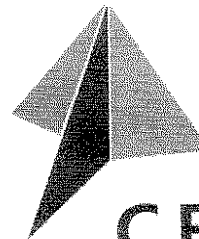
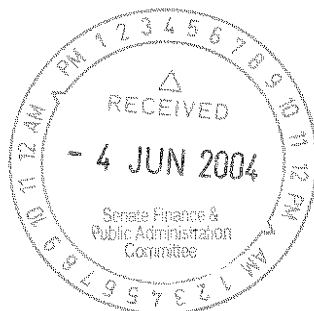


Our Reference: GEN 04/207
4.6/005

4th June, 2004.



CEPU

COMMUNICATIONS
ELECTRICAL
PLUMBING
UNION

Mr. Alistair Sands,
Secretary,
Finance and Public Administration Legislative Committee,
Parliament House,
CANBERRA. ACT. 2600.

Dear Mr. Sands,

I refer to the Public Hearing in relation to the Inquiry into the provisions of the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 and the submissions made by representatives from the Community and Public Sector Union (CPSU), Communications, Electrical and Plumbing Union (CEPU) and the Australian Manufacturing Workers' Union (AMWU).

As requested at that hearing on 13th May 2004 please find enclosed further submission on behalf of the CPSU, CEPU and the AMWU.

Yours faithfully,

A handwritten signature in cursive script that reads "Sharelle Herrington".

Sharelle Herrington,
DIVISIONAL ASSISTANT SECRETARY.

Encs.

SH:kr

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**FURTHER SUBMISSION TO THE
FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE**

1. At the Public Hearing of the Senate Finance and Public Administration Legislation Committee Inquiry into the provisions of the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002, the unions representing the ACTU were invited to make a further submission in relation to matters raised by the Committee or by the Department.
2. The unions on behalf of the ACTU wish to raise a number of further points for consideration by the Committee.
3. In general, these points all deal with the following:
 - The concerns associated with the proposed changes to election processes for Health and Safety Representatives (HSRs).
 - Protection for individuals requesting union involvement.
 - Issues raised by the Department
 - Other concerns not previously highlighted.

Proposed changes to election/selection processes for HSRs

4. The Bill seeks to remove the union's role in the election of HSRs and place such responsibility with the employer. The justification for this is that unions will not allow non-members to be elected. The Act has no such limitation, both union and non-union members are entitled to nominate for election as an HSR. Evidence tendered by the CPSU indicates that the current arrangements and conduct of elections does not mean that non-unionists are not represented or are not elected as HSR's.
5. In State OHS Acts there are a variety of provisions that allow trade unions to conduct the election of HSR's. In that regard the current Commonwealth Act is not out of kilter with other jurisdictions.
6. The purpose of electing Health and Safety Representatives (HSRs) is to have a democratic process for choosing a person who, in the opinion of the employees, has the skills, aptitude, independence and subsequently the training to best represent the issues of the workplace to management and beyond.
7. The alternative to being elected is to be appointed by management, the union or some other selection mechanism.
8. Appointment by management necessarily destroys independence, if not in fact then by perception and is open to manipulation by choosing a person more sensitive to the views of the manager than to the health and safety needs of the workplace if and when the two vary. (When budget, output objectives, deadlines and the like dominate thinking to the exclusion of health and safety for example.)
9. Currently the elected person is chosen by the workgroup to represent the workgroup and the rights and powers conferred by the Act are an individual responsibility. The union will of course seek to organize and support HSRs as they have a key role in the unions' core objective of healthy and safe workplaces. However, appointment by the unions rather than election would be considered undemocratic and not in line with union principles.
10. In addition, appointment by any other mechanism is likely to be expensive, cumbersome and time consuming. Election is clearly the best method.

11. The Act as it currently stands provides a clear process for election in Section 25:
 - a. If there is unanimous support for a sole candidate that person is elected
 - b. If not an involved union conducts an election
 - c. If there is no involved union the Commission can appoint someone to run it
 - d. Regulations provide the involved union must run the election in line within its rules
 - e. The union accepts nominations (if there is only one the person is elected) and conducts a ballot amongst all employees in the workgroup
 - f. An election should occur every two years
12. The unions have been doing this and have good systems in place for timely and proper elections.
13. A key point of interest in this is the right of the union to reject nominations to contest the election. This provision has been used on very rare occasions and there is no evidence of it being abused. The more common experience is that the unions have to canvas staff and generate interest to achieve a nomination at all. The unions have accepted non-union member as HSRs. If the union has no role in the election process the real possibility exists that the process of building interest in the role may not happen and it may become an add-on role for the management team.
14. This system is fair, it works and it is delivering active, interested and trained HSRs to the workplace.
15. The Bill on the other hand proposes to replace this with a system of management run elections consistent with direction of this bill to write out the role of unions.
16. The employer calls for nominations, conducts or arranges an election, must comply with election regulations only if a majority of employees so request and must comply with directions issued by the Commission.
17. Under this proposal the employer is given a free hand unless the employees of the workgroup are sufficiently organized for a majority to demand fair process. This is an unaccountable system open to manipulation and liable to fall into disrepair.
18. If workers are to trust the process that enables them to participate in OH & S matters in the workplace then HSR's must be clearly independent of management and must be able to raise issues and challenge practices or proposals without fear of recrimination or victimisation. The proposed amendments remove unnecessarily the independence and protection embedded in the current system of election of HSR's
19. The proposed amendment is made more unaccountable by the Bill's proposal to remove the right of unions to inspect lists of HSRs currently found in Section 25. Such a list would provide information on the size and makeup of the workgroup, the names of elected representatives and the dates of election. It is submitted that the current Bill should be strengthened by allowing unions to demand a copy of the listing rather than simply being able to inspect it. While this process normally works in a cooperative manner as set out in agreements made under the act experience has shown that recalcitrant employers can withhold the information and block union efforts to ensure elected reps are in place
20. The whole reporting and accountability regime under the proposed amendment is flawed, leaving the process open to manipulation. For example Clause 24 (1A)(3) would appear to allow consultation with the HSR only in varying a Designated Work Group (DWG), not the group as a whole. Clause 25A(3) allows for a vacancy for an HSR for up to 6 months with no advice to anyone, a totally unacceptable proposition if accountability is to be maintained.

21. The proposal to limit inspection rights to investigators raises the ludicrous prospect of the unions being forced to call in a Comcare investigator to ascertain representation is being properly maintained.
22. A suggestion was made that proportional representation should be considered, i.e. an HSR for union members and an HSR for non-union members with varying methods of election. While potentially workable the concerns with such a proposal would be that it could lead to workplace conflict (2 HSRs/1 DWG) or to a diminution of focus on workplace health and safety issues and an increase in bureaucracy and cost.
23. The proposal of creating an artificial divide between those who have joined the union in the workplace and those that have not for electoral purposes is not supported for several reasons. This divide would be artificial as people firstly are employees and secondly, although some choose to not financially support the union through membership, surveys show they still support the role of the union.
24. Other factors include the additional cost of training and supporting dual HSRs, the capacity for internal disputes, the capacity for inertia as roles become blurred, the capacity for confusion within staff as to the demarcation and the capacity for a manager to manipulate the situation by favouring one or the other HSR.

In summary it is submitted that the proposals are not an improvement to the current system, are potentially detrimental and therefore should be rejected

Protection for individuals requesting union involvement

25. The Bill provides for safety management arrangements to be developed 'in consultation with the employees of the employer' (S16(2)(d)). In developing or varying such safety management arrangements an employee may be represented by 'an employee representative' (S16A).
26. An employee representative may seek a certificate from the CEO of Comcare to establish that such a request has been made and the requesting employee will not be identifiable (S16B).
27. This provision is totally bureaucratic and unworkable but at least it does recognise that in placing the obligation on an individual to request union involvement, that individual may need to be protected from bullying, harassment or intimidation to prevent union involvement.
28. The provision relating to employee anonymity only relates to consultation around developing or varying of safety management arrangements. In all other instances where the individual employee must request union involvement, the employer will know the identity of the individual.
29. Proposed provisions where this will be the case include:
 - S41 (5) Request an investigation by Comcare
 - S48 (1)(M)} Appeal against decision of investigator
 - S48 (2)(d)(e)}
 - S71 (2A) Request to Comcare to institute proceedings for a breach of the Act

Issues raised by the Department

30. The Department made a number of claims in its oral submission, which the unions would dispute or seek, further evidence to substantiate the statements.

31. A reference was made to the processes set out in the Petroleum (submerged hands) Amendment Act 2003. The ACTU has made representation to the Minister for Industry, Tourism and Resources (The Hon Ian McFarlane, MP) in relation to late changes in this Act, specifically the processes referred to, that the ACTU and affiliated unions were not made aware of prior to the Act going to Parliament. A copy of that representation is attached for the information of the Committee.
32. The Department suggested that the only real change in the role of unions proposed by the Bill is in relation to the election of HSRs. This is incorrect – significant changes are also proposed in relation to their role in consultation, in requesting/varying DWGs, in calling for investigations and in requesting prosecutions. The role of unions in working to protect the health and safety of their members in the workplace is significantly diminished. A reliance on individual action without the support and protection of their union will limit the capacity for remedial action in the workplace. For example, over a number of years the CEPU and Australia Post, together with an employer organisation POAAL have worked together to address issues associated with security and staff safety in Retail Post Offices (corporate and licensed). This initiative commenced after a union request for an investigation in New South Wales in 1998 / 1999. The ongoing process is focussed on workplace outcomes, highly consultative and has achieved significant workplace safety improvements. None of this would be likely under the proposed changes in this Bill.
33. The suggestion of manipulation of the HSR nomination process by the union ignores the equally broad capacity for employer manipulation of the proposed process. For example the proposed S31 (1)(b) would allow the employer to remove an HSR by varying the DWG through a mechanism of simply changing the membership of that group. Consultation on such a change could be limited through S24 (1A)(3) to a single individual. Arguing that manipulation would not occur, because the employer has a 'Duty of Care', leads to the nonsensical outcome that because the employer has a duty of care, there is no need for employee involvement at all.
34. There is no evidence that direct consultation between employer and employee will be any more flexible or productive or lead to better safety outcomes in the workplace than the existing consultation arrangements.
35. Similarly no evidence is provided that safety management arrangements will deliver better health and safety outcomes than the existing processes in place.
36. The Department also claimed that the Bill would serve to enhance the ILO convention/obligations. No information to substantiate that claim was provided.

Other concerns

37. The Bill proposes a change in the role of a consultant referred by Comcare (previously the Commission) to an employer/employee to provide advice. The Bill now provides for a simple referral by Comcare, the Act as it stands allows the Commission to refer as part of the 'exercise of its function to provide advice'. There is concern that this may limit the role of such an advisor.
38. The current S68 requires notice of 'and a report concerning' particular accidents or dangerous occurrences. The requirement for a report is deleted in the Bill raising concerns that sufficient detail will not be provided for the proper management of the scheme.
39. Schedule 2 of the Bill, Section 19 relates to an offence where an employer exposes an employee to a substantial risk of death or serious bodily harm. There appears to be no justification for limiting this new offence to the employer/employee relationship. The logical conclusion of this provision is that an employer can subject 3rd parties to a substantial degree of risk of death or serious bodily harm, in a way that is negligent or reckless, and not be held liable in any way.

The Hon Ian Macfarlane MP

Minister for Industry, Tourism and Resources
House of Representatives
Parliament House
Canberra ACT 2600

12 February, 2004

Dear Minister,

I am writing regarding the Petroleum (Submerged Lands) Amendment Act, No.118, 2003. This Act was intended to amend the Petroleum (Submerged Lands) Act, 1967, (the PSLA) in order to establish the National Offshore Petroleum Safety Authority.

The ACTU and affiliated unions were consulted on the proposed amendments to the PSLA and provided comments on the exposure draft provided for that purpose by the Department of Industry, Tourism and Resources (DITR). It was repeatedly stated by DITR that amendments to the PSLA would be limited to those necessary to enable the establishment of NOPSAs and not to alter the intent of the PSLA in any other respects.

However, it has subsequently come to our notice, that Section 13 A in the Amendment Act, differs significantly from the PSLA, in that it involves the 'operator' of an offshore facility in the conduct of the election of health and safety representatives (HSRs). This was not foreshadowed in the exposure draft, nor was it raised with us in consultations prior to the Bill going to parliament. The exposure draft made reference to 'a person authorised by the Safety Authority' to conduct elections in certain circumstances, but did not propose any role for operators in the election of HSRs.

It is not acceptable for operators of a facility, or any employers, to be involved in the election of HSRs. To do so undermines the independence of HSRs, which is fundamental to their primary role, which is to represent the workforce.

On behalf of the workforce of the offshore petroleum industry, the ACTU expresses deep concern that such a provision, which is contrary to OHS legislation anywhere in the country, has made its way into the Amendment Act. We do not support it, nor should it be supported by any party who wishes to ensure the very best health and safety outcomes on off-shore facilities or in any workplace.

Your sincerely,

Greg Combet
Secretary