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Our Ref: NK:TM: 1111020

The Director
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney NSW 2000

FAXED 13.1.12

By Facsimile: 9230 2981

Dear Director

RE: OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW (INQUIRY)

We are the solicitors for the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.(**"PSA"**)

We refer to the evidence of John Cahill, Sue Walsh and Bill McNally before the Standing Committee on Law and Justice at the public hearing on 16 December 2011. During that hearing three questions were taken on notice. We are instructed to respond to those questions as follows:

1. **How many applications or disputes do you find yourself taking to the IRC? (transcript p 30, question from Mr David Shoebridge)**

   The number of applications lodged by the PSA varies from year to year. In 2010 the PSA estimates that it lodged 386 applications. In 2011 that figure rose to 478.

2. **We heard earlier this morning that the Law Society proposed to support option 2A as opposed to option 1. Options 2A and 2B of the Government's issue paper primarily suggests expanding the Administrative Decisions Tribunal to become the New South Wales administrative and Employment Tribunal. I was wonder whether you could now express your view – or take it on notice – as to why you do not believe that is a good idea. (transcript p 33, question from The Hon. Peter Primrose)**

It is not the PSA's preferred option that the IRC be converted into an employment division of a super tribunal such as NCAT. Instead the PSA maintains that there is merit in the IRC and the Court continuing to be hybrid bodies that are both the tribunal and at the same time a court of superior record. In those circumstances disputes can not only be conciliated and arbitrated but there are judges who can immediately move into enforcement and judicial mode is to bring the full armoury of industrial law to resolve the industrial dispute. In this regard it is worth recalling that the 15% of the workforce that remains within the jurisdiction covered of the IR Act relates to a significant aspect of the economy of New South Wales. It covers the essential services of nurses, fire fighters, police officers, teachers and the general public service. The industrial ramifications of disputes lodged by those groups in terms of the ability of the State to deliver services needs to be considered.

Currently there is a system that is flexible and effective at resolving those disputes. That is because of the expertise of those who constitute the IRC and the Industrial Court and the respect they hold with the disputant parties. The system of the IRC and the Industrial Court has worked from over 110 years and is still working. There is no need to change it.

The PSA does not consider that option to 2A is the way forward

3. **Your submission suggests that restraint of trade case could be moved from the Supreme Court to the Industrial Court. Can you expand on that issue. (transcript p 35, question from Mr David Shoebridge)**

The restraint of trade matters the PSA is considering are those arising out of employment contracts or common law obligations. Those applications have an essential employment character. These cases decide whether to uphold a restriction on where, when and for whom a person can work. They are matters that should appropriately be incorporated into a "one stop shop" for all employment and industrial matters.

Yours faithfully,
W.G. McNALLY JONES STAFF

NATHAN KEATS