



22nd January 2007

Mr J Carter
Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Phone: +61 2 6277 3521
Fax: +61 2 6277 5706
By Email: eet.sen@aph.gov.au

Dear Mr Carter

Re: Employment And Workplace Relations Legislation Amendment (Welfare To Work And Vocational Rehabilitation Services) Bill 2006

The PSU Group of the Community and Public Sector Union welcomes the opportunity to make a submission on the *Employment And Workplace Relations Legislation Amendment (Welfare To Work And Vocational Rehabilitation Services) Bill* on behalf of our members employed by CRS Australia.

CPSU comments are restricted to amendments to the *Disability Services Act* that support the move to a contestable vocational rehabilitation services market from 1 July 2007.

CPSU would also appreciate the opportunity to participate in any future public hearing on this Bill. Please contact Ms Alison Rahill on 02 8204 6906 with regards to this matter.

Yours Sincerely,



Stephen Jones
National Secretary
Community & Public Sector Union

Summary

- CPSU supports the retention of CRS Australia as the sole provider of vocational rehabilitation services funded by the Commonwealth
- CPSU believes CRS Australia, as the largest provider of vocational rehabilitation services in Australia, is best placed to continue to deliver the highest standard of service to clients with disabilities
- CPSU opposes the removal of accountabilities and protections required under the *Public Service Act 1999* and the *Disability Services Act 1986* in the delivery of vocational rehabilitation services funded by the Commonwealth
- CPSU opposes the provisions of the Bill which support the move to a contestable vocational rehabilitation services market

Introduction

CPSU argues that the provision of vocational rehabilitation services should be provided by CRS Australia employees engaged under the Public Service Act 1999 only. This is to ensure consistent quality of service delivery and a strong regime of accountability. It is the only way of maintaining public confidence.

Given the nature and extent of powers delegated to officers under the *Disability Services Act 1986* it is vital that the employment of staff under the Public Service Act is maintained. This factor is an important aspect of the perception of the organisation as a body bound by high standards of ethics and confidentiality.

The Public Service Act exists to recognise that people expect a higher standards from a government service than from a private sector service. The Public Service Act aims to enshrine the principle of an apolitical service that is efficient and effective in serving Government, the Parliament and the Australian public. It establishes a legal framework for the effective and fair employment of staff, and puts in place measures to ensure the highest levels of accountability and integrity.

Furthermore, employment under the Public Service Act brings with it constraints with respect to the employment of staff which are aimed at preventing patronage and favouritism, nepotism and corruption, and which ensure a level of transparency in decision making.

The CPSU believes that the APS Code of Conduct and associated Values provide a stronger regime of integrity and a broader focus beyond merely the market forces of a for-profit vocational rehabilitation services sector.

Current environment

CRS Australia provided vocational rehabilitation services to 43,945 clients. All of the clients that use the services have a disability¹.

CPSU members report professional and ethical conflict following the introduction of targets and the commencement of a DEWR funding model in July 2006. There are reports of anxiety about a shift to quantity over quality decision-making and increasing difficulties and barriers to work due to the casualisation of the labour market.

¹ Department of Human Services Annual Report 2005 – 2006 page 89

Definition of officer

CPSU opposes the Government's proposed new definition of officer in section 4 of the Disability Services Act 1986.

CPSU also believes a clear case has not been made to justify the broadening of the definition of officer to include "a person or employee of such a person who performs services on behalf of the Department under a contract between the person and the Commonwealth".

This new definition of officer would include an APS employee; or an employee of a body (whether incorporated or not) established for a public purpose by, or under, a law of the Commonwealth.

Under proposed section 34, the Bill confers all or any of the powers under Section III to the new definition of officer, as such there appears to be no provision for private market providers to be subject to the same accountabilities as CRS Australia.

For example, a private provider is not subject to Section 26 Review of decisions under Part III which gives clients the right to make an application to the Administrative Appeals Tribunal for review of reviewable decisions.

During 2005 – 06 CRS Australia conducted eight internal reviews.

Under the Welfare to Work regime a client can be required to participate in a rehabilitation program or face the prospect of financial penalty. It is fundamental that a client maintain their right to seek a review of a decision that has such a profound effect on their life.

CPSU believes it is in the public interest to maintain a strong system of accountability and integrity provided for under Section 26 Review of decisions and the Public Service Act.

Uneven playing field

If the Government's proposal to open vocational rehabilitation services to the for-profit sector goes ahead, CPSU believes it will not be a level playing field. Market forces alone will not ensure quality service delivery, accessibility for all and positive rehabilitation outcomes.

CPSU contends that opening up vocational rehabilitation services to the private sector will have the effect of driving down wages and conditions in the sector, and as such undermine CRS Australia employment conditions:

- Coverage under the Maternity Leave (Commonwealth Employees) Act 1973, the Long Service Leave (Commonwealth Employees) Act 1976 and the Occupational Health and Safety (Commonwealth Employment) Act 1991, and their subordinate legislation.
- Maintenance of membership in the relevant public service superannuation funds

CPSU is also alarmed that CRS Australia must compete with the for-profit sector who do not have to hold a current certificate of compliance. It appears that the Government's intention is to subject CRS Australia to compete with the private for-profit service providers that are not subject to the same rigorous standards – indefinitely.

It is highly likely that as a result of the proposed Bill, CRS Australia employees will face an uncertain future. One outcome may be that in a regional centre CRS Australia may lose its contract, and even though CRS employees may end up providing the same service to the same clients, their individual terms and conditions will be reduced.

When APS employees move to a new private employer, their Long Service Leave entitlements, accrued leave, and superannuation contributions will not transmit.

Employees and clients of private organisations sub-contracted to provide a service for Centrelink, would not have access to these protections, making it difficult to protect staff against unjust accusations or legal challenges.

CPSU members currently employed by CRS Australia feel deeply and strongly about the issue of the employment regime, and believe that vocational rehabilitation services should remain under the Public Service Act.

CPSU members would reject unequivocally the establishment of contestability, the result of which will be to weaken public confidence, lower pay and conditions, and remove accountability standards and employee protections of the APS Act.

Within the next couple of years it is likely that CRS Australia will provide limited, non-specialist vocational rehabilitation services in areas that remain unprofitable or unattractive to the private sector.

Single national provider

CPSU members are deeply concerned about the prospect of losing the advantage to the clients of having a single national provider of vocational rehabilitation services. Those advantages compared to private for-profit providers include:

- Knowledge sharing – making sure there is consistency of decision-making and case management
- Innovative and flexible approaches, staff training and commitment to best practice
- Quality assurance processes such as a survey of 1000 clients who have completed programs to gain feedback and insight into long-term job outcomes
- Well-developed protocols for maintaining privacy of clients' case files (no complaints from the Privacy Commissioner in 2005 -06)
- Equity of access with the provision of services close to where people live – 174 offices plus visiting services
- Commitment to social justice and equity. CRS has a comprehensive disability action plan (required under the Commonwealth Disability Strategy) to improve access and opportunities for people with disabilities. Outcomes are reported.
- Strong commitment to improving quality services to people with disabilities. CRS Australia maintained certification under the *Disability Services Act 1986* with no deficiencies recorded.² The auditor's report states:

“...has a strong focus on best practice in the provision of services and meeting and exceeding outcomes for people with a disability.”

CRS Australia is uniquely positioned to effectively provide vocational rehabilitation services of multi-disciplinary teams which incorporate a wide variety of staff who provide specialist services.

This is only possible because CRS Australia is a single government owned national provider with the necessary skills and expertise across metropolitan and regional Australia.

CRS Australia employs allied health professionals who are required to have tertiary qualifications.

CPSU believes that by opening the vocational rehabilitation services to the for-profit sector will result in a shift of focus:

- bottom-line profits and not on rehabilitation outcomes
- away from less-profitable regional centres

² Department of Human Services Annual Report 2005 – 2006 page 91

- away from specialist units, such as mental health specialists. (30.6% of CRS Australia clients have a mental health condition³)
- less resources being utilised for the benefit of the job seeker/client, resulting in poorer rehabilitation outcomes

Public Service Act integrity regime

The accountability and integrity regimes of Public Service Act establish conduct suitable for employees, and detail sanctions for when the standards aren't met. The Australian Public Service Act contains a detailed set of Values and Code of Conduct supported by departmental guidelines.

APS employees have high standards of individual protection and external accountability in their employment, including:

- Protection for Whistleblowers
- Protection from unfair, unjust or unreasonable termination
- External review of promotion to uphold merit selection
- External review of disciplinary actions by the Public Service Commissioner

The regime put in place by the Public Service Act was enacted 6 years ago, and was the subject of much debate. It was intended to ensure that the Australian Public Service was an organisation with the highest ethical and moral practices. It applies to a broad range of persons and professions engaged by the Commonwealth to carry out the whole gamut of public service functions.

These include persons who access sensitive personal information dealing with health and social security, as well as to the public interface of the service with the public. They also include lawyers, prosecutors, court registrars, protective service officers, tax investigators, quarantine inspectors and custom officers.

With respect to internal mechanisms, s.10 of the Public Service Act enshrines fifteen core Values. These include:

- that the APS is apolitical;
- that the APS has the highest ethical standards;
- that the APS is openly accountable for its actions;
- that the APS delivers its services fairly, effectively, impartially and courteously.

All Agency heads are legally obliged to uphold and promote the Values (s.12). They must also, and have been, the subject of Directions by the Public Service Commissioner (s.11). All public servants are legally charged to comply with those Directions (s.42).

Section 2.1 of the Directions establishes that their purpose is to:

- ensure that all public servants understand their responsibilities in relation to the values; and
- set out the minimum requirements that must be met in upholding the Values.

They function therefore as a legally enforceable set of minimum standards for the conduct of Public Servants.

Section 13 of the Act the establishes the Code of Conduct. This further enshrines the Values, as sub-section 10 states that an APS employee must at all times uphold the Values, as well as

³ Department of Human Services Annual Report 2005 – 2006 page 90

the integrity and good reputation of the APS. Other requirements imposed by the Code on employees include that they:

- behave honestly and with integrity in the course of their employment;
- act with due care and diligence in their employment;
- respect confidentiality;
- disclose conflicts of interest and take steps to avoid conflicts arising;
- not make improper use of information;
- use Commonwealth property in an appropriate manner;
- uphold the good reputation of the APS; and
- treat everyone with courtesy and respect.

Procedures must be put in place to determine whether employees have breached the Code of Conduct (s.15(3)). Pursuant to Directions of the Public Service Commissioner these procedures must comply with procedural fairness, but enable the matter to be dealt with as expeditiously as possible.

Penalties for a breach of the Code of Conduct range from a reprimand to termination of employment.

The procedures are concerned with investigating suspected breaches of the Code. There is no requirement as to where or how the suspicion arises. Suspected breaches, however raised, are the subject of the procedures, and can result in the sanctions referred to.

There is also a strong imperative on employees to report suspected breaches resulting from the Value as to ethical standards, and the requirement to implement procedures to encourage whistle-blowing and protect those that do (see s.16 the Act and Div 2.2 the Regulations).

A person suspected of breaching the Code can be suspended with or without pay whilst an investigation proceeds if it is considered in the best interests of the APS that this occurs (s.28).

There are internal review mechanisms put in place, as well as review by the Public Service Commissioner as well as by the Ombudsman.

Other legislation can also be relevant. For example, it is an offence under s.70 of the Crimes Act 1914 for a public servant to communicate information obtained in the course of employment.

There are internal review mechanisms put in place, as well as review by the Public Service Commissioner as well as by the Ombudsman. External review of the actions of public servants generally is ultimately through the Ombudsman.

The Ombudsman is able to investigate complaints about the actions of Commonwealth agencies and Departments, including on the grounds that the action is unfair or unreasonable. The Ombudsman can compel the production of documents, and require questions to be answered under oath.