



State Public Services Federation (SPSF) Group

and

Public Sector Union (PSU) Group

of the

Community and Public Sector Union

Submission to the

**Senate Education, Employment and Workplace Relations
Committee inquiry**

into the:

- National Vocational Education and Training Regulator Bill 2010 [2011]
- National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010 [2011]
- National Vocational Education and Training Regulator (Consequential Amendments) Bill 2011

1 March 2011

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CPSU-SPSF GROUP – Background Information

The Community and Public Sector Union (CPSU) welcomes the opportunity to contribute to the Senate Education, Employment and Workplace Relations Committee inquiry into the Bills relating to the formation of National Vocational Education and Training Regulator (NVR).

The CPSU is one of the largest public sector unions in Australia with more than 180,000 members. The union comprises two groups: the SPSF Group and the PSU Group.

This submissions is made by CPSU, PSU and the Community and Public Sector Union (SPSF Group) on behalf of its associated bodies: the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (PSA NSW), the Queensland Public Sector Union of Employees (QPSU), the Civil Service Association of Western Australia (CSA WA), the Public Service Association of South Australia Incorporated (PSA SA) and the Community & Public Sector Union (SPSFT) Inc Tasmania (CPSUT) (collectively referred to as the *State Associated Bodies*).

The State Public Services Federation (SPSF Group) primarily represents employees of State Governments such as State Government Administration, Education, Agriculture and Natural Resources, or their agencies like Universities, Electricity Authorities, Roads and Traffic or Water Resources bodies. We have branches in all six states.

The PSU Group of the CPSU represents workers in the Australian Public Service (APS), the ACT and Northern Territory Public Services, the telecommunications sector, call centres, employment services and broadcasting. We are a national union with members in every state and territory. Our members are generally employed by the Commonwealth Government or its agencies, such as Tax, Centrelink, Defence, Immigration and work in the areas of administration, sales, engineering, communications, information technology, legal, technical, scientific research, broadcasting and many other fields.

What we do

The Federal Union of the SPSF group looks after nationwide industrial issues for Universities and also industrial matters that span more than one State. It handles industrial relations between other Federal unions and deals with other Peak Bodies, such as the ACTU, on behalf of the rest of our Union Branches and the "Associated Bodies". Also, it coordinates any issues that interest more than one Branch. These can include training standards, rights of women members, health and safety and so on.

The CPSU-SPSF group of the Union has been coordinating activities related to staff transfers from State to Commonwealth jurisdiction, in particular relating to the COAG National Reform Agenda and the formation of national entities to replace State-based regulatory authorities. Examples of these transfers include the National Measurement Institute (NMI) and the Australian Health Practitioner Regulation Agency (AHPRA). Although the latter is not a national employer, the issues involved in staff transitions to the new agency were similar when it came to ensuring fair and

equitable treatment and minimising loss of terms and conditions of employment with the new employer.

General Principles

Our union, the CPSU, does not take issue with the formation of a national regulator overseeing the registration and accreditation of registered training organisations. Our primary concerns centre on the transfer of staff from existing state-based VET registration and accreditation organisations to one national employer. We note with approval that transferring staff will be employed under the Public Service Act 1999, allowing the organisation and its staff the ability to integrate seamlessly into the APS and take advantage of whole-of-government initiatives and efficiencies.

We believe that any employee transferring from the State to the Commonwealth or to another entity as a consequence of a COAG agreement (or for any other reason) should not suffer a detriment to their entitlements, which principle has also been stated by the COAG Reform Council (CRC). In its report to COAG in March 2008, the CRC noted (with particular reference to the NMI project):

Following a briefing from the implementation team, the CRC further notes that it is of paramount importance to the effective operation of the new system that the majority of current skilled trade measurement personnel transfer to the Commonwealth. If this does not occur, the successful implementation of the arrangements could be compromised. Consequently, in the CRC's view, every effort should be made to retain these staff during the transition period and to ensure that their transfer occurs without detriment to remuneration or conditions.

The CRC recommends that the Commonwealth Government give high priority to the drafting and passage of the necessary legislation and associated regulations and particular attention is paid by all parties to the staffing and equipment requirements of the new national trade measurement entity.

We note that this principle is reaffirmed in the *Transitional Provisions Bill*,

Part 6—Treatment of staff employed by VET Regulators etc.

25 Engagement of staff

(1) Without limiting item 30, regulations under that item may provide for:

(a) the engagement of an employee from a State VET Regulator or the VET Regulator of a Territory, on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the relevant VET Regulator immediately before the engagement;

However, our experience in dealing with these transfers, notably with the above-mentioned NMI and AHPRA, has shown that these transitions need to be improved and standardised through agreement and implementation of consistent processes at both State and Commonwealth senior government levels.

Staff transfers – key concerns

- Salaries
- Hours of work

- Long Service Leave
- Superannuation
- Recreation Leave
- Project timing and communication

As members of the committee are no doubt aware, there are significant differences in salary levels applied in the various State and Territory jurisdictions. The NVR will be negotiating an Enterprise Agreement with representatives from the PSU which is the union staff would be covered by as they are transferring to APS Commonwealth employment. Under that EA, pay levels will be established which in our experience means that some employees will effectively be suffering a pay freeze while waiting for other jurisdictions to "catch up".

Furthermore, it is expected that employees will have to work a 37.5 hour week, which may be longer than currently experienced by staff in some jurisdictions. This combined with the salary differential issue above combines to make a pay reduction.

There are also differences in the calculation of leave accumulation (Long Service, Recreation etc) between the Commonwealth APS and State public services.

The ability to transfer superannuation schemes is one of the issues causing the most distress for employees making the decision to transfer to the Commonwealth. Staff under the defined benefits schemes would lose considerable entitlements if obliged to cease membership of their relevant schemes. Thus far, we have seen that State and Commonwealth governments have agreed to allow staff to remain under these schemes. However, this has had to be negotiated each time and there is no absolute assurance that it will occur for each transfer.

A process is required to ensure that the new national employing agency would be approved as a scheduled employer of the relevant schemes and staff under those superannuation schemes would be able to remain under those schemes.

In the case of the NVR Project we are concerned by the extremely tight deadlines put in place for the establishment of the new agency. The passing of relevant legislation, at both State and Federal levels, has not been finalised and yet the staff in the various State-based entities are obliged to make decisions about transferring within the original (and unreasonably short) timeframes. In NSW for example, staff are already being pressured into making applications for transfer by 28th February 2011.

In addition to these unrealistic time constraints, employees are expected to make decisions without adequate information about how their entitlements will be affected. In particular, no assurances about the transfer of those above-mentioned key entitlements have been forthcoming.

Recommendations

1. We refer to our letter of 25 November 2008 to then Secretary of the Department of the Prime Minister and Cabinet, Mr Terry Moran AO, in which we requested a *Memorandum of Agreement on the Principles for the Transfer*

of Employees affected by COAG and other inter-jurisdictional agreements. A copy of this letter is attached to this submission. These principles should include *inter alia* the employees':

- right to consultation
 - right to representation by the Union in the transfer discussions
 - guarantees of no loss or disadvantage to be suffered in:
 - accumulated service entitlements
 - rate of pay
 - hours of work
 - access to comparable superannuation
 - no forcible transfer
 - declining offer transfer
 - rights to redeployment without loss of status by the transfer of their employment between jurisdictions
2. We believe there should be an immediate instruction given to State and Federal Agencies that any discussions of entitlements and advice about the effect of transfer of employment must conform to the principles agreed between the Government and the Union, and that therefore no approaches to employees be made until such time as that agreement has been concluded.
 3. We again request that a formal process be put in place at COAG and Ministerial Council level and communicated to all State and Federal Finance, Treasury and other relevant departments.
 4. We seek to establish an Agreement that will save the respective State and Federal Agencies affected by the on-going COAG reforms the inefficiency of having to negotiate these same issues repeatedly on an Agency by Agency basis.

We submit these recommendations with particular reference to the subject of this Senate inquiry, the establishment of the National VET Regulator. However, we would like to emphasise that these issues which have occurred in the past will continue to arise as long as the COAG reform process continues and involves the rationalisation of public services and activities between jurisdictions. We note that we have been in discussions on this subject for some time with the project team for the National Rail Safety Regulator.

We would welcome the opportunity to provide the Committee with more detailed information at any time.