

Submission
No 18

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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Theme:

Summary

Public Service Association of NSW

(Registered as Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales)

Submission

Legislative Council Standing Committee on Social Issues

Inquiry into the Impact of Commonwealth WorkChoices legislation

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The Public Service Association of NSW is a State registered association of employees registered under the provisions of the NSW Industrial Relations Act 1996. We represent approximately 47000 members. The majority of our members are employed by the NSW State Government. We also represent general staff employees in NSW universities and a number of employees employed by private sector organisations generally where there was some former relationship with the NSW state Government.

As a result of the actions of the NSW State Labor Government the effects of WorkChoices on our membership has been limited to a number of discrete sectors. With the exception of Higher Education employers in our sector have not rushed to exploit the advantages that are available to them under WorkChoices. As a result our submission will primarily focus on point (a) of the Inquiry's terms of reference:

(a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact on wages conditions and security of employment.

Our preference for the NSW Industrial Relations System:

Our union has historically been, and remains, a strong supporter of the NSW industrial relations system. The vast majority of our members have been covered by this system and thanks to the recent legislative initiatives of the NSW Labor Government the vast majority of our members will remain under this system.

The PSA supports the retention of this system for a number of reasons:

- Fairness and justice is a primary object of the system
- The NSW system is base on an underlying system of common rule and enterprise awards that provide a safety net of minimum wages and conditions that are based on the principle of “fair and reasonable” conditions and that are set by an independent tribunal. The PSA has a proud history of defending the

award system and continues to negotiate wages and conditions primarily through awards.

- Unlike the new federal regime the NSW system places an emphasis on conflict resolution without recourse to industrial action that is based on compulsory conciliation and arbitration through the NSW Industrial Relations Commission. The PSA is a heavy user of the NSW Commission as an effective means for resolving disputes without the need to take industrial action. The Commission has delivered fairness and equitable outcomes for our members and allowed a climate of cooperative industrial relations to prevail in our relations with our employers. The low level of industrial disputation in NSW compared to the rest of Australia is testimony to the effectiveness of this system.
- The NSW system is flexible with its system of enterprise bargaining and consent award making with few limitations on the content of these agreements. The system also provides scope for innovation such as the ground breaking Equal Remuneration Decision by the NSW Industrial Relations Commission which arose from an application by this union. Such a decision would not be possible under the Federal regime.
- Unions are recognised as legitimate participants in the industrial relations system and are accorded rights commensurate with our international obligations. Union density is strong in the NSW Public Sector and joint consultation facilitated through award provisions has allowed members to have a voice in their workplaces without fear of victimisation. This has not been the experience of our union colleagues in the Federal Public Sector.
- Unlike the Federal regime which has an emphasis on punitive measures and court based enforcement the NSW system is accessible and rights are capable of being enforced without encountering prohibitive costs. Commission processes are accessible and fast and members can have their rights enforced

without personal cost through the Commission's conciliation and arbitration powers.

- The NSW System retains an unfair dismissal system that equitably balances the rights of employees and employers

Experience in Higher Education:

The PSA through its federally registered counterpart the Community and Public Sector Union (State Public Services Federation) NSW Branch has for many years represented members working in Universities that have been covered by the Federal Industrial Relations system. These members have suffered the brunt of an ideological attack on the rights of workers to organise and bargain collectively with their employer. Through the mechanism of funding arrangements the Commonwealth have sort to push the boundaries of their agenda to weaken the bargaining position of unions in the higher education sector and to push individual contracts through mandatory requirements for the offering of Australian Workplace Agreements. This is despite the clear preference of employees in this sector for collective bargaining as the means for setting wages and conditions.

The experience of our members in the higher education sector under the pre WorkChoices legislative regime emphasises the fundamental weaknesses of the Federal framework for industrial relations. Employees and employers have been forced into a relationship based on conflict. Bargaining has been constrained by the application of Electrolux principles and the proscriptions of the Department of Education Science and Training through its Higher Education Workplace Relations Requirements (HEWRR). This is now being expanded into the TAFE sector through the Skilling Australia legislation.

This interventionist approach in agreement making has foreshadowed the introduction of the notion of "Prohibited Content" under the post WorkChoices regime. Restrictions imposed on the inclusion in agreement making of union rights clauses has further constrained the free exercise by employees in this sector of their right to organise and bargain collectively.

Collective bargaining is premised on the notion of 'the collective' of employees being represented at the bargaining table. Representation is implicit in this notion and essential for the genuine exercise of this right. Restrictions on the ability to secure, through agreement making, enforceable rights for delegates and officials constrains the capacity of members to be effectively represented at the bargaining table.

Further the restriction on the right to negotiate for union training clauses further restricts this ability as well as seriously compromising health and safety in the work place through the curtailing of training and education on this important aspect of working life. The PSA has funding under Workcover programs to undertake O.H. &S. training. The ability to deliver this in universities will be curtailed under Workchoices prohibited content provisions and the HEWRRS requirements.

Clearly this restriction does not exist in the NSW state system. Employees and employers in the NSW system are able to negotiate the inclusion in enterprise agreements and consent awards provisions that accord rights to unions, union officials and accredited delegates. In many public sector industrial instruments these provisions have provided for:

- release from working time to attend to delegates duties,
- rights to undertake trade union training on paid leave,
- rights to conduct paid time union meetings to facilitate participation of members in consultative arrangements,
- broader right of entry arrangements to facilitate the access by members to assistance and advice from paid union officials,
- rights to have union dues deducted from wages, and
- the right to have the union represent members under a dispute settling procedure.

State Owned Corporations:

The PSA also represents members in a number of organisations that may be affected by the transitional arrangements under WorkChoices. Despite the legislative action taken by the State Labor Government to insulate the vast majority of Public Sector workers from the impacts of WorkChoices, employees in State Owned Corporations were not brought under the NSW Industrial Relations Act for award and agreement making, nor for conciliation and arbitration of disputes. However the PSA and Unions NSW affiliates are utilising the extended common law agreement provisions brought under this Act to protect and regulate wages and conditions that currently exist in each organisation.

The PSA strongly urges the Labor Government to further legislate to bring S.O.C. employees fully under the NSW Act for wage and condition setting, and to grant these employees of the State Government the same protection and all rights and entitlements of other employees.

The PSA is now a party along with Unions NSW to the High Court challenge. The outcome of these proceedings may or may not resolve the position of these S.O.C.s and the standing of state based systems. The P.S.A. prefers immediate clear protection for S.O.C. employees.

The PSA strongly recommends that the State Government legislate specific bargaining provisions for State Owned Corporations to resolve this differentiation and to bring them back fully into the state system.

Impact on state registered unions:

Recent decisions of the Australian Industrial Relations Commission have also created further confusion in relation to the status of state registered unions such as the PSA. The Commission has determined that it can make orders in relation to state registered unions despite the fact that they may not have obtained transitional registration and they may therefore be unable to be represented in the proceedings that make such orders.

State unions who seek full registration under the Federal system now must pass the arbitrary threshold of having more than 50% of their members as Federal system employees.

The right of entry by state registered unions to hold discussions with members employed under transitional instruments is extinguished for these unions unless they seek transitional registration. Federal registration entails a far more intrusive regulatory approach to the internal administration of unions contrary to ILO conventions and in stark contrast with the provisions of the NSW Industrial Relations Act. The internal administrative regime imposed by the Federal system has the consequence of raising union compliance costs and represents a further encumbrance on unions which constrains employee rights to effectively bargain collectively.

Summary:

The PSA is a strong advocate for the retention of a discrete NSW state industrial relations system. In comparison with the Federal regime the NSW system meets international I.L.O standards to which Australia is a signatory. This provides a framework that recognises and gives effect to the basic right of workers to organise and bargain collectively. We believe the current system has served our members well and has produced a climate of harmonious industrial relations in our sector.

We applaud the legislative initiatives of the State Labor Government to insulate the majority of public sector workers from the impacts of WorkChoices but believe the Government stopped short of full protection for all of its employees by failing to take steps to protect public sector workers in State Owned Corporations. We submit that the government must explore other legislative measures to provide for the wages and conditions of these employees to be negotiated through the state industrial relations system. This could perhaps be done through the creation of specific provisions for enterprise bargaining for State Owned Corporations similar to the provisions for agreement making under the Public Sector Employment and Management Act 2002.