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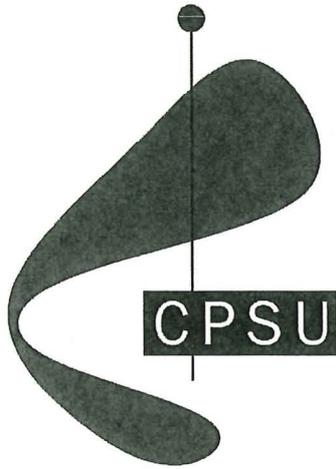
Submission Cover Sheet

Inquiry into Human Rights (Workers Rights) Amendment Bill 2019

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CPSU (PSU Group) Submission:

**Review into the Human Rights (Workers
Rights) Amendment Bill 2019**

January 2020

Background

The Community and Public Sector Union PSU Group (CPSU) is an active and progressive union committed to promoting a modern, efficient and responsive public sector delivering quality services and quality jobs. As the largest union in the ACT Public Service (ACTPS), the CPSU welcomes the opportunity to provide a submission to this inquiry on legislation proposing to strengthen the rights of workers within the ACT, enshrining workers' rights, as human rights.

The protections of workers' rights is a critical need within the ACT. Too often workers' rights and industrial relations are used as a political football at the expense of hard working members of the community. While recognising these proposed laws may affect all workers within the ACT, our submission is based on the observations and experiences of our members.

It is the firm view of the CPSU and its members that this bill goes beyond the simple aspect of the ability for the Commonwealth to consider workers conditions such as pay-rates and entitlements for leave (the typical realm of the federal industrial relations framework) to the fundamental human rights that must be afforded to all, regardless of sex, social status or creed. These should include as a basis, the right to choose your occupation; the enjoyment of just and favourable conditions; the right to enjoy workplace rights without discrimination; the right to either form, or join a work related organisation; and the right to anti-union discrimination in the workplace.

The key issues our submission will address include:

1. The importance of the right to freely choose work;
2. The right to just and favourable terms of employment, while enjoying those rights free from discrimination; and,
3. The right to partake in a union, free from discrimination or hinderance of that organisation to protect and represent its members.

Based on the need to protect these fundamental rights in the ACT, the CPSU supports the passage of the Human Rights (Workers Rights) Amendment Bill with the inclusion of the right to organise.

Right to freely choose your occupation and/or trade

Relevant term of reference: The addition of workers' rights in the Human Rights Act 2004 including...the adequacy of the use of International Covenant on Economic, Social and Cultural Rights (ICESCR);

In responding to the Term of Reference (ToR), the CPSU notes the importance of Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

ICESCR, Article 6 states:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.¹

For CPSU members, this article is critical. Anecdotal evidence from members over the past seven years has been that these rights have been under sustained attacks on workers in the ACT. Workers are forced to choose between employment with poor rights and conditions (often insecure work or degraded rights) or no work at all.

Within the ACT Government's own workforce, approximately 24% of the workforce do not hold stable or secure employment.² The impact of this is a public service workforce that can be hesitant to give frank and fearless advice due to a fear of job loss. In this last six months, the CPSU represented a member who was insecurely employed and provided advice that was contrary to the held view of the Directorate executive. When the member was brought in to be counselled about their actions, the member was advised that they 'shouldn't make waves' if they wanted to keep their job. While many would consider this frank and fearless advice, the actions by the Directorate against the employee flies in the face of the intent of the ICESCR.

The need to practise one's trade without fear or fright of repercussion is not merely an

¹ Office of the High Commissioner. (2020) International Covenant on Economic, Social and Cultural Rights. United Nations. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

² ACT Public Service Head of Service (2018, October). ACT State of the Service Report 2017-18. ACT Government.

industrial right, but a human one. For this reason, the ICESCR is adequate in its protections of these actions and should be accepted by the ACT as a fundamental human right.

Recommendation 1: That s27B (1) remain as part of the Human Rights (Workers Rights) Amendment Bill, and formally be adopted by the Australian Capital Territory as a Human Right.

The right to just and favourable terms of employment, while enjoying those rights free from discrimination.

Relevant term of reference: The addition of workers' rights in the Human Rights Act 2004 including...the adequacy of the use of International Covenant on Economic, Social and Cultural Rights (ICESCR);

Favourable terms of employment are an important aspect to be considered as it goes beyond simply establishing a baseline of entitlements for workers. Without key protections, workers are forced to compete against each other for the lowest common denominator. Workers should not and must not be put in a position where to maintain employment, rights and entitlements are sacrificed.

There have been several examples over the past few years where workers in the ACT have been threatened with lesser conditions to maintain employment. If the right to be 'better off overall' through employment is no longer just an industrial right but now a human right, occurrences such as these are less likely. Without this vital protection proposed for the Human Rights Act, this exploitation can and will continue.

However, to ensure the right to be better off overall is maintained, workers must be given this right in conjunction with the right to enjoy them free from discrimination. The right to freedom from discrimination is well established but limited to a set number of conditional aspects within the Anti-discrimination Act. By including this right within the Human Rights Act, the protections from discrimination will be extended to a workers right to just a favourable terms.

Recommendation 2: That s27B (2) and s27B (3) remain as part of the Human Rights (Workers Rights) Amendment Bill, and formally be adopted by the Australian Capital Territory as a Human Right.

**The right to partake in a union, free from discrimination; or
hinderance of that organisation to protect and represent its
members**

Relevant term of reference: The addition of workers' rights in the Human Rights Act 2004 including...the adequacy of the use of International Covenant on Economic, Social and Cultural Rights (ICESCR); The adequacy of the use of International Labour Organisation (ILO)

The CPSU supports the intent of the proposed Human Rights (Workers Rights) Amendments Act, however, the CPSU believes it should also include the right to organise by being a union member.

The right to be a member of a union (free from discrimination) is recognised by the ACT Government as policy throughout the Union Encouragement Policy. This policy notes that the ACT Government not only encourages union membership, but advocates for workers to take part in an active role within that work-place organisation. While this policy is relatively new to the ACT Government, it has had a positive impact on workers culture, particularly in areas such as Canberra Health Services, where workers feel confident enough to come forward.

However, this policy does not apply to the wider ACT community. The CPSU notes the experience of our members in the Australian Public Service whose rights to union representation were removed from Enterprise Agreements and rights to bargain and organise collectively have been constrained.

Furthermore, the CPSU notes that Australia is known internationally as a country that hinders the ability of unions to protect and represent its members. The 2019 International Trade Union Confederation Global Rights Index gave Australia a rating of three out of five, indicating regular violations of labour rights.³ The CPSU also notes that Australia is not a signatory to the ILO Convention 151 – Labour Relations (Public Services) which protects the right to organise, ensures access to facilities, outlines procedures for determining employment conditions and guarantees their civil and political rights.⁴

When workers collective organise, conditions for workers and the wider community improves, whether it be through a safer workplace, better conditions or organisational growth. While the impact of this amendment would not be the same as the ACT Government's Union Encouragement Policy, it would give workers the right to collectively organise through being a union member, free from discrimination.

³ International Trade Union Confederation (2019, June). 2019 ITUC Global Rights Index. <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf>

⁴ International Labour Organisation (n.d.). C151 - Labour Relations (Public Service) Convention, 1978 (No. 151). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312296

Finally, the CPSU sees value in the addition of the right for unions to organise in the workplace. It has become too common to see unions locked out of workplaces or prevented from representing their membership. This right is fundamental and must be included in the proposed amendments because it allows the right to represent workers as a basic human right. Workers involved in an adverse situation are often hesitant to act due to many of the issues discussed above. The Bill should be amended to include 'everyone has the right to organise, or be organised by their work-place organisation'.

Recommendation 3: That s27B (4) and s27B (5) remain as part of the Human Rights (Workers Rights) Amendment Bill, with the addition of the 'right to organise' as s27B (6); and formally be adopted by the Australian Capital Territory as a Human Right.