



**Community and Public Sector Union**

• Stephen Jones • National Secretary

Mr John Carter  
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Senate Education, Employment and Workplace Relations Committee  
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Dear Mr Carter

**Senate Employment, Workplace Relations and Education References and Legislation  
Committee Inquiry into the *Fair Work Bill 2008***

Please find attached a submission from the Community and Public Sector Union (PSU Group) to the Inquiry into the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009*.

The contact person for this submission is Ms Melissa Donnelly, Senior Legal Officer, who can be contacted on (02) 8204 6971.

Yours sincerely

Stephen Jones  
National Secretary

**Senate Employment, Workplace Relations and  
Education References and Legislation  
Committee**

**Inquiry into the provisions of the *Fair Work  
(Transitional Provisions and Consequential  
Amendments) Bill 2009***



**CPSU (PSU Group) Submission**

**April 2009**

1. The PSU Group of the Community and Public Sector Union ("CPSU") represents workers in the Australian Public Service ("APS"), the ACT Public Service, the Northern Territory Public Service, Telstra, the telecommunications sector, call centres, employment services and broadcasting.
2. The CPSU has had the opportunity to read the ACTU submission, and supports and endorses that submission.
3. The CPSU wishes to make brief written submissions regarding certain aspects of the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* ("Transition Bill") currently being considered by the Committee.

### **Substandard individual agreements**

4. The CPSU supports the submissions of the ACTU regarding the termination of substandard agreements.
5. As currently drafted the Bill provides that an employee on a substandard agreement can only have that agreement terminated prior to the nominal expiry date if the employer consents to that termination.
6. In our experience, companies like Telstra that have pursued AWAs aggressively, making them a condition of engagement, and used template AWAs that cut key conditions and make wage increases discretionary are reluctant to agree to the early termination of their AWAs. Quite logically, if Telstra thought it was in the company's interests to use AWAs to reduce conditions why would they now willingly give the employees the chance to be covered by a superior alternative agreement.
7. On numerous occasions, the CPSU and other unions have sought assurances from Telstra that the company would consent to any employee's request to terminate their AWA. This has been raised with Telstra subsequent to the passage of the Transition to Forward with Fairness amendments, and therefore the prohibition on making new AWAs.
8. Telstra has, however, been unwilling to provide employees on AWAs with the assurances sought; so it remains likely that these employees will be forced to stay on their AWAs for their full term. The full term of many of these AWAs would be five years. This outcome is particularly unjust where employees had no real choice about signing up to an AWA; that is the employee was only offered the job on the condition that they sign up to the inferior AWA.
9. The CPSU believes that the Transition Bill should allow for unilateral terminations prior to the nominal expiry date in the public interest. This

specifically should cover situations where the relevant employee(s) is disadvantaged respective to the next applicable industrial instrument.

### **Enterprise awards**

10. The CPSU notes and welcomes the provisions of the Bill dealing with the modernisation of enterprise awards.
11. We do submit, however, that the provisions should be explicit in ensuring that the decision of whether or not to modernise enterprise awards, and the modernisation process itself, does not disadvantage employees.
12. The current award modernisation process before the Australian Industrial Relations Commission has been conducted on the basis that the modernisation process should not disadvantage employees.
13. It therefore seems appropriate that employees covered by enterprise awards are entitled to the same protections that other employees are entitled to, when the modernisation of enterprise awards is considered. Where enterprise awards are superior to the terms and conditions in modern awards, employees should not suffer disadvantage and should continue to be entitled to those superior terms and conditions.

### **Industrial action processes**

14. Under the terms of the *Transition Bill* all industrial action processes, including protected action ballots, must be recommenced. This will cause significant cost and inconvenience.
15. In November 2008 the CPSU and CEPU were successful in an application for a protected action ballot for their respective Telstra members. Telstra management opposed the application in its entirety, and the matter required a full day's hearing in the Australian Industrial Relations Commission.
16. Given the size of the workforce, the election process conducted by the AEC took many weeks to complete. We estimate the cost of conducting such a ballot was several thousand dollars; this is without including the costs to the employer and the union in collating the rolls and complying with the directions of the Commission. The result of the ballots were overwhelmingly in favour of taking protected industrial action.
17. The effect of the *Transition Bill* is that all successful ballot applications will have to be retried; this will be a weight on union and Commission resources. In the matter of a successful application, a ballot will have to be held at considerable cost to the Commonwealth and union parties.

18. It is difficult to imagine an application and a ballot that was successful under the current laws having a different result under the new laws. In our view, there is no good policy reason for requiring the recommencement of all industrial action processes.