C2/6/6

25 August 2000

Mr J Carter
Secretary
Senate Employment, Workplace Relations, Small Business and Education Legislation Committee
Parliament House
Canberra ACT 2600

Dear Mr Carter,

I refer to your letter of 21 August 2000 inviting submissions from our union to the Committee's inquiry into four bills to amend the *Workplace Relations Act 1996.*

Due to the limited time available and the similarity of the bills to schedules of the Workplace Relations Bill 1999, CPSU's submission is essentially an edited version of the submission made to the Committee last September.

As an affiliated union, CPSU fully supports the comprehensive submission of the Australian Council of Trade Unions to the Committee.

The contact person in CPSU for this submission is Assistant National Secretary Doug Lilly who can be contacted at our Melbourne Office on 03 92062222.

Yours sincerely,

Wendy Caird
National Secretary

Senate Employment, Workplace Relations, Small Business and Education Legislation Committee

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

Workplace Relations Amendment (Termination of Employment) Bill 2000

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

CPSU (PSU Group) Submission

August 2000

Senate Employment, Workplace Relations, Small Business and Education Legislation Committee

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

Workplace Relations Amendment (Termination of Employment) Bill 2000

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

CPSU (PSU Group) Submission

Introduction

The PSU Group of the Community and Public Sector Union welcomes the opportunity to make a submission on matters of relevance to our members arising from the Senate Inquiry into the four Amendment Bills to the *Workplace Relations Act 1996*.

Due to the limited time available and the similarity of the Bills to schedules of the Workplace Relations Bill 1999, CPSU's submission is essentially an edited version of the submission made to the Committee last September.

Background information on the coverage and membership of CPSU (PSU Group) is at **Attachment A**.

Like all other workers, CPSU members have experienced the adverse impact of the significant changes which accompanied the commencement of the *Workplace Relations Act 1996*. The majority of those members who are employed in the Federal public sector have experienced a double degree of difficulty over the last four years in dealing with the new industrial relations environment. The Federal Government, as their employer, has aggressively pursued its own workplace relations policies which have imposed even more severe constraints than the legislation on agreement-making, award simplification, and representation by unions in the public sector.

Effect of Bills on CPSU Members

In the light of the experience with the current legislation, and an assessment of the likely impact of the change proposals in the four 2000 Bills, CPSU identifies at **Attachment B** the aspects of the legislation which would have the most adverse effect on the interests of our members.

CPSU urges the Committee to find that no aspects of these Bills should be enacted by the Parliament.

We continue to believe, as stated in our submission on the 1999 Bill, that the onus lies with those parties supporting the Bills to establish the need for its provisions in the context of current arrangements. The Government has not demonstrated there are such significant problems with the operation of the 1996 legislation that further substantial amendments as proposed in the Bills are warranted at this time. Nor has the Government been able to show that the amendments will bring any changes of a positive nature to relations in Australian workplaces.

On the contrary, enactment of the Bills, with particular reference to the aspects highlighted in this submission, would lead to much greater inequity, with the system loaded even more heavily in favour of employer interests.

CPSU (PSU Group)

August 2000

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Attachment A

About the Community and Public Sector Union (CPSU)

CPSU is one of the largest and most active unions in Australia. It was formed in 1994, with the amalgamation of the Public Sector Union (PSU) and the State Public Services Federation (SPSF). CPSU is affiliated to the Australian Council of Trade Unions.

CPSU is a democratic union run by and for CPSU members. Members and workplace delegates determine the union's direction by discussion, debating and voting on issues that directly affect them. A national committee, elected by members, manages the union, and a team of full-time, professional staff work with local workplace delegates to provide service and assistance to members.

CPSU (PSU Group)'s coverage is predominantly in the Federal public sector, but also includes ACT and NT Governments, and public and private sector employers in the communications, aviation, broadcasting and pharmaceutical industries.

Our major employers include:

- Australian Public Service agencies such as Centrelink, Defence and the Tax Office.
- Statutory authorities such as CSIRO, the ABC, and Health Insurance Commission.
- Government Business Enterprises such as Telstra, Australia Post, Air Services and Medibank Private.
- ACT and NT Government Departments and authorities.
- Private sector companies such as CSL Ltd, Ten Network, Seven Network, Pacific Access, Qantas, and Sydney Airport.

CPSU membership reflects the diversity of professional, technical, managerial, administrative and general occupations associated with this range of public and private sector employment.

CPSU is very active in representing the industrial interests of our members under the *Workplace Relations Act 1986*. Our union is party to over 100 Federal awards and nearly 200 current certified agreements.

CPSU Offices are located in every capital city as well as a number of regional towns including Alice Springs, Newcastle, Townsville and Lismore.

The CPSU website is located at: www.cpsu.org

Attachment B

PRIORITY ISSUES FOR CPSU

Australian Workplace Agreements Procedures

- **AWAs to prevail over certified agreements in all circumstances.**

  The Government has already been criticised in an ILO Report for its 1996 legislation giving primacy to individual contracts over collective bargaining. It is obviously intent on taking this bias even further, by removing the ability for parties to choose a collective agreement which then prevails over AWAs for its duration.

- **Removal of employer obligation to offer the same AWA to all comparable employees.**

  This requirement was an important Senate amendment in 1996 to ensure some equity when employers are offering AWAs in the workplace. Its removal will open the way for more secretive and inequitable terms of employment under AWAs. Pay equity research on the incidence of over-award payments suggests that women employees will be the losers from this change. The Australian Bureau of Statistics publication Employee Earnings & Hours [6306] indicates that in May 1998 women earned only 43.7% of payments in excess of award and formal agreement rates. This gap appears to be widening, as the comparable figure in 1996 was 48.1%.

- **Mandatory consideration periods before employees sign AWAs to be replaced with cooling-off periods after signing.**

  The present legislation allows employees time to carefully consider an AWA, including the required explanatory material, and if necessary obtain advice, before committing to its terms. Substituting a cooling-off period will be to the detriment of the employee interest, as it will allow an employer to press for an immediate signature. Employees will always be put in a more difficult position if they have to withdraw from an agreement they have previously accepted.

- **Legal effect of AWAs to commence from signing by parties, and to operate for up to 60 days without Employment Advocate approval.**

  This provision probably offers greater potential for employer exploitation than any in the entire Bill. It effectively presents an opportunity for employers to take a two month holiday from award obligations under the legal protection of the Act without an AWA even being lodged at the Office of the Employment Advocate, let alone approved. If the AWA eventually lapses or is not approved, it is incumbent on an employee to take court action to recover any award entitlements foregone while the AWA was in operation.

- **Protection of no-disadvantage test and cooling-off period not to be available to employees above a modest remuneration ceiling.**

  At first glance, it may appear that a figure of $68,000 would only exclude relatively highly paid employees from the normal processes for the approval of AWAs. However, the figure is for "remuneration", not salary, and this term has been

expansively defined by the Commission to include base pay, superannuation, regular penalties, and other benefits attracting FBT.

The reality is that this new ceiling will exclude first-line supervision employees in areas of the Federal public sector from the protections they need if they are asked to sign an AWA. For example, a Customs Officer Band 2 [second level of the structure] working at a major airport, whose base pay is $37,254, has remuneration as broadly defined in excess of the $68,000 ceiling. It should be noted that there is no provision to index this figure, so the fixed ceiling will exclude an increasing number of employees as remuneration levels rise.

Secret Ballots for Protected Action

- **Complicated, inflexible and protracted secret ballot process as a mandatory step to achieve protected status for action in bargaining disputes.**

  CPSU invariably follows the democratic principle of members having an informed vote before they take any form of industrial action. Stringent conditions for the taking of protected action, safeguards against abuse of this right, and provisions for employees to seek secret ballots are already contained in the Act.

  An objective examination of the secret ballot proposal in the Bill must conclude that its principal objective is to frustrate the taking of legitimate industrial action by employees in support of a bargaining position, not to promote democratic control of such action. The scope for employers to use delaying tactics is substantial, enabling them to postpone protected action and avoid the resolution of bargaining disputes.

  The proposal that a union must specify the precise details, including the commencement time and duration, of any industrial action, when making application for a protected action ballot, is particularly onerous and restrictive, and clearly biased towards employer interests in a dispute situation. An observation in a recent decision by the Federal Court interpreting the existing provisions in the Act on notification of protected action is very relevant to this issue. In Davids vs National Union of Workers, the Full Court said:

  > *"To interpret (s170MO), on the other extreme, as requiring **precise details** of every future act or omission would be to impose on the giver of a notice an obligation almost impossible to fulfil. Industrial disputes are dynamic affairs. Decisions as to future steps often need to be made at short notice, sometimes in response to actions of the opposing party or other people, including governments, and changing circumstances. It would be **a major, and unrealistic, constraint** on industrial action to require a party to specify, three clear working days in advance, exactly what steps it would take. An unduly demanding interpretation of s170MO(5) would **seriously compromise the scheme of Division 8** of Part VIB of the Act; it would be difficult for a party to an industrial dispute to obtain the protection contemplated by the Division."*
  >
  > *[1999 FCA 1108 - 13 August 1999 -emphasis added]*

- **Minimum period for non-payment of employees taking any form of industrial action to be one day.**

This ill-considered amendment will have the effect of turning any incidence of industrial action, such as a short stop-work meeting, into a whole-day stoppage, as our members could not be paid for the day. It is difficult to see whose interests are being served by such an amendment, apart from those of a punitive Government seeking to arbitrarily increase the cost to employees exercising their democratic right to take industrial action.

The centralist and rigid nature of this provision will ensure that s187AA of the Act will be ignored by employers even more widely than it is now. There is abundant evidence from a number of recent disputes that the no-pay penalty is applied either selectively or not at all by employers in situations where union members impose bans. In a bargaining dispute this year, CPSU members employed as Bursars in ACT schools imposed a single ban on a periodic financial statement, and were stood down without pay. This was inconsistent with the employer response to other disputes in ACT Government where no such action was taken.

Termination of Employment

- **Termination cannot be found to be harsh, unjust and unreasonable where the employer establishes operational reasons.**

  This will preclude an examination of processes used by employers in selecting employees for redundancy, no matter how unfair or inadequate they are.

- **An assessment by the Commission at the end of conciliation that a claim is unlikely to succeed means the employee cannot take the claim further.**

  The nature of the conciliation stage will be radically changed by this provision. It will be turned into the full hearing of the case, or parties will withhold material to prevent the Commission from reaching a considered view.

- **Recovery of costs to be easier where claims are pursued unreasonably, and the Commission can require an applicant to give a financial security during a case.**

  Costs are currently awarded only in exceptional circumstances. Lowering the barrier for recovery of costs and requiring financial securities are cynically calculated measures to deter individuals from pursuing a legal remedy at a time when they are most vulnerable to such pressures.