

Submission by the:-

**PUBLIC SERVICE ASSOCIATION AND PROFESSIONAL OFFICERS'
ASSOCIATION AMALGAMATED UNION OF NEW SOUTH WALES**

to the:-

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

in relation to:-

**INQUIRY INTO PROVISIONS OF THE WORKPLACE
RELATIONS AMENDMENT (TERMINATION OF
EMPLOYMENT) BILL 2002**

The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales ("PSA") is an employee organisation registered under the NSW Industrial Relations Act 1996.

PSA's contact details are: 160 Clarence Street, Sydney 2000; GPO Box 3365, Sydney 2001; telephone number 02 9290 1555; fax number 02 9262 1623. The General Secretary is Mr Maurie O'Sullivan.

The PSA wishes to make the following points about the draft Bill:-

1. The Bill seeks to enlarge the Federal unfair dismissal jurisdiction without the concurrence of all the States. The PSA considers this would be a significant misuse of the constitutional powers of the Commonwealth. The extent of the Commonwealth powers requires that they be exercised with extreme caution to ensure that the Australian people are not subject to arbitrary decisions to take over long-established functions of the States. The New South Wales industrial relations system is a well-established, well-regarded jurisdiction with a long history of involvement in unfair dismissal cases for the substantial number of people employed under NSW State awards and agreements.

2. The Federal unfair dismissal laws would prevail over State laws, awards and agreements for all employees of constitutional corporations. Therefore, all NSW State public servants (other than those employed in corporations), together with employees of sole traders, partnerships and any other non-corporate body would be exempted from the Federal jurisdiction. The PSA does not believe that this would lead to a simplification of the unfair dismissal laws. It would, however, lead to a weakening of the NSW industrial relations system, with subsequent disadvantage to a large proportion of the PSA's membership who work for NSW Government departments.
3. The NSW Industrial Relations Act 1996 was introduced following community consultation including with both employer and employee representatives. The unfair dismissal sections of the Act are currently under review. The Industrial Relations Amendment (Industrial Agents) Act 2002 addresses the problem of unscrupulous industrial agents who had been pursuing speculative unfair dismissal claims. Further amendments to deal with other issues are proposed. This demonstrates that the NSW Government has been responsive to complaints about the operation of the unfair dismissals system, has consulted widely, and is making appropriate amendments to the Act.
4. There are number of proposals in the Bill which would affect PSA members working for corporations in the NSW public sector. These are summarised on page 2 of the Explanatory Memorandum under "Measures to improve the operation of unfair dismissal law". The NSW Industrial Relations Commission already takes account of these points in their consideration of unfair dismissal claims, and we understand this is also the practice of the Australian Industrial Relations Commission. There is no need to raise the level of these considerations by placing them in legislation as the Commission judges, deputy presidents and commissioners have the responsibility to consider the facts of each individual case and make their decisions accordingly.

5. As to the proposals in the Bill in relation to small business, the PSA seeks to remind Senators that the employees of small business are your fellow Australians and are just as entitled to fair and equitable treatment as any other person. The proposals to double their probation periods, halve their possible compensation payments and allow the employers to avoid the standard processes of advising employees of deficiencies in performance would have the effect of creating a sub-class of employees based entirely on the size of the business they are working in.

In summary, the PSA is strenuously opposed to the Workplace Relations Amendment (Termination of Employment) Bill 2002. In addition, we support the submissions of the NSW Labor Council and of the State Public Services Federation.

12 February 2003

For further information, please contact Rosslyn Small, Industrial Officer, Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales at telephone 02 9220 0905, email rsmall@psa.asn.au, postal address GPO Box 3365, Sydney 2001.

The PSA's Principal Industrial Officer John Scullion has approved this submission.

PSA reference A03/0546

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