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**CPSU Submission to**

**Inquiry into the Fair Work Amendment**  
**Bill 2013**

**April 2013**

## Introduction

The PSU Group of the Community and Public Sector Union (CPSU) is an active and progressive union with approximately 60,000 members. The CPSU represents employees of the Australian Public Service (APS), the ACT Public Service, the Northern Territory Public Service, CSIRO, ABC, Telstra, the telecommunications sector, call centres, employment services and broadcasting.

CPSU (PSU Group) members are covered by the *Fair Work Act*. We make this submission based on our members' experience in the federal industrial relations jurisdiction.

The CPSU supports the *Fair Work Amendment Bill*.

The Bill contains sensible and modest amendments to the *Fair Work Act*. The amendments are consistent with the Review of the *Fair Work Act* conducted in 2012 and its accompanying report, "*Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*".<sup>1</sup>

The CPSU welcomes provisions in the Bill for improved family friendly measures and the changes to right of entry provisions. The Bill also contains new provisions to address the issue of workplace bullying, which is an issue of particular concern to CPSU members and represents important new measures to recognise employees' human rights at work.

The CPSU submission is not intended to be comprehensive. This submission concentrates on aspects of the Bill of specific concern and relevance to CPSU members. The CPSU notes that the ACTU is making a comprehensive submission and supports and adopts that submission.

## Family friendly measures and right to request flexible working arrangements

The Bill contains amendments to the right to request flexible working arrangements in the *Fair Work Act* ("the Act"). The Act currently provides a parent, or other person, who has responsibility to care for a child under school age or a child with a disability under the age of 18 years old with the right to request a flexible working arrangement to allow them to manage their caring responsibilities.

The Bill extends this right to request flexible working arrangements to:

- employees who are carers;
- employees who have disabilities;
- employees who are aged over 55; and
- employees who are experiencing, or caring for a family member who is experiencing, domestic violence.

These are important amendments and go some way to recognising the difficulties employees can face when balancing work and home life. Significantly, the Bill recognises that the challenges of

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<sup>1</sup> See: <http://deewr.gov.au/fair-work-act-review> last accessed 4.4.13

balancing work and home life are not just experienced by parents, but can also be a significant issue for other employees.

Accordingly, the CPSU supports the extension of the right to request flexible working arrangements to a broader class of employees with caring responsibilities.

The CPSU supports provisions contained in the Bill clarifying the grounds upon which an employer can reasonably refuse a request for a flexible working arrangement. However, the CPSU supports an amendment to the Bill to place obligations upon an employer to give genuine or serious consideration to the request and also make reasonable efforts to accommodate that request. Such an amendment would provide additional clarity around how requests should be dealt with and give employees confidence their request would be taken seriously.

Unlike all other National Employment Standards the right to request is not enforceable and the Fair Work Commission is not entitled to hear disputes arising out of its application, unless of course the jurisdiction is created through an enterprise agreement. It is inappropriate that this important minimum standard is not subject to the usual dispute resolution mechanisms.

As a minimum legal standard for all employees, the CPSU believes the right to request should be further extended to other employees and also made an enforceable right. The Fair Work Commission should be able to deal with unreasonable refusals for flexible working arrangements, including examining whether the employer genuinely considered the request and reasonable efforts were made to accommodate it. The CPSU supports amendments to the Bill to this effect.

## **Workplace bullying**

The CPSU welcomes the provisions in the Bill which address workplace bullying. If passed by Parliament, this legislation would be an important development giving victims of workplace bullying the opportunity to seek remedies for the way they are being treated.

These amendments follow on from the House of Representatives Standing Committee on Education and Employment Inquiry Report "*Workplace Bullying: We just want it to stop*"<sup>2</sup> ("the Bullying Report") and the Government's response to that Report. The CPSU participated in the Inquiry and in our submission argued for effective mechanisms to deal with circumstances of bullying.<sup>3</sup>

Workplace bullying is a matter of concern to many CPSU members. In 2010-2011 up to 18% of APS employees indicated they believed they had been subject to bullying or harassment.<sup>4</sup> APS figures also show women are more likely to feel they have experienced bullying or harassment (20%) as compared with men (15%).<sup>5</sup> Similarly in an NT Government survey conducted in 2011, 26% of staff

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<sup>2</sup> House of Representatives Standing Committee on Education and Employment Inquiry Report "*Workplace Bullying: We just want it to stop*" October 2012

<sup>3</sup> See:

[http://www.apf.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=ee/bullying/su bs.htm](http://www.apf.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ee/bullying/su bs.htm) last accessed 4.4.13

<sup>4</sup> Australian Public Service Commission, State of the Service report 2010-11, p 74

<sup>5</sup> Ibid p 75

identified that they had felt bullied or harassed in the previous 12 months.<sup>6</sup> These statistics demonstrate that bullying can be a serious issue in areas of government employment.

It is laudable the Government has adopted key recommendations of the Bullying Report. Dignity and respect at work are basic human rights and this Bill recognises these rights by giving victims of bullying an opportunity to seek redress. Whilst occupational health and safety, industrial and discrimination laws, and the common law may be capable of dealing with certain aspects of bullying, to date in the federal jurisdiction there has been no universal legal protection or remedy.<sup>7</sup>

This Bill establishes clear legal protection and recourse for employees experiencing workplace bullying. The focus on early intervention by the Fair Work Commission to make orders to address the bullying conduct is appropriate and welcome. Establishing a clear recourse for employees will also encourage employers to be pro-active at managing and rectifying workplace bullying complaints. As such, these amendments may also assist in addressing incidences of compensable injuries arising as a result of workplace bullying.<sup>8</sup>

Additional funding will need to be granted to the Fair Work Commission so it can successfully manage the additional workload this increase in jurisdiction will likely bring. The Fair Work Commission is already under budget pressures and has identified that it would be unable to absorb the cost of managing this new work within its current funding arrangements.<sup>9</sup>

For the reasons outlined above, the CPSU supports the proposed anti-bullying provisions and believes these amendments will give employees who are experiencing workplace bullying a clear path to remedy that conduct, and will encourage employers, employees and unions to work together to combat instances of workplace bullying.

## Right of entry

The CPSU believes that the proposed amendments to the right of entry provisions of the *Fair Work Act* are sensible proposals which will enhance employees' rights to representation in the workplace. In particular the provisions that allow for a lunch room to be used as a default when another appropriate room cannot be agreed on are sensible and modest amendments which should be supported.

The Act currently allows an employer to decide the room in which an organiser must meet with employees and the route an organiser has to take to that room. To successfully challenge an employer's decision to put the union organiser in a particular room, the union would have to be able to prove the manager intended to intimidate employees, discourage their attendance or make it difficult for employees to participate; or that the room itself is unfit. In our experience this is a very

<sup>6</sup> Office of the NT Commissioner for Public Employment, *Northern Territory Public Sector Employee Survey Report 2011*, pp 49-50

<sup>7</sup> *Workplace Bullying: We just want it to stop* at 2.147

<sup>8</sup> See: <http://www.canberratimes.com.au/act-news/change-in-culture-is-needed-on-ps-compo-20130402-2h5dl.html> last accessed 4.4.13

<sup>9</sup> Hansard Transcript, Education, Employment and Workplace Relations Legislation Committee - 13/02/2013 - Estimates - EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO - Fair Work Commission

high bar to demonstrate and is not effective in remedying genuine disputes between employers and the union about the exercise of right of entry.

Furthermore, under the current provisions, where there are immediate issues that employees in that workplace and the union organiser wish to discuss the organiser has little choice but to agree to the employer's requirements about using a particular room, regardless of how unreasonable that may seem. If the union organiser is not prepared to use the room allocated to them by the employer then they will be refused entry to the workplace.

The proposed amendments would effectively establish a default arrangement where the union and employer cannot agree on an appropriate room to hold discussions. Establishing a lunch or tea room as the default arrangement would improve employees' ability to access their union in the workplace and ensure that employees are able to access the union, without feeling intimidated or being unnecessarily inconvenienced.

Unfortunately under the current legislation, situations commonly arise where employees do feel intimidated or are unnecessarily inconvenienced when seeking to access their union. Setting a default arrangement would ensure that there is a clear standard for right of entry, where parties cannot otherwise agree, that ensures employees can easily access the union. The amendments would also remove the tension that can arise between unions and employers about selecting an appropriate room for union visits.

In a number of areas, particularly in the public sector, the CPSU has good relationships with employers and local managers and is able to come to arrangements about right of entry that suit all parties. This is positive for employees, the employer and the union. However, in some areas the CPSU continues to experience difficulties when exercising right of entry. Right of entry problems that arise in our membership can broadly characterised as follows:

- **Inappropriate room:** Union organisers being directed to use a room that is inappropriate; for example it is too small or next to/ within earshot of the supervisor. Having a default arrangement would ensure that if a more appropriate room cannot be agreed, the lunch room would be available
- **Access issues:** Union organisers being directed to use a room to which employees do not have easy or ready access, restricting employees' ability to access and talk to their union. This may be due to the location of the room or even because the room is in an area of the building that requires a security access pass.
- **Obfuscation:** Employers will require a union organiser to use a certain room and be escorted by a supervisor to get to and from that room. However upon arrival, an organiser's entry may be delayed because the employer's nominated escort is not available or late, it may also be because the organiser is directed to a room that is already in use, or in some cases the room that has been booked for the organiser does not even exist.

Recent issues the CPSU has had in trying to access workplaces using right of entry include:

- At certain Telstra sites it is common for CPSU organisers to be directed to a room on a different level of the building from that of many of the employees the organiser wished to speak with or a level of the building not all employees can access. At another Telstra site, the

CPSU organiser was directed to a room with only two chairs, thereby frustrating the organiser's ability to discuss issues with the numerous members at that site.

- It is also a common experience for CPSU organisers to be informed upon attending the Telstra site the room booked for their visit was double-booked or is otherwise unavailable.
- Telstra and Sensis require a local manager to escort the organiser to and from the allocated room. However the escort is often late or unavailable, delaying the organiser's entry to the workplace and therefore the start of the meeting with employees. Given that employees are only allowed to attend discussions in their meal breaks, these sorts of delays seriously impact the time available for employees to talk to their union.
- In an ATO workplace, 1600 staff work across 6 floors of the building and a majority of staff take lunch in a large common room on the 6<sup>th</sup> floor. The agency refuses to allow union organisers to use the large common room on the 6<sup>th</sup> floor to meet with employees. Union organisers are directed to attend various meeting rooms which are far more difficult for employees to access. For example the organiser is regularly directed to use a small meeting room on the 2<sup>nd</sup> floor, many floors from the 6<sup>th</sup> floor where employees are likely to be in their break. This has the effect of discouraging employees and members from meeting with the CPSU during lunchtime. This is an example where access to a lunch room would be a much more sensible option for holding discussion due to its size and would not unduly interfere with the lunch time of employees who did not wish to meet with the CPSU organiser.

As demonstrated by the above examples, there are situations where employees are being denied their right to discuss matters with their union in the workplace and the current Act does not provide an effective avenue to rectify the situation.

The amendments contained in the Bill would assist in resolving these issues and ensuring that the rights of employees to access their union and be represented are respected. Furthermore, these changes are consistent with the overarching purpose of the right of entry laws to balance the rights of unions to represent members at the workplace and the right of employers not to be unduly inconvenienced.

For these reasons, the CPSU strongly supports the modest amendments to the right of entry provisions proposed in this Bill.

## **Conclusion**

The CPSU welcomes the amendments to the *Fair Work Act* proposed in the Bill.

The provisions against workplace bullying are important, providing a clear mechanism by which employees experiencing bullying can seek redress with an emphasis on early intervention and remedying any inappropriate conduct.

The extension of the right to request and amendments to right of entry to create default arrangements where a room cannot be agreed on, are modest and sensible operations which will enhance the operation of the Act. It is however disappointing that the Bill does not establish the right to request flexible working arrangements as an enforceable right, consistent with the other National Employment Standards provisions.