

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004**

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**Submission no:** 18

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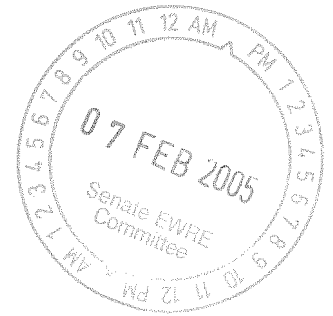
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7<sup>th</sup> February 2005



Committee Secretary  
Senate Employment, Workplace Relations and Education Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Australia

By email: [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)

Dear Committee Secretary,

***Inquiry into the provisions of the Workplace Relations Amendment  
(Right of Entry) Bill 2004***

Please find enclosed a copy of a submission by the Community and Public Sector Union (PSU) Group to the Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004.

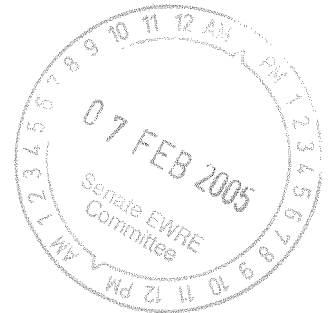
CPSU does not seek to appear before the Committee for this inquiry.

The contact person for this submission is Jane Mulligan, CPSU Parliamentary Liaison Officer (02) 6220 9630.

Yours faithfully,

Jane Mulligan  
Parliamentary Liaison Officer  
Community & Public Sector Union

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



**Inquiry into the Workplace Relations  
Amendment (Right of Entry) Bill 2004**

**CPSU (PSU Group) Submission**

**5<sup>th</sup> February 2005**

## **Inquiry into the Workplace Relations Amendment (Right of Entry) Bill 2004**

### **CPSU (PSU Group) Submission**

#### **Introduction**

1. Community and Public Sector Union (PSU Group) welcomes this opportunity to make a submission to the Senate Employment, Workplace Relations and Education Committee Inquiry into the Workplace Relations Amendment (Right of Entry) Bill 2004.
2. CPSU is a federal union with regions and sections in each State and Territory. CPSU's coverage is predominantly in the Commonwealth public sector, but also includes ACT and NT public sectors, and public and private sector employers in the communications, education, aviation, broadcasting, health and pharmaceutical industries.
3. CPSU has read the submission of the ACTU and supports that submission. CPSU intends to focus specifically on the issues and experiences relevant to the work of the CPSU.
4. CPSU believes that employers have the right to conduct their business without undue interference, disruption or harassment of any kind. To that end, CPSU has always sought to promote values that encourage its employees to adhere to the highest standards of professional behaviour when entering workplaces for the purpose of union-related activity.
5. CPSU believes that contrary to the assertions of the Minister for Employment and Workplace Relations,<sup>1</sup> this Bill does not strike an appropriate balance between the right of unions to enter workplaces and the rights of employers.
6. In this submission CPSU will contend that the current provisions governing right of entry under Division 11A of the *Workplace Relations Act* (1996) are already adequate to the stated task and that this Bill will tip the balance in favour of the employer, more so than is already the case.
7. The Bill is designed to curtail the ability of unions to have a reasonable presence in the workplace and to carry out their legitimate activities. The Bill will provide those aggressively anti-union employers with increased grounds to exclude unions from some workplaces. That is not good public policy.

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<sup>1</sup> Second Reading Speech, Minister for Employment and Workplace Relations Mr Andrews, House of Representatives Hansard, 2<sup>nd</sup> December 2004, p 5.

8. In the absence of any demonstrated rationale for the Bill, the only conclusion that can be drawn is that the government's intention is to make access to collective representation for employees even more difficult.
9. The Bill should therefore be rejected.

### The legislation

10. This Bill seeks to impose a more strictly formal and bureaucratic process on union organisers who seek to gain access to workplaces.
11. It is a fact of life in the current industrial landscape that some employers are simply "anti-union". They would prefer it if unions had no right to enter their workplace – under any circumstances.
12. This active hostility to unions is manifest in those employers who do not respect their employees right to bargain collectively and be represented by a union in wage negotiations. CPSU's coverage and experience in the public sector means that this regrettably includes some government agencies.
13. The Department of Employment and Workplace Relations (DEWR) sets the standard in this regard. DEWR consistently ignore their employees wishes for a union-negotiated certified agreement and instead try to foist non-union agreements on their staff.
14. DEWR employees recently voted overwhelming (78%) against the non-union agreement that management have been pushing at staff since April 2004. This situation occurs despite the fact that the 1996 *Workplace Relations Act* clearly provides for choice. It also highlights the "anti-union" practices that are currently being pursued in some federal government agencies with respect to industrial issues.
15. Right of entry – whilst not an issue of contention in DEWR at this stage, is clearly yet another front on which the anti-union battle is being fought. This is occurring in conjunction with the rapidly escalating pressure from the Minister for Workplace Relations Mr Andrews, for non-union agreements not only in his own department, but right across the public sector.<sup>2</sup>
16. The fact that 78% of DEWR employees voted in December 2004 for a union agreement also demonstrates that while CPSU membership in DEWR would be somewhat less than 78%, union membership levels alone are not an indication of union support, a fact that is frequently and conveniently overlooked in discussions over union activity in the workplace.

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<sup>2</sup> "Unions on death row says Minister", The Sydney Morning Herald, 5<sup>th</sup> February 2005, p 1.

17. Since the implementation of the Commonwealth *Workplace Relations Act*, CPSU has adopted a co-operative and pragmatic approach to the practice of right of entry. CPSU employees always try to meet the concerns of the employer, even when these test the boundaries of reasonable behaviour.
18. This pragmatic approach is driven by the fact that it is simply unproductive to seek right of entry into a workplace on any other basis. A dispute with an employer over the petty details of access to a workplace will not result in greater access – quite the contrary.
19. For this reason alone, CPSU has been involved in very few disputes with the AIRC over right of entry under the current provisions
20. Even when it is clear that an employer is acting in an obstructive manner, seeking to frustrate the ability of unions and members to communicate, CPSU has only in a few extreme cases sought to deal with this situation in the AIRC. In some of these cases the employer's position has prevailed and in some [fewer] cases, CPSU has.
21. The current regime is therefore arguably effective in achieving a balance in the workplace between the rights of employers and unions. As is set out in more detail in the submission to this inquiry by the ACTU,<sup>3</sup> there is no compelling evidence of difficulties for employers under the current provisions.
22. Union members are keenly aware of the anti-union ideology of the Coalition Government, and with the Coalition as their employer, CPSU members are sensitive to how this may manifest itself in the workplace.
23. CPSU, like all unions, is an organisation that depends on the trust and good faith of members to exist. CPSU members range across the spectrum of political beliefs, and it is well understood by the organisation that members do not wish to see their union behaving aggressively or unreasonably in the workplace.
24. CPSU represents and promotes the values of its membership by pursuing fairness in the workplace, even when this is not fully reciprocated.

### **Recruitment restrictions**

25. Trade unions provide a range of services to both members and potential members in workplaces. These services include information

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<sup>3</sup> ACTU Submission to the Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004, pp 7-10.

about their rights in the workplace and negotiations with the employer and general industrial issues.

26. The CPSU, like most unions and other membership-based organisations, has a constant churn of members, with resignations, retirements and recruitment an everyday occurrence.
27. By seeking to confine recruitment conversations to a bi-annual activity, the Bill is clearly intend to have the consequence of negatively affecting union membership and fostering disputes over right of entry.
28. Disputes will almost certainly arise because of the recruitment restrictions set out in section 280Z (2)-(3) of the Bill. That is because recruitment is an implied aspect of almost every conversation between a union official and member or non-member.
29. It will be difficult and challenging for union officials to hold a discussion in workplaces on industrial issues and avoid telling them that their workplace will be in a stronger bargaining position if there are more members, or that if they become a union member they can access the services of the union for advice on their individual grievance.
30. This new restriction on recruitment is clearly designed to frustrate union activities in the workplace. It will also create an easy complaint mechanism for some employers who will wish to utilise this provision as a ground for complaint to the AIRC about the conduct of a union official, perhaps leading to the revocation of their permit under section 280F(2) of the Bill.

### **Location of meeting rooms**

31. Many employers, acting under the current provisions of the *Workplace Relations Act*, chose to engage in practices which can only be described as “gaming” when it comes to right of entry.
32. These practices include allocating union organisers to either a remote room outside the secure area employees are located, or a room on another floor to the one employees are located in. Or at the other extreme, employers will place union organisers in a room adjacent to management offices, or with an entry clearly visible to other employees and management. One employer always puts a security guard outside the meeting room. Other CPSU organisers have had the allocated room changed at the last minute with no capacity to communicate this to staff.
33. On the face of it, some of these scenarios may not read as unreasonable. However, in the context in which these manoeuvres take place, where the employer regards the union as a nuisance that interferes with their capacity to impose lower wages and conditions on

employees, these examples can only be seen as instances of gaming, where the employer has all the advantage.

34. In the current political environment, CPSU members are sensitive to their membership of the union being made public to their colleagues. They do not want to be seen as “trouble-makers” by their managers.
35. If employed in a workplace that is hostile to unions – as is commonly the case in the telecommunications industry – employees will be apprehensive about attending a meeting if the room allocated is located where management have a clear view of which employees are seeking information from the union.
36. It is an unfortunate reality that many employees do feel intimidated in some of the more union-hostile workplaces, and are consequently not confident in exercising their rights under the *Workplace Relations Act*. This is a situation that will only be further exacerbated under this Bill.

## **Conclusion**

37. Given the current practice surrounding right of entry under the existing provisions of Division 11A of the *Workplace Relations Act*, it is difficult to comprehend the need for this new Bill.
38. In setting out a more bureaucratic process, with greater scope for employers to make vexatious complaints to the AIRC, it is clear that the intention of the Coalition government is to make access to workplaces a more contentious and litigious aspect of industrial relations between employers and unions.
39. It is difficult to comprehend how seeking to frustrate the ability of employees to discuss their everyday workplace issues with their union representatives can be good public policy.
40. CPSU will continue to take a co-operative and pragmatic approach to right of entry into workplaces and continue to ensure that members have access to advice and information as they require it.