.*
- *Investigate and provide information and support for trainees under the VEET Act.*

b) That the role of the ombudsman in relation to advocacy for individuals and involvement in bargaining be removed.

The employee ombudsman position was created as part of the E &IR Act in 1994 as a direct attack on the union movement and as an ideologically driven which attempt to undermine the principle that unions were the representatives of employees. It reflected the philosophy of the Act which was individual based and that individual workers could pursue industrial matters with their employer.

The employee ombudsman was meant to be the individual workers alternative to belonging to a union.

In practice, the employee ombudsman's office has had little or no impact on improving industrial relations and the conditions of employment for SA workers. This can be demonstrated from the Ombudsman's own annual report of 2002/2001.

In fact the report emphasizes that the best results for workers are when there are strong and effective unions.

" ..the notion that all that is needed is to eliminate industrial disputes through weakening unions is at least partly responsible for the many negative industrial relations outcomes we are currently experiencing such as corporate failures, a casualised workforce, excessive working hours, workplace bullying, workplace injury and disease and so on." (page10)

Part 6 of the I&ER act specifies the functions of the employee ombudsman. In his annual report the ombudsman comments on each of these functions.

Part 6 -

(a) to advise employees on their rights and obligations under awards and enterprise agreements.

"it has not been possible to devote the resources to this aspect of our work that has been the case in the past"

(b) to advise employees on available avenues of enforcing their rights under awards and enterprise agreements.

"this function was carried out as part of our performance of function (a)"

(c) to investigate claims by employees or associations representing those employees of coercion in the negotiation of Enterprise Agreements.

"No such claims were received by this office in the reporting period"

(d) To scrutinize enterprise agreements lodged for the approval under the Act and to intervene in the proceedings for approval if the Employee Ombudsman considers that there is sufficient reason for doing so.

The office approved 215 enterprise agreements and was involved in 51% of agreements approved. "involvement featuring intervention and the provision of advice seems to be declining in importance, as predicted in last year's report,

but requests on the part of workers to be represented by the office seem to be increasing steadily"

(e) To represent employees in proceedings (other than for unfair dismissal) if: the employee is not otherwise represented, or it is in the interest of justice that such representation be provided.

"..the only proceedings in which our representation was sought are those relating to unfair dismissal and workers compensation. The legislation prevents our providing this representation…"

(f) to advise individual home based workers who are not covered by awards and enterprise agreements on the negotiation of individual contracts.

"as in previous years no requests for such assistance were received"

(g) To investigate the conditions in which work is carried out in the community under contractual arrangements with outworkers and other examinable arrangements.

"Very little was done as far as this function was concerned during 2000-20001 because all our resources were fully occupied with enterprise bargaining, dealing with complaints and workplace bullying"

(h) To provide an advisory service on the rights of employees on occupational Health and safety issues.

"Complaints on Occupational Health and Safety and Workers Compensation issues continue to increase each year, despite the Office being only one of a number of agencies available to assist workers with problems of this nature. The complaints are the same as they have always been, non-payment of workers compensation entitlements, delayed determination of claims, unsafe workplaces etc. "

The main work of the Ombudsman's office over the last year seems to be in areas that either are outside of the legislation (workplace bullying, underpayment of wages, workers compensation) or where other organizations can and do provide the same service. (Working Women's Centre, Workplace Services, unions, Commission). There is also a large amount of work involved in promotion of the office yet the majority of functions under the act are not being performed. Of great concern is that that the employee ombudsman is the only body with legislative authority to advise and support outworkers and yet nothing has been achieved by them in this area- the most exploited workers in the state. The Textile, Clothing and Footwear Union, the Working Women's Centre, Dale Street Women's Health Centre

and the Fairwear campaign have all achieved more for outworkers than the employee ombudsman's office.

For these reasons, there is not an apparent need for the ombudsman's office in its current form. As part of the review of industrial relations it is important to ask the question. What sort of additional functions other than unions and the Commission would assist South Australians to achieve better industrial outcomes?

Some very marginalized workers who are not members of unions such as outworkers and workers in highly precarious areas or with extremely small number of working hours need access to advice and support in order to avoid exploitation. The union movement is exploring ways to support these workers but in the meantime there is the need to provide a service for them, in a similar way that the working women's centre currently does. Options for this should be explored but it is unnecessary to enshrine such arrangements in the Industrial relations act. The funding currently provided to the Office of the Employee Ombudsman (approx $500,000 per year) could be better used to provide such a service.

Better use of the Ombudsman's Office within the objects of the Act could be in the area of VEET. When it is considered that trainees and apprentices have a low level of understanding of their rights and entitlements they are in an extremely vulnerable position at the workplace. Therefore the "Office" could be a conduit for providing information and advice to unions, which would enable them to give better support to workers and involvement in training programs. This was always the case in the past resulting in the programs being more transparent and better managed, eg union membership would significantly improve the status and situation of trainees that unions have found it increasingly difficult to identify, organise and support. Given this role the "Office" would be linked across the union movement who would be more able to deal with issues relating to traineeships and apprenticeships in South Australia.

The involvement of the Employee Ombudsman in representing individuals in advocacy and bargaining has not been successful and in some cases actively cuts across the legitimate role of unions. For the Ombudsman representing several individuals to be able to sit at the bargaining table alongside unions representing hundreds or even thousands of members and have equal status in negotiations is both insulting and undemocratic.

If there was to be a statewide and legislative role for the Ombudsman we would recommend a total restructuring of the Office with broad reporting powers in relation to objects of the act and the identification of industrial issues that could lead to reform of the state Act. Good information and research would assist unions, community organizations, government departments and the Commission to be able

to better address issues facing working South Australians. If this was to happen then the title "ombudsman" would be a more accurate description of the position.

3.7 The State Relationship to Federal System

Recommendations:

a) *That the dual state and federal systems remain in place.*

b) *That the current system of dual appointments to state and federal jurisdictions continue with better resourcing including an increase in Commissioners and staff.*

The split between the state and federal industrial relations system is about 50/50. The shift to the federal jurisdiction by groups such as teachers has largely been due to the nature of the legislation at the time rather than a rejection or a state system. In fact the Australian Education Union registers agreements in both the state and federal systems.

The difficulty with moving to a unitary system of industrial relations is that the legislation is debated and amended in a national context, removed from the specific circumstances and of our state. It is important to maintain a state system so we are more easily able to address the issues facing SA workers. The removal of the state system in Victoria has created problems for the industrial rights of many Victorian workers.

The current arrangements of dual appointments of industrial Commission members is considered to be effective by unions in South Australia. However, there is a need to increase the resources of the Commission in SA, especially if the review of the SA industrial relations system leads to a stronger role for the Commission.

3.8 International Labour Standards

Recommendations:

a) *That the objects of the SA Act make reference to the ILO conventions ratified by the Australian Government. E.g. " assisting in giving effect to Australia's obligations in relation to labour standards" (Queensland I.R. Act)*

b) *That a particular reference be made in the Act to the convention on freedom of Association convention, the right to organise and collectively bargain convention and the workers representative convention.*

c) *That the SA Government ratify the ILO convention on the provision of paid maternity leave.*

Australia is signatory to a number of ILO conventions which are part of a global system of international labour standards. These conventions were developed by governments of the world in partnership between employers and workers organisations to establish standards for the conditions of human beings at work.

These conventions provide the basis for internationally accepted standards for workers across the world. SA is part of the global economy and trades with many nations who have also committed to these standards. These standards are therefore relevant and should form the basis of key principles within which our industrial relations system operates.

Currently the ILO convention 158 on the termination of employment is the only convention specifically mentioned in the Act.

Other conventions that should be referred to are the right to organise convention, the right to organise and collectively bargain convention and the workers representative convention.

These conventions describe the rights of workers to organise in unions and to collectively bargain. The current act does not enshrine these sentiments, even though Australia is a signatory to them. The conventions rightly points out that "the principle of freedom of association to be a means of improving conditions of labour and of establishing peace"

The term 'absolute freedom of association" is included in the current objects of the state Act. The inclusion of the word "absolute" is opposed to the spirit of the ILO convention as it has come to mean the right <u>not</u> to associate and the right to bargain individually not collectively. This is not the intention of the ILO convention 87 and more recently the collective bargaining convention 154.

These conventions recognise the need for and the importance of employee organisations and calls on signatory nations to promote collective bargaining.

In relation to conditions of specific workers the relevant ILO conventions to which Australia is a signatory include the workers with family responsibility convention, the equal remuneration convention, the minimum wage fixing convention. A key issue of current public concern is the issue of paid maternity leave. The Australian

Government has not ratified the ILO convention on the provision of paid maternity leave. In the context of this review it would be a good step forward for workers with family responsibilities for the state Government to show the way and ratify this convention with a strong recommendation to the federal Government that it does the same.

The referral to the ILO conventions as part of the IR act will provide an international context and a guide to our deliberation in South Australia.

3.9 Fair Employment Tribunal

Recommendations:

a) *That mechanisms to address the cross over of different acts relating to the employment rights of workers be explored.*

There are four Acts of parliament which directly relate to issues of employment rights in South Australia.

1. The Workers Rehabilitation and Compensation Act
2. The Occupational Health and Safety Act.
3. The Industrial and Employee Relations Act.
4. The Equal Opportunity Act.

At the workplace, workers rely on different Acts for different purposes often connected with a common situation. Problems that occur at work do not necessarily fit neatly into only one jurisdiction. For example, the issue of workplace bullying can be considered an industrial issue but it has occupational health and safety implications, could cause injury which should be compensated for and may also be considered a be form of harassment under the equal opportunity act.

This can also apply to individual worker issues eg a worker who is sexually harassed resigns and become ill may have an unfair dismissal claim or an equal opportunity claim, a common law claim, a WorkCover claim and possibly an underpayment of wages claim. All in different tribunals, all with different time limits and originating processes.

There are currently unjust and unclear provisions governing the interaction between the various remedies. For example, it is arguably the case that an unfair dismissal application that raises issues of discrimination precludes a complainant from later pursuing a claim under the Equal Opportunity Act not withstanding that the remedies available under the EO Act are broader than those available under the I&ER Act.

The UTLC sees a need to explore mechanisms to deal with the cross over of matters between acts.

4. CONCLUSIONS:

The UTLC believes the pendulum has swung too far in favour of the interests of business and employers in relation to the industrial relations system in South Australia and away from the rights of employees. This, combined with a confrontational approach from the current federal government, has given permission for some employers to operate in unfair and exploitative ways at the expense of employers who wish to operate in a more positive and democratic way.

The result has been that South Australia has the highest casual rate in the country, labour hire is extensively used in both the public and the private sectors and SA workers are generally low paid and low skilled compared to other states. Good industrial relations are fundamental to a productive and vibrant state where workers are part of the state's development.

Therefore it is important that a new, balanced and fair industrial relations system is created in South Australia in line with the new Government's approach to putting SA back on the map as a vibrant, innovative and confident state.

The new system should be based on fairness, participation and social justice by enabling union to play an active role in protecting and improving workers living standards and working rights.

The UTLC submission calls for a strong industrial relations act which operates in a fair and balanced way and has as its base a strong award system.

We seek an Industrial Relations act which enables workers to organise collectively through their unions to improve their living standards.

Its time to swing the pendulum back and build a system which delivers fair and safe work for all South Australians.

REFERENCES

ABS (2002[a]) Australian Bureau of Statistics (ABS) *Australian Social Trends 2002: Work - State Summary Tables* Cat. No. 4102.0,

ABS (2002[b]) Australian Bureau of Statistics (ABS) *Labour: changes in the price of labour*. Aus Stats: http://www.abs.gov.au/ausstats/ab…/91c8a6170765b036ca25b3500122692!OpenDocument

AMWU (2000) Australian Manufacturing Workers Union. *Fifteenth Biennial National Conference*. Proceedings, Sydney, NSW. p.33

Australian Centre for Industrial Relations Research and Training (ACIRRT) (1999) *Australians at Work: just managing?* Prentice Hall, Sydney.

Australian Council of Trade Unions (ACTU) (1999*) Employment Security and Working Hours - A National Survey of Current Workplace Issues*. ACTU, Melbourne.

Australian Industrial Relations Commission (AIRC) (2001) W789529PR903575: s.113 Variation of order and award by consent (c2001/332) Metal, Engineering and Associated Industries Award, 1998 - Part 1)(ODN C No. 02568 of 1984). Justice Munro, Sydney, April 2001.

Australian Labor Party (ALP) (2002) SA Labor's Policy: *Industrial Relations: Restoring the Balance*: SA Labor Platform for Government. http://www.sa.alp.org.au/policy/index.html

Australian Manufacturing Workers Union (AMWU) (2001) *Marginal Seats Campaign Kit; 2001 Federal Election.*

Australian Young Christian Workers (2001) *Don't Bother Coming in Today: casual work, casual nature.* A Report on the situation of young casual workers in Australia today. August 2001. Australian Young Christian Workers' Movement, NSW.

Cameron, Joanne (2000) *Young People and Casual Work*. A Report prepared for the South Australian United Trades and Labour Council, November 2000.

Collis, Gary (2001) *Office of the Employee Ombudsman: Annual Report* 2000-2001.

International Labour Organisation (ILO) C100: Equal Remuneration Convention, 1951. http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C100

International Labour Organisation (ILO) C111: Discrimination (Employment and Occupation) Convention, 1958. http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C111

International Labour Organisation (ILO) C135: Workers' Representatives Convention, 1971. http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C135.

International Labour Organisation (ILO) C156: Workers with Family Responsibilities Convention, 1981 http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C156

International Labour Organisation (ILO) C158: Termination of Employment Convention, 1982. http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C158.

International Labour Organisation (ILO) C173: Protection of Workers' Claims (Employer's Insolvency) Convention, 1992. http://www.ilolex.ilo.ch:1567/scripts/convde.pl? C173.

International Labour Organisation (ILO) C87: Freedom of Association and Protection of the Right to Organise Convention, 1948. http://www.ilolex.ilo.ch:1567/scripts/convde.pl? C87

International Labour Organisation (ILO) C98: Right to Organise and Collective Bargaining Convention, 1949. http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C98

Queensland Government Submission to Queensland Industrial Relations Commission *Pay Equity Inquiry* (2000) http://www.ir.qld.gov.au/reports&submissions/index.htm

Queensland Government (2001) *Code of Practice for Outworkers*. http:www.ir.qld.gov.au/publications/code of practice.pdf.

Ross, Andrew (ed)(1997) 'Introduction' In *No Sweat: fashion, free trade, and the rights of garment workers*. Versco, New York. p 10.

Ross, Andrew (ed)(1997) *No Sweat: fashion, free trade, and the rights of garment workers*. Versco, New York.

South Australia Department of Education Training and Employment (DETE) VET Strategy Branch (2002) *South Australia: People, Jobs and Skills*. DETE, Adelaide.

South Australian Department of Employment, Further Education, Science and Small Business (DEFESSB) (2002) *Quarterly Labour Market Report. July 2002*. Adelaide. pp 1-4.

South Australian Department of Industry and Trade (DIT) (2002) *South Australia: Productive, Creative, Competitive*. Adelaide

Spoehr, John; John Quiggin and S. Barrett (2002) *South Australian Labour Market Briefing. Vol. 3 No. 1*, University of Adelaide, Centre for Labour Research, February 2002. pp 1-6.

Legislation:

South Australian *Industrial and Employees Relations Act 1994*

Queensland *Industrial Relations Act 1999*

New South Wales Industrial Relations (Ethical Clothing Trades) Act 2001 No. 128