Industrial Legislation Policy

ACTU Congress September 1991

1. Preamble

1.1 Congress affirms that the principles of conciliation and arbitration provide the proper basis for a fair and effective industrial relations system for Australia. This system should be based upon a recognition of:

- the need to encourage direct negotiations between unions and employers leading to the establishment of industrial agreements providing for improved wages and conditions;
- the right of unions and unionists to take industrial action to protect and to promote their legitimate industrial interests without legal impediment;
- the right of unions to regulate their own affairs in a democratic way;
- the right of union officials and members to perform their union duties free from outside interference;
- the principle that industrial relations and the activities of unions should be free from government interference;
- the need for processes of effective consultation to take place between government and unions on all aspects of industrial legislation.

2. Federal Legislation

2.1 General

Congress reaffirms that federal industrial legislation should:

- emphasise that processes of conciliation and direct negotiation are the most appropriate basis for dispute prevention and settlement;
- seek to prevent undue government interference in industrial relations matters;
- ensure that participation in the federal system should be available to all unions regardless of the nature of the employment of their members;
- be framed so as to ensure that it does not impose any unnecessary constraints upon the capacity of the Commission to prevent and settle interstate industrial disputes;
- facilitate the amalgamation of unions, and
- facilitate the continued valid, effective and democratic operation of unions.

2.2 Prevention and Settlement of Industrial Disputes

1. Industrial relations in Australia will be best served if emphasis is placed on conciliation as a means of preventing and settling disputes. This is entirely consistent with the Objects of the Act, which clearly require that the principal efforts of the participants in the system should be directed to prevention and settlement by means of conciliation. Arbitration should be a last resort.

2. The present system of conciliation and arbitration is often excessively legalistic. Too often issues are determined in a 'court room' atmosphere, which is not conducive of their speedy resolution.

3. The facts of any dispute should be ascertained quickly, and the matter should then be processed as expeditiously as is consistent with equity and good conscience.

4. Congress emphasises that the function of industrial tribunals is to resolve the causes of industrial disputes, and not simply to obtain a resumption of work during a stoppage, or to secure the lifting of bans.

2.3 Appeals, Reviews and References

1. The present provisions relating to appeals from decisions of members of the Industrial Relations Commission and the reference of matters to a Full Bench of the Commission require amendment. The provisions which allow a reference to a Full Bench at any stage of the conciliation and arbitration process and which allows the President of the Commission to withdraw a matter at any stage from an individual member of the Commission also tend to undermine the authority of individual members of the Commission and place undue emphasis on Full Bench hearings.

2. Further, the provisions for appeals and references of matters "which are of such importance that in the public interest" an appeal should lie or reference be granted, have proved incapable of clear definition and have resulted in serious inconsistency in approach by the Commission.

3. Too many issues are allowed on appeal or by reference to a Full Bench. The emphasis on Full Bench hearings is unnecessary and wasteful as many matters may be settled satisfactorily by an individual member of the Commission without recourse to costly (both in terms of time and money) and more formal proceedings before a Full Bench. Matters considered by a Full Bench should be restricted to those of major industrial principle and should not be determined by legalistic procedures which have little regard to the issues in dispute.

4. The Government, through the Minister for Industrial Relations, should not have power to interfere in the dispute prevention and settlement functions of the Commission. In particular the Minister should not have right to intervene in matters before the Commission or to apply for the reference of a matter or for the review of a decision of a member of the Commission by a Full Bench of the Commission. Section 107 of the Act should be amended accordingly and sections 44 and 109 should be repealed.

2.4 Appointments to Industrial Relations Commission

Congress supports the provisions in the new Act which provide that all persons who are appointed to the Industrial Relations Commission must have skills and experience in the field of industrial relations.

2.5 Access to Industrial, Social and Economic Research

The parties who appear before Tribunals should have access to an independent office of industrial, economic and social research. Such an office should be established under the Federal Act. It should provide information and transcript free of charge to unions that are parties to proceedings. This would help to promote equality of access to the Tribunals.

2.6 Publications

1. The prompt publication of the Commonwealth Arbitration Reports and of awards and variations is important to the proper functioning of the conciliation and arbitration system.

2. It is also necessary for consolidations of awards to be published at regular intervals or after a significant number of variations to an award have been made. The Office of the Industrial Registrar should be given sufficient resources to allow such publication and to provide readily accessible information to unions about decisions of the Commission and award standards.

2.7 Jurisdictional Issues

1. Too often in the past the efficient functioning of the conciliation and arbitration system has been inhibited byrestrictive interpretations of section 51 (35) of the Constitution by the High Court of Australia. For example, some groups of workers have been denied any access to the system because they have been found not be engaged 'in an industry'. In other cases major issues have been excluded from the purview of the Tribunals because they did not relate to an 'industrial dispute'. In particular Congress expresses it's opposition to the restrictive interpretation adopted by the Commission in relation to its capacity to deal with unfair dismissals. Such decisions bore no relation to social, economic or industrial reality. Congress welcomes the series of decisions since 1983 which have swept away much of this out-model case law, and reaffirms the need for Parliament to ensure that there are no unnecessary legislative constraints upon the capacity of the Commission to deal with interstate industrial disputes.

It is also important that judicial powers such as the power to give binding and authoritative interpretations of awards should be exercised in an industrial context.

3. Enforcement

3.1 General

1. There is an enormous range of legal sanctions which may be used against unions, members and officials who take industrial action in Australia. The existence of these sanctions is based on the incorrect assumption that such provisions have a constructive role to play in the formal industrial relations system.

2. There is clear evidence for the proposition that the use of sanctions against unions and unionists in the course of industrial disputes is likely to exacerbate those disputes and make them more difficult to resolve. In addition the use of sanctions may well cause permanent damage to the relationship between employer and union and between employer and employee.

3. Historically, Liberal-National Party Governments have adopted the misguided policy of 'strengthening' and increasing the legal sanctions in industrial legislation. They have created new sanctions and revamped the old ones. They have attempted to reduce the ability of unions to effectively represent the working men and women of Australia.

4. The failure of these policies amply demonstrates the need for a more rational and less confrontationist approachto industrial relations. Accordingly, Congress calls on the Labor Government to repeal the sanctions provisions which are presently embodied in the Industrial Relations Act.

5. Congress re-affirms its support for the Hancock recommendation that the penal provisions in the Conciliation and Arbitration Act should be repealed as part of an overhaul of the system. Congress is of the view that self-discipline within the system of conciliation and arbitration is the most appropriate means of ensuring compliance with that system. This is clearly demonstrated by experience since 1983.

6. Congress also notes the existence of a range of sanctions provisions outside the framework of the Industrial Relations Act. This includes ss. 30J and 30K of the Crimes Act, ss. 45D and 45E of the Trade Practices Act, the so-called 'economic torts', and state provisions such as the Queensland Industrial (Commercial Practices) Act. The combined effect of these provisions is to make it impossible for any union or group of workers in Australia lawfully to take action to protect or to promote their legitimate industrial interests. This state of affairs is a disgrace to any democratic society.

7. Congress affirms that the capacity of the union movement to perform its traditional, responsible functions should not be impeded by either the civil or the criminal law. This must include the right to withhold labour or to impose limitations upon the performance of work.

8. Congress further declares its full support for any union or unionist acting in accordance with the decisions and rules of their union who are made the subject of the operation of these sanctions.

3.2 Industrial Relations Act

1. Congress calls for the repeal of those provisions in the Industrial Relations Act which may be used against unions, members and officials who engage in industrial action to protect or to promote their legitimate interests.

2. The provisions which ought to be repealed include:

- the de-registration provision (s. 294) so far as it allows for sanctions to be imposed as a result of industrial disputes.
- the bans clause procedures (ss. 181-186, 178) which allow penalties to be imposed on unions acting in ontravention of a bans clause;
- the provision which prevents the Commission from dealing with claims for payment by employees for periods during which industrial action was taken. Congress acknowledges that section 124 of the new Act goes some way to overcoming this problem -at least in relation to occupational health and safety disputes;
- the provisions which protect persons who fail to take part in industrial action (ss. 334 and 335);
- the provisions whereby a breach of the Act may be converted into a contempt of court and penalised accordingly (s. 61 of the Industrial Relations Act and s.41 of the Federal Court of Australia Act) and
- the provision which makes it an offence for a union officer to advise, encourage or incite a union member, bound by an award, to refrain from, prevent or hinder such a member from

i). working in accordance with the award;

ii). working with an employer bound by the award (Cf: s.312)

iii). Congress condemns the position taken by reactionary employer organisations in response to Government proposals to introduce a more rational and equitable compliance system. As a result of such opposition we are faced with the retention of the discredited and ineffectual penal clauses from the old Act together with a wide range of unnecessary enforcement provisions outside the system which make it impossible for unions to properly protect and promote the interests of their members.

3.3 Trade Practices Act

1. Sections 45D and 45E of the Trade Practices Act prohibit a wide range of legitimate industrial action by unions, members and officials. They should be repealed at the earliest possible opportunity.

2. The Trade Practices Act is a totally unacceptable vehicle through which to attempt to regulate the legitimate industrial activities of trade unions. The Act should be used only for promoting free competition and fair trading by business enterprises.

3. The s. 45D actions that have been taken against unions clearly demonstrate that the Trade Practices Act is not merely useless in settling industrial disputes but is positively harmful. The special characteristics of industrial disputes demand that they be dealt with under industrial legislation and not by recourse to the Trade Practices Act.

4. The so-called conciliation procedures provided under the Industrial Relations Act in respect of section 45D and 45E disputes are a sham. They are intended merely to facilitate the enforcement of those sections and do not provide a genuine opportunity for the industrial relations merits of a dispute to be examined and an acceptable resolution sought.

5. Congress welcomes the steps taken in section 164 of the Industrial Relations Act to provide that inappropriate State legislation in relation to secondary boycotts does not operate where such conduct may give rise to an action under the Trade Practices Act.

3.4 Tort Liability

1. Congress condemns in the strongest terms the use of the so-called 'economic torts' in an attempt to inhibit the capacity of the Australian trade union movement to protect and to promote the legitimate industrial interests of its members.

2. Accordingly, Congress calls for the introduction of statutory protection against common law liability for industrial action.

3. This protection should extend to unions and their members and officials.

4. It should apply to all acts or omissions in contemplation or furtherance of an industrial dispute. However it should not protect wilful acts or omissions directly causing death or physical injury to a person or physical damage to property, or which constitutes a defamation.

5. If there are constitutional constraints upon the capacity of the Commonwealth Parliament to introduce a satisfactory level of protection against common law liability, Congress calls upon all State Governments to seek to provide complementary protection within their sphere of legislative

competence.

3.5 Crimes Act

1. Sections 30J and 30K of the Commonwealth Crimes Act should be repealed. The continued existence of the industrial and political sections of the Crime Act constitute a threat to the freedom and independence not only of the union movement, but of the Australian people.

2. Congress welcomes the recommendations of the Hancock Committee to the effect that the right to initiate a prosecution for breach of s.30K should be limited to those who have a direct interest in the matter in hand. This would go at least some way towards mitigating the harshness of a highly offensive provision.

3. Congress notes with concern the failure of the Commonwealth Government to implement the Hancock recommendation, let alone to attempt a more far-reaching reform of these provisions.

3.6 State Laws

1. Congress condemns the introduction of anti-union legislation by some State Governments. Congress expresses its opposition to the NSW Industrial Relations Bill now before the NSW Parliament. This Bill seeks to undermine fundamental human and democratic rights enshrined in Australian society.

2. In summary, the NSW Greiner Government has launched an assault against fairness in the workplace. The NSW Industrial Relations Bill represents an attempted industrial coup by the conservatives in NSW to destroy much of what has been achieved by the labour movement over a hundred years. It also represents an important trialing of the New Right agenda. What happens in NSW will have far reaching consequences across the country. It is a model warmly endorsed by the Hewson Liberal/National coalition.

Congress notes that the legislation -

- sets out a battery of penalties and sanctions against industrial action in addition to common law penalties. Any action other than usual performance of work is met with instant penalties. This is a return to the confrontationist, law of the jungle approach to industrial relations.
- defines pathetically weak minimum standards. For example, the forty hour week (not the thirty eight hour week) is defined as a minimum standard. But there's a catch: its a forty hour week averaged over a whole year. So an employee can be forced to work twenty hours one week and sixty hours the next - without overtime or penalty conditions.
- duplicates the provisions of sections 45(D) and (E) of the Trade Practices Act in the NSW industrial legislation.abolishes preference provisions in awards. provides draconian powers for the Minister in terms of deregistration of unions, injunctions against unions and ordering secret ballots of members on any issue as union cost.
- provides that interested person, whoever they might be, could seek the deregistration of a union.
- allows employers the right to decide (rather than employees) the superannuation fund(s) which will cover a workplace.
- provides that unions must give seven days notice to an employer before setting foot into a

workplace to inspect the wages records, check on award implementation or to organise campaigns or recruit members.

- abolishes the position of Chief Industrial Magistrate and the existing Industrial Commission and replaces that body with two new tribunals. The Bill introduces a complicated interest/rights distinction in the legislation and restricts the right to immediate recourse to arbitration (before a matter can be heard in an arbitration hearing the President of the Commission must issue a certificate certifying that the processes of conciliation are exhausted).
- bans the Industrial Commission from overviewing enterprise agreements - which can be made excluding trade unions. Thus, the public interest or the general fairness of an agreement is not subject to overview by the Commission. Such enterprise agreements are rubber-stamped by the government appointed public servant known as the Commissioner for Enterprise Agreements.
- Accordingly Congress endorses the actions taken by the Labor Council of NSW and unions in NSW to defeat this reactionary legislation.

3. Congress calls on all fair-minded persons, including community, welfare and church organisations, to raise theirvoices in protest against this attack on ordinary and decent Australians.

4. Congress calls upon State Labor Governments to remove anti-strike provisions which have been inherited from former conservative Governments. Where they are unable to repeal such legislation, they should at least ensure that it is not used.

5. Congress welcomes the criticisms by the International Labour Organisation in September 1991 of the NSW Government's Essential Services Act, 1988, which contains provisions that

- go far beyond a reasonable and fair definition of essential services;
- infringe the principles of freedom of association; and
- allows for unilateral actions by the Government, rather than recourse to due process, the determination of particular essential services and penalties in breach of the legislation.
- Accordingly, Congress calls on the NSW Government to repeal or substantially amend this legislation. Congress congratulates the Australian Government for referring this legislation to the ILO and supports any action the Federal Government might take to ensure compliance with the ILO ruling.

6. Congress calls on the ACTU Officers to; Seek national publicity in opposition to this legislation. A delegation of ACTU Senior Officers and representatives of major federal unions to meet with Premier Greiner and other key members of the New South Wales Parliament. Seek the support of the Federal Labor Government in opposing this legislation and to take action where this legislation is in breach of any treaty/convention to which australia is a signatory. Seek the support of national employer bodies in opposition to this legislation. Raise with the ILO the braches of ILO conventions contained in this legislation. Raise with the ILO the breaches of ILO conventions contained in this legislation. Approach ICFTU to make appropriate representation and to pursue this matter with other appropriate international associations.

7. Congress is also concerned at the use of the general criminal law against union officials and members in respect of the discharge of their responsibilities as such.

8. The union movement will not stand idly by when union officials and members are deprived of their basic civil liberties because they are performing their union duties.

9. Congress further states that proposals for the introduction of so-called 'Right to Work' legislation are dishonest and deceitful and have been so titled in order to give such legislation a credibility which it otherwise would not have. Congress believes such legislation is a denial of civil liberties and the right of workers freely to organise for their common good, and determines that it will resist the introduction of such legislation.

4. Government Intervention

4.1 The Government, through the Minister for Industrial Relations (or anyone else) should not be able to initiate enforcement proceedings against unions, members or officials.

4.2 Congress expresses its disappointment that provisions originally introduced by a Liberal-National Party Government whereby the Minister may apply for the cancellation of the registration of a union (s. 294), and for an order from the Federal Court enjoining a union or person from committing or continuing a contravention of the Act or the Regulations have been retained in the new Act. (s.109). These powers must be removed.

4.3 The Union Movement condemns the extension of the Minister's powers (including the power to apply for the review of decisions by, or the reference of matters to, a Full Bench of the Commission) in cases in which those powers are used against unions for political purposes and without regard to the industrial relations consequences.

5. Trade Unions

5.1 General

1. Unions should be free to regulate their own internal affairs consistent with principles of fairness and natural justice. Unions members should be free to determine the structure of union government which is best suited to their needs and to the needs of the organisation that represents their interests.

2. The increasing degree of government and judicial interference in the internal affairs of unions seriously impedes the effective, efficient and democratic operation of unions in the interests of their members.

3. Successive governments have passed, or proposed, legislation that substantially removes the right of union members to decide upon how the affairs of their unions are to be conducted and that considerably impairs the efficient and democratic operation of unions.

4. This legislation and decisions of the courts with respect to the internal affairs of unions have created a large degree of uncertainty as to the requirements o the law and have involved unions in protracted and expensive litigation. This situation is further exacerbated by court decisions which are inconsistent with each other, and with the stated objects of the Industrial Relations Act.

5. Many of the provisions relating to organisations which were contained in the Industrial Relations Act constituted a step in the right direction in this context. However they were still based upon an unacceptable degree of external interference in the internal affairs of registered organisations.

5.2 Membership

1. Membership of unions should be encouraged by provisions in awards and agreements for preference to unionists in all matters relating to employment. Such matters include:

- offers of employment;
- promotion;
- preferred dates, where applicable, for long service leave, leave without pay and annual leave;
- retention and redeployment in redundancy or retrenchment situations, and
- training and retraining opportunities.

2. Union members, delegates and officers should be protected against victimisation on account of their union activity. Special provision should be made for the protection of union delegates and shop stewards in accordance with the ACTU Charter on Shop Stewards. The present provision in the Act (s.) 334 should be amended to ensure that protection against victimisation is meaningful and applies to all employers. It should also be amended so as to protect persons who are denied access to employment because of union membership or activity.

3. The defence of Shield of the Crown should not be available in respect of public sector employers involved in s.334 matters.

4. Congress condemns attempts by the so-called 'New Right' to undermine the organisational security of the trade union movement through the use of State anti-discrimination legislation, and through ill-informed attacks on the 'closed shop'. It also condemns the proposal for a constitutional referendum on the right not to belong to a trade union as a political gimmick which is entirely lacking in substance.

5. Existing provision relating to conscientious objection to union membership should be repealed and replaced. The provision (s.267) is defective in that:

- the grounds of conscientious objection are too wide, and
- relevant unions are not properly involved and do not have the right to appeal from the Registrar's decision to issue a certificate.
- Section 267 should be replaced with a provision which enables persons whose genuine religious beliefs do not allow them to become union members to apply to the relevant union for an exemption from the operation of preference provisions in awards and agreements, or from union membership. The granting of such an exemption should be conditional upon the payment of relevant union fees. An appeal to the Industrial Registrar should be available against a decision not to grant an exemption. The guidelines for dealing with appeals should be determined after consultation with the ACTU and be set out in the Act. The Union concerned should have the right to be represented in the appeal proceedings.

6. Congress acknowledges that the `deemed member' provisions set out in section 202 of the Industrial Relations Act constitute a step in the right direction in relation to the capacity of federal unions to enrol independent contractors as members. However, Congress believes that there is scope for further reform in this area to ensure that all quasi employees are able to become union members and fully participate in the affairs of their union.

5.3 Elections

1. The present legislation dealing with elections constitutes an unwarranted interference with the freedom of union members to decide how the affairs of their unions are to be conducted.

2. As well as being objectionable in principle, the present legislation dealing with union elections is excessively complex and gives rise to great uncertainty and injustice. It is in need of improvement and rationalisation.

3. Section 136 provides that an application by at least the prescribed number of relevant affected employees can be made to the Commission to conduct a Union ballot. This provision should be reviewed to ensure:

- that the number of members required to petition the Commission to conduct the ballot is realistic and appropriate. In this regard Congress declares that the requirements for only 250 members or 5% of the number of members employed by the employer at the place of work concerned, whichever is the lesser amount, to petition for such a ballot is neither realistic nor appropriate. It should be deleted;
- that only bona fide applications should be considered, and
- that only financial members of the organisation should be able to make an application.

5.4 Union Officers

1. There is a need for union officers to maintain a high standard of personal and financial integrity in all their affairs and especially in the performance of their union duties.

2. At the same time, the democratic basis of union organisation in Australia requires that union members should have the ultimate say in the management of the affairs of their union, and in the election of their industrial representatives. The provisions of the Industrial Relations Act which operate to disqualify certain persons from seeking or holding union office (section 228) run counter to this principle.

3. Even on their own terms, they are much too wide. They go much further than the proposals set out in the Winneke Report. They are also wider than equivalent provision in companies legislation.

4. They are also objectionable because the range of offences which may lead to disqualification includes offences under the Industrial Relations Act (for which other penalties are already prescribed) and offences not in any way related to union duties or activities.

5. Congress notes with concern the fact that these provisions while introduced by the Liberal-National party Government were reproduced in their entirety in the Industrial Relations Bill. It calls upon the Government to ensure that they are repealed at the earliest opportunity.

5.5 Union Rules

1. Union members, through democratic processes, should have the right to determine rules for the effective, efficient and democratic operation of their organisations. The present legislation falls far

short of recognising this right and is therefore in need of reform.

2. In particular there is a need:

- for legislation to allow the valid and continued operation of unions in accordance with rules freely determined by union members through democratic processes;
- for the removal or limitation of the power of the courts to strike down union rules so other than in circumstances where the rules in question are harsh, unjust and unconscionable that union will not be required to conduct their affairs in circumstances of uncertainty created by the existence of the power and by the decisions of the courts;
- for the expansion of the role of the Industrial Registrar in advising on matters relating to rules so that unions will have access to information and independent advice which will allow them, where necessary, to improve and up-date their rules. In this regard Congress welcomes s.63(1) of the new Act which provides that one of the functions of the Industrial Registry is to provide advice and assistance to organisations in relation to their rights and obligations under the Act, and
- for the Industrial Registrar or Designated Presidential Member, to be given power, subject to notification to the union rule-making authority and appropriate safeguards and consents, to make minor textual amendments of rules filed for certification in order to remove grammatical and clerical errors and to provide for conformity with the Act.

3. The Industrial Relations legislation introduced some minor improvements to the provisions of the Act relating to rules. However Congress is of the view that it did not adequately address the issues of principle embodied in ACTU policy.

5.6 Union Coverage

1. It is essential that duly authorised undertakings given by unions in relation to changes to their constitution or coverage rules be honoured.

2. Congress notes that the Act has been amended to require the Commission to have regard to any agreement or undertaking of which the Commission becomes aware that deals with the right of an organisation of employees to represent under this Act the industrial interests of a particular class or group of employees.

3. Section 118A(2) of the Industrial Relations Act constitutes an acceptable approach to this issue. Congress objects to the without giving a union affected a reasonable opportunity to put their case, congress calls upon the Federal Government to amend the Act to extend the operation of section 118A to cover employer organisations." power to enable the Commission to alter the rules of organisations in the context of demarcation dispute (Sections 118A(1),(5),(6) & (7) without giving a union affected a reasonable opportunity to put their case. Congress calls upon the Federal Government to amend the Act to extend the operation of section 118A to cover employer organisations.

5.7 Amalgamation

1. There should be no restrictions on the right of unions to amalgamate in accordance with the requirements laid down in their rules. In this regard Congress recognises that the 1991 amendments to the Act represent a substantial improvement over the former provisions.

2. Legislation should provide for the automatic registration of an amalgamated body where:

- in a ballot in each union proposing amalgamation and which is open to all members eligible under the rules to vote, a majority of those voting in favour of the amalgamation, and
- at the time of registration, the rules of the amalgamated body do not provide for wider constitutional coverage than the registered rules of the amalgamating unions.

3. It follows that where an amalgamation does not involve any extension of the eligibility rules of the amalgamating unions there should be no right for any other organisation or party to object to the proposed amalgamation.

4. Where an amalgamation has been affected in accordance with these principles, members of the amalgamating unions shall be members of the amalgamated body.

5. Where unions registered under the Industrial Relations Act have in the past effected amalgamation with other registered unions, such amalgamations shall, after a reasonable period, be deemed to be valid for all purposes and to provide full and effective membership of the amalgamated body.

5.8 Compulsory Secret Ballots in Respect of Industrial Action

1. Unions have a definite responsibility to ensure that the members involved are adequately consulted before becoming committed to industrial action. However, the power of the Industrial Relations Commission to order secret ballots in respect of industrial disputes or industrial action is in violation of the right of unions to regulate their own affairs. This power of the Commission should be withdrawn.

2. Further, the power given to the Commission to order a secret ballot at a particular workplace, on application by a few as four employees at the workplace, is unnecessary and undesirable. The democratic procedures and practices adopted by unions for determining the attitude of members with respect to industrial campaigns are adequate.

3. Congress notes with concern the fact that the ballot provisions of the former Conciliation and Arbitration Act were reproduced in their entirety in the Industrial Relations Bill.

5.9. Financial Accounting

1. The Union Movement rejects the amendments to the former Conciliation and Arbitration Act and Regulations emanating from the Sweeney Report on Alleged Payments to Maritime Unions as being based on an inadequate knowledge and understanding of union accounting procedures and as representing an unwarranted bureaucratic intrusion into the internal affairs of unions. There should be a complete review of the financial accounting provisions in the Act to remove the unnecessary and costly requirements imposed upon unions by the Liberal-National Party Government.

2. Congress calls for the repeal of the approval and notification procedures in relation to loans, grants and donations by unions. These provisions are unnecessary, impose upon unions requirements which go far beyond what is contained in companies legislation or what was recommended in the Winneke Report, and impede the effective operation of unions in the interest of their members.

3. Congress expresses its concern at the fact that the Industrial Relations Act made virtually no attempt to come to terms with these issues, but welcomes the Government's undertaking that these provisions will be reviewed in the near future.

6. State Industrial Legislation

6.1 Congress endorses the continuing role of the various State industrial systems.

6.2 It also endorses the proposals for greater co-ordination between the Federal and State systems which were set out in the Hancock Report. It expresses its condemnation of the fact that the States were not prepared to agree to the implementation of these recommendations in the Industrial Relations Act.

6.3 Congress calls upon State Governments to adopt the South Australian legislative provisions dealing with joint sittings and encourages the States to appoint members of the Federal Commission to the State Industrial Tribunals.

6.4 Congress supports recent legislative initiatives by State Governments - particularly South Australia – which provide a basis for overcoming some of the problems associated with dual registration.

7. Quasi Employees

7.1 Congress expresses its total opposition to attempts by body hire companies such as Troubleshooters available to promote sham "contractual" arrangements designed to circumvent award and statutory provisions.

7.2 Congress resolves to seek the following amendments to the Industrial Relations Act in relation to quasi employees:

- amend the definition of 'employee' in the Industrial Relations Act to include 'quasi employee';
- amend the definition of 'industrial dispute' to delete the requirement that an industrial dispute be about 'matters pertaining to the relationship between employers and employees';
- insert an unfair contracts review procedure into the Industrial Relations Act;
- allow unions to represent such employees.

The intention of the above measures is not to regulate 'genuine' independent contractors but rather they are directed to bogus arrangements designed to avoid tax and other legal obligations.

8. Robe River

8.1 Congress, having heard a report on the current situation at Robe River reaffirmed its support for amendments to the Industrial Relations Act to ensure that quasi employees come within the operation of the Act. Further:

- There should be associated amendments to section 5 of the Act in relation to the definition of Maritime and Waterside employees.
- The concerns raised by the Maritime Unions will be raised by the ACTU representatives in the forthcoming tripartite visit to Japan.
- The ACTU should raise the taxation implications of contracting out with the Federal Government; and
- The ACTU to raise with Federal Government the extent to which exporting the mining licences can be reviewed and made subject to compliance with Federal and State Industrial laws.
- That the Federal and State Government (W.A.), along with representatives of the Maritime and Mining unions participation in a meeting, convened by the ACTU with senior management representatives of North Broken Hill Pty Ltd to discuss and successfully resolve all matters associated with Tugboat operations at Port Walcott and mining operations at Panawonica and Wickham plant, further, if a successful resolution is not achieved the ACTU and its affiliates consider action against Robe River Iron Associates with the view to normalise Industrial Relations and negotiations in this area.