

AUSTRALIAN SENATE
**EMPLOYMENT, WORKPLACE RELATIONS, SMALL BUSINESS AND
EDUCATION**

REFERENCES COMMITTEE
LEGISLATION COMMITTEE

**SUBMISSION OF THE HEALTH SERVICES UNION OF
AUSTRALIA**

The Health Services Union of Australia (“the HSUA”) is a registered organisation of employees under the *Workplace Relations Act 1996*. The HSUA has around 65,000 members employed in the health and community services sector, both public and private.

The membership of the HSUA includes all classes of employees employed in public and private hospitals, aged care facilities, disability services, community health centres, private medical and dental services, private professional health services, such as radiology and pathology and many other areas of health and community services.

The HSUA seeks to make submissions on the four bills referred to the Committee by the Senate on 17 August, namely:

- *Workplace Relations Amendment (Australian Workplace Agreement Procedures) Bill 2000;*
- *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000;*
- *Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000;*
- *Workplace Relations Amendment (Termination of Employment) Bill 2000.*

In making this submission, the HSUA reiterates many of the points made in our earlier submission (dated 17 September 1999) to the Committee for the Inquiry into the *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999*.

Secret Ballots for Protected Action

Simply put, the proposed secret ballot regime would make it virtually impossible to take protected industrial action.

The effect of the Bill would be to *require* the Commission to direct the conduct of a secret postal ballot of members for any industrial action to be protected. Presently, ss135 and 136 of the *Workplace Relations Act 1996* ('the Act') give the Commission a discretion to order that a vote of members be taken by secret ballot if, for example "... the Commission considers that the prevention or settlement of the industrial dispute might be helped by finding out the attitudes of the members".

At no time since the introduction of these provisions has the Commission ordered, either of its own motion or at the request of an employer party, such a ballot of members of the HSUA during the course of an industrial dispute. In the submission of the HSUA the existing secret ballot provisions are rarely used. The HSUA therefore questions the need for further, restrictive provisions without any evidence that they would assist in the resolution of disputes.

In addition, the cumbersome and technical requirements imposed by this Bill would only serve to open the process up to further litigation and challenge. This is not in the public interest. The protracted litigation in relation to other notice provisions of the Act (such as s170MO) is illustrative of the likely approach to the proposed amendments.

In practice, it is almost impossible to for a union, particularly in the health and community services sector, to conduct industrial action without the widespread support of the membership. This is because employees in health and community services are reluctant to take industrial action without just cause due to their overriding commitment to the patients and clients in their care.

Termination of Employment

The Bill seeks to impose further restrictions on employees seeking a remedy for harsh, unjust or unreasonable terminations under the Act. The proposed amendment that provides for the Commission to dismiss a claim at the conciliation stage is a fundamental denial of natural justice.

Further, the HSUA has serious concerns about the impact of the proposal to impose a penalty on “advisors” for encouraging employees to pursue applications. Such a provision clearly has the capacity to interfere with the provision of frank, unbiased and independent advice to employees. The HSUA notes that the proposed prohibition does not extend to the advisors of employers failing to encourage a reasonable settlement where there is no prospect of success in opposing claims. This is both inequitable and inconsistent with the existing approach in the Act to costs (see s. 170CJ(2)(b)).

Australian Workplace Agreement (‘AWA’) Procedures

The proposed changes are aimed at minimising the scrutiny of AWA’s by the Employment Advocate and/or the Commission. The effect of the proposed amendments would be to undermine the importance of the ‘no-disadvantage test’ by, for example,:

- Not applying it to employees who earn more than \$68,000;
- Making an AWA operative prior to its approval; and
- Removing the option of referral to the Commission.

These provisions will enable AWA’s to undermine the status of safety-net awards and collective bargaining outcomes. Insofar as they removal fundamental protections of employees, they are opposed by the HSUA.

Tallies and Picnic Days

The HSUA opposes this Bill and submits that matters such as the inclusion of union picnic days and tallies in awards is appropriately left to be determined on the merits by the Commission.