

PSA/CPSU/SPSF submission to Work choices inquiry

INTRODUCTION:

Following a direction by the Minister of Industrial Relations to the SA Industrial Commission on the 27 March 2007, the Commission determined that it would hold an inquiry into a number of aspects of the Commonwealth's Workplace Relations Amendment (Workchoices) Act 2005 and the Independent Contractors legislation.

The Public Service Association - Community and Public Sector Union (State Public Services Federation) South Australian Branch have advised the Commission at the initial hearing of the Inquiry, that we will lodge a submission into the effects of the Workchoices legislation as it relates to the Terms of Reference.

PSA/CPSU covers a wide range of public sector workers. These range from base grade clerical workers and professionals in the public service, to allied health workers working in health and community centres, as well as staff of Statutory Authorities and Corporations.

DISCUSSION:

On 1 April 2007, the Statutes Amendment (Public Sector Employment) Act became law. This means that for those employees of public sector agencies named in the Act, they became the direct employees of the employing authority identified in the Act. However for those public sector employers not so named, such as Universities or water utilities, they are subject to Federal law and Workchoices.

The PSA-CPSU has a significant membership in the tertiary sector. The Union also has members in Forestry SA, United Water, Trans Adelaide, as well as Novita Childrens Services (formerly the Crippled Childrens Association) Workcover Corporation and the Red Cross.

These agencies are subject to Workchoices, despite the State Government's policy position which is opposed to the Federal legislation.

Nonetheless they are still subject to it. Novita wishes to take "advantage" of the legislation now and is acting accordingly.

ISSUES:

Lack of flexibility

One of the issues of concern to the Union is the legislation's lack of flexibility in problem solving. An example of this is a dispute between the PSA and Novita Childrens' Services. The Association has a number of matters it wishes to raise that relate to what we say are breaches of the local (State) award. Instead of them being dealt with on their merits, Workchoices's rigid nature requires that form takes precedence over substance and that the real issues the Union has raised on behalf of members remain unresolved. Some progress is now being made after considerable effort and expense.

Also all awards that originated from the State Commission that the Association is party to will cease to have enforceable effect as State instruments from March 2009, which is when the transitional award arrangements currently in place conclude unless the employers party to the Award are subject to the Statute Amendment (Public Sector)Employment) Act . They will therefore remain in the State jurisdiction. Any other employers in the public sector will automatically be subject to Workchoices regardless of their views ,unless they are unincorporated.

Work life balance

The PSA has recently made a submission to the Parliamentary Select Committee on Work life balance. A copy of this can be found on our website www.cpsu.asn.au/ However for those members /employees in the tertiary sector employed under PSA/CPSU (SPSF) Awards and Agreements their terms and conditions are governed by the Workplace Relations Act. Although the federal legislation has as one of its objects “ assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers”, that goal is difficult to reach for the majority of employees in the sector.

Research conducted by several industrial relations academics has shown that for the majority of workers an individualised system of contracts through Australian Workplace Agreements is not conducive to developing an effective system of worklife balance as an industrial entitlement.

The Union 's own analysis of the the Agreements on offer in the three tertiary institutions in South Australia show that while there are relatively generous parental leave provisions they don't say much about Worklife balance per se and any arrangement to that affect is by individual negotiation between the staff member and institution. AWA's have been taken up by only a small number of individuals at the institutions.

Since the legislation was introduced, the PSA has emphasised that a strong State industrial system remains the best method of ensuring worklife balance provisions are applicable to all public sector workers. Our most significant public sector award (The South Australian Public Sector Employees Interim Award) and our main Agreement (The South Australian Government Wages Parity Salaried Staff Agreement) have provisions relating to Work life balance.

Impact on PSA as an employer

The PSA employs over 40 people. As an incorporated body we are bound by Workchoices. We are also a transitionally registered organization under the legislation. Staff were employed pursuant to a local (State) enterprise agreement, which for the purposes of the Act is now a preserved state agreement.

As a consequence negotiations for a new Agreement need to take account of the Act's requirements. As an example any new collective Agreement is unable to contain a reference to trade union training as it is contrary to the Act's prohibited content provisions. The PSA sees this as an unwarranted limitation on its affairs. In addition the new limitations on unfair dismissal apply to the Association, though the Association has indicated to its staff and the union (ASU) that it wishes to continue to act as a good employer. Compliance with the Act has delayed the whole process of negotiating a new enterprise agreement and unnecessarily prolonged finalisation of the negotiations.

Also because the PSA is bound by Work choices it must comply with the record keeping and payslip requirements of the Act. These are set out in Part 19 Chapter 2 of the Regulations under the

Act. Failure to meet this requirement can lead to significant penalties which can adversely affect the Association.

The impact on the federal body (Community and Public Sector Union, State Public Services Federation) SA Branch

The Union had gone to considerable expense to avert the threat of technical deregistration. Until the Government announcement that the Act will be amended, uncertainty existed as to whether the Union's registration was in jeopardy. The Minister for Employment and Workplace Relations announcement of 29 May 2007 has removed this uncertainty, although we await to see the final legislation after its passage through both Houses of Parliament. the Act is expected to specify that some members, rather than the majority, must be in the federal jurisdiction. Nevertheless, the Act overall retains it's complexity.

SUMMARY

The complex and anti union nature of the legislation has opened opportunities to allow employers to introduce a variety of non union industrial arrangements at the workplace. In the public sector this has been kept to a minimum for a variety of reasons. PSA/CPSU have considerable concerns in respect to those members still under Work Choices.