SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS COMMITTEE

INQUIRY INTO FAIR WORK (TRANSITIONAL AND CONSEQUENTIAL AMENDMENTS) BILL 2009

SUBMISSION BY CPSU, THE COMMUNITY AND PUBLIC SECTOR UNION – STATE PUBLIC SERVICES FEDERATION GROUP

1. The State Public Services Federation (SPSF) Group of CPSU, the Community and Public Sector Union ("SPSF"), represents the industrial interests of approximately 120,000 employees of State Governments in departments, agencies, statutory authorities, instrumentalities and State owned corporations, as well as general staff employees of universities. While most of these are within the jurisdiction of the various State industrial tribunals, three major groups of our members are already within the Federal jurisdiction.

2. These are:

   - Employees of the Crown in right of the State of Victoria;
   - General staff in universities; and
   - Direct employees of State owned corporations which are trading or financial corporations, as well as employees of privatised former State Government entities (eg, prison officers employed by private prisons in Victoria).

3. The industrial interests and employment relations circumstances of most of the members of SPSF are different in significant respects from those of the members of many other unions.

4. Largely, State public sector employees are engaged as "officers" of the Crown and their employment is governed by legislation enacted by the Crown in Right of the State.

5. Our submissions in relation to this bill are limited to:

   a. the treatment of "non Federal system employees" proposed by the Bill;

   b. the sunsetting of transitional instruments based on the conciliation and arbitration power out of the Federal system by Schedule 3 Clause 20 on 27 March 2011; and

c. the inability of employees who are trapped in inferior State systems to make application to become part of the Federal system during and after the transition period

Non – Federal system employers and the Bill

General adoption of the ACTU submissions

6. In the main, SPSF is content to adopt and endorse the submissions made by the ACTU in its submissions to this inquiry.

7. In particular we adopt the ACTU criticisms of Schedule 3 clause 20 of the Bill in relation to the proposed transition of non-Federal system employers from the system and the termination of transitional instruments on 27 March 2011.

8. We adopt these submissions subject to an important proviso which we will explain in this submission.

Point of departure from ACTU submissions

9. In the component of its submission dealing with non-Federal system employers, the ACTU makes the following observation:

> "Moreover, as a general point, we see good policy sense in continuing to allow parties to an interstate dispute to participate in the Federal system. There is no constitutional impediment to allowing those parties to have recourse to the Federal system to help settle their dispute by "conciliation and arbitration", whether through the making of a modern award (provided it is within the ambit of the parties' dispute) or through the lodgement and enforcement of an enterprise agreement. The remaining provisions of the Fair Work Act (dealing with NES, general protections, industrial action, right of entry etc) can also be safely extended to these parties, as

> furthering the settlement of the original dispute and preventing further disputation.
>
> We submit that the Bill should allow parties to an interstate dispute to participate in Federal system."

10. We agree there is no compelling reason why the regime established by the Bill should exclude parties to existing industrial disputes from the Federal system. We also assert that the logic underpinning the extension of the application of the system to parties with *existing* disputes could extend to parties to *new* interstate industrial disputes in certain limited circumstances.

11. SPSF would argue there are compelling reasons for the Bill to include an ability for non-Federal system employers or employees to apply to join the Federal system by the creation of *new* interstate industrial disputes pursuant to s51 (xxxv) of the Constitution.

The necessity for an escape hatch from inferior State system

12. We are not suggesting a wholesale abandonment of the current policy of the Federal Government to rely on the corporations Power.

13. We submit the corporations power should be supplemented by a limited reliance on the conciliation and arbitration power to permit, in certain limited circumstances, non-Federal system employers or employees to serve logs of claim, create interstate industrial disputes and become part of the Federal system during the transition period and beyond.

14. Should the Federal Government achieve its desired aim then some or all States will refer their remaining private sector employers into the Federal system on or before 1 January 2010. Victoria is exceptional because it has already committed to a virtually universal referral of its workplace relations powers.

15. This may lead to a situation where some State Governments move to adopt an inferior and unfair system in relation to their own employees. Such a system could include the provision for egregiously lop sided individual contracts and the removal of a truly independent umpire to adjudicate or mediate disputes.

16. The policy position of SPSF is that workplace relations in Australia is best served by the concurrent existence of robust and fair State and Federal industrial relations systems which are harmonised and complementary. Justice dictates that if some States move to "gut" their workplace relations regimes to ghettoise their own workforce, the Federal system should provide a mechanism whereby workers are free to make an application to move to the Federal system.

17. The ability to abandon defective State systems was used effectively by public sector unions during the era of the Kennett Government in Victoria and the Court Government in Western Australia. We argue the logic of the provision of an "escape hatch" to a superior Federal system still applies.

Setting the hurdle for access to the Federal system

18. We reiterate we are not seeking to revive the *Conciliation and Arbitration Act 1904*. We would be content if the Bill was amended to include the ability for State public sector workers to apply to Fair Work Australia for a finding of an interstate industrial dispute where they are subjected to industrial legislation that does not meet certain minimum standards.

19. An analogous provision of this nature was the amendment to the Brereton legislation which took effect on 21 January 1992 pursuant to the *Industrial Relations Legislation Amendment Act (no 2) No 215 of 1992*.

20. This provision added a new s111(1A) to the *Industrial Relations Act 1988* and had the effect of exempting proceedings concerning awards being made in relation to employees bound by State industrial authorities from a public interest argument.

21. That provision set a "hurdle" whereby proceedings would be exempt from the public interest argument only if the "terms and conditions sought" could not be "dealt with by a State industrial authority by compulsory arbitration".

22. Of course, we are not suggesting that provision of compulsory arbitration be the hurdle in the bill. An appropriate hurdle could be either that a State industrial tribunal or competent State industrial authority, under its governing legislation:

    a. can set terms and conditions that are inferior to an appropriate modern award and the NES; and/or

    b. cannot provide adequate access to an independent dispute services provider.

23. We would welcome the opportunity to discuss this proposed amendment with the Senate Committee should we be called upon to do so.

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