

Community & Public Sector Union
Michael Tull • National President

29 October 2010

Mr Hamish Hansford
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

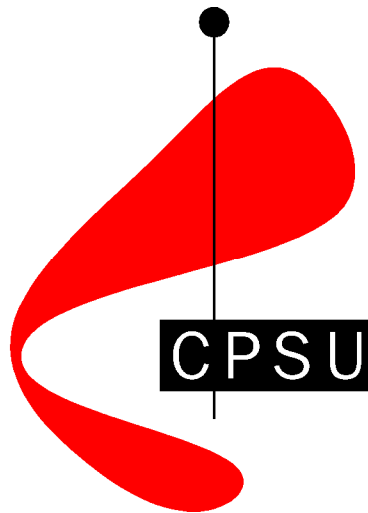
Dear Mr Hansford

Please find attached a submission from the Community and Public Sector Union (PSU Group) to the parliamentary inquiry into the *Crimes Legislation Amendment Bill 2010*.

The contact person for this submission is Dr Kristin van Barneveld, CPSU Deputy Secretary, ph 02 6220 9664.

Yours sincerely

Michael Tull
CPSU National President



CPSU (PSU Group) Submission:

**Crimes Legislation Amendment Bill
2010**

**Senate Legal and Constitutional
Committee**

October 2010

Summary of Recommendations

The CPSU recommends:

1. That the ACC CEO not be provided with the power to issue a declaration that would disapply the *Fair Work Act 2009* from an employee suspected of serious misconduct.
2. That employees of the ACC continue to have access to the unfair dismissal rights enshrined by the *Fair Work Act 2009*.

Introduction

The Community and Public Sector Union (CPSU) is an active and progressive union committed to the promotion of a modern, efficient and responsive public sector that delivers quality services and quality jobs. We represent around 55,000 members in the Australian Public Service (APS), ACT Public Service, NT Public Service, ABC and the CSIRO. We also have members in Telstra, aviation, commercial television and the telecommunications industry.

The CPSU welcomes the opportunity to provide a submission to the Senate Inquiry into the *Crimes Legislation Amendment Bill 2010* (the “Bill”). The CPSU is the major union representing employees of the Australian Crime Commission (ACC). This submission has been prepared in consultation with these members.

The CPSU supports the important work of the Australian Crime Commission combating serious and organised crime. The CPSU understands the need for the ACC to have the ability to effectively deal with serious misconduct of its employees.

While the CPSU understands the need to deal effectively with serious misconduct, we have significant concerns regarding the proposal to remove immediate access to unfair dismissal rights provided by the *Fair Work Act 2009* from employees terminated on grounds of serious misconduct.

Amendment of the *Australian Crime Commission Act 2002*

The CPSU is concerned by the proposal to allow the CEO of the ACC powers to remove unfair dismissal rights from employees terminated on the grounds of serious misconduct.

The reinstatement of unfair dismissal rights to Australian employees, through the *Fair Work Act 2009* (FW Act), was a critical part of the Your Rights at Work campaign. These rights form a core part of the Government’s industrial relations policy and in our view it would be inappropriate for ACC employees to be denied these rights.

The amendments proposed in the Bill would allow the CEO of the ACC to issue a declaration disapplying the FW Act once an employee has been found to have breached the APS Code of Conduct and terminated under the *Public Service Act 1999* (PSA).

All Australian Public Service employees employed under *Public Service Act 1999* (PSA) have access to the unfair dismissal protections and procedures on the Fair Work Act. This includes employees working in areas of the highest security clearance and other sensitive areas. There is no evidence to suggest that dealing with serious

misconduct in the ACC would require limiting the protections or remedies available to ACC employees in a way that is not applied to any other APS employees.

The CPSU does not believe that the processes of the *Administrative Decisions (Judicial Review) Act 1997* are an adequate alternative to Fair Work Australia:

- Fair Work Australia provides both employers and employees with access to timely conciliation and arbitration processes.
- FWA is a specialist tribunal, readily available to applicants and with expertise in dealing with dismissals.

It occurs to the CPSU that the proposed amendments may be motivated by a concern about having potentially sensitive matters dealt with in the open proceedings of Fair Work Australia. However the Fair Work Act provides specific provisions to address any such concern:

FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 593

Hearings

(1) FWA is not required to hold a hearing in performing functions or exercising powers, except as provided by [this Act](#).

(2) If FWA holds a hearing in relation to a matter, the hearing must be held in public, except as provided by subsection (3).

Confidential evidence in hearings

(3) FWA may make the following orders in relation to a hearing that FWA holds if FWA is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:

(a) orders that all or part of the hearing is to be held in private;

(b) orders about who may be present at the hearing;

(c) orders prohibiting or restricting the publication of the names and addresses of persons appearing at the hearing;

(d) orders prohibiting or restricting the publication of, or the disclosure to some or all of the persons present at the hearing of, the following:

(i) evidence given in the hearing;

(ii) matters contained in documents before FWA in relation to the hearing.

(4) Subsection (3) does not apply to the publication of a submission [made](#) to FWA for consideration in an [annual wage review](#) (see subsection 289(2)).

FAIR WORK ACT 2009 (NO. 28, 2009) - SECT 594

Confidential evidence

(1) FWA may make an order prohibiting or restricting the publication of the following in relation to a matter before FWA (whether or not FWA holds a hearing in relation to the matter) if FWA is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:

(a) evidence given to FWA in relation to the matter;

(b) the names and addresses of persons making submissions to FWA in relation to the matter;

(c) matters contained in documents lodged with FWA or received in evidence by FWA in relation to the matter;

(d) the whole or any part of its decisions or reasons in relation to the matter.

(2) Subsection (1) does not apply to the publication of a submission made to FWA for consideration in an annual wage review (see subsection 289(2)).

Given the operation of the Fair Work Act it is entirely possible for an unfair dismissal matter to be dealt with in Fair Work Australia in a manner that would not compromise the operations, or damage the reputation of the ACC.

Recommendation: That employees of the ACC continue to have access to the same unfair dismissal rights enshrined by the <i>Fair Work Act 2009</i> as do millions of Australians.
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