

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.158(1) RAO Schedule - Application for alteration of eligibility rules

**Application/Notification by CPSU, the Community and Public Sector Union
(D2005/20)**

SENIOR DEPUTY PRESIDENT LACY

MELBOURNE, 13 JULY 2006

Eligibility for membership.

ADDENDUM TO DECISION PR973284

Substitute paragraph [14] as follows:

[14] Accordingly I consent to the following alteration:

In Part 1 of Rule 2 of Chapter A, insert the following words after sub-rule P:

“Q.1 Despite anything to the contrary in these rules, the following persons are eligible for membership of the Union:

- (i) persons employed by:
 - (A) Sensis Pty Ltd but excluding any employee who is eligible to become a member of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and whose employment is subject to the Sensis Advertising & Design Agreement 2003-2004 AG828506 PR938287 and any successor or replacement agreement whether certified, lodged, registered or however constituted; or
 - (B) Invizage Pty Ltd.
- (ii) persons performing work as customer service representatives or telephone operator or a sales representative or a supervisor of the foregoing in Teletech International or any subsidiary of the company within the meaning of the Corporations Act who in the past or are currently performing work for the Commonwealth;
- (iii) persons performing work as customer service representatives or telephone operator or a sales representative or a supervisor of the foregoing in Stellar or Sirius or any subsidiary of the companies with the meaning of the Corporations Act;
- (iv) subject to the proviso in subrule F(7), persons employed as labour hire employees who, if they were employees performing work of the kind which they usually perform as labour hire employees, would be eligible for

membership of the union under sub-paragraph (i) or (ii) of this subrule, or Rule 2 Part A.1(i)(g) or A.1(iv).

Q.2 Provided that persons eligible to be members of the CEPU and employed as tradesman, artisan, draftsman, technical assistant, technical officer, mail officer, linesman, telecommunication technician, telecommunications technical officer, telecommunications electrical worker, postmaster, telegraphist or theatrical, film, television and video technician will not be eligible under this rule.”

BY THE COMMISSION:

SENIOR DEPUTY PRESIDENT

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Workplace Relations Act 1996

s.158(1) RAO Schedule - Application for alteration of eligibility rules

CPSU, the Community and Public Sector Union

(D2005/20)

SENIOR DEPUTY PRESIDENT LACY

MELBOURNE, 12 JULY 2006

Eligibility for membership

DECISION

[1] CPSU, the Community and Public Sector Union (CPSU) lodged in the Registry in New South Wales on 17 May 2005, an application for consent to the alteration of its eligibility rules. The application was made under Schedule 1B, now Schedule 1, Chapter 5, Division 5, s.158 of the *Workplace Relations Act 1996* (WR Act). Notice of the application was published in the *Commonwealth of Australia Gazette*, Government Notices, GN22 on 8 June 2005.

[2] By its application the CPSU proposed the following alterations to Part 1 of Rule 2, Chapter A of its rules:

(1). Amend Rule A.1 in Part 1 of Rule 2, Chapter A, by inserting a new sub-rule A,1(i)(g)(F) so that sub-rule (g) reads as follows:

(g) any person employed as a customer service representative or telephone operator or any person employed as a supervisor of the foregoing by a business of part of a business which performs a call centre function for

(A) the Commonwealth;

(B) the Northern Territory;

(C) the Australian Capital Territory;

(D) a body corporate established for a public purpose, whether in whole or in part, by or under a law of the Commonwealth, the Australian Capital Territory or the Northern Territory other than any Local Government body established under the Local Government Act (Northern Territory) or other Local government Legislation in the Northern Territory;

(E) a company or other body corporate incorporated under a law of the Commonwealth or of a State or Territory, being a company or other body corporate in which the Commonwealth, the Northern Territory or the Australian Capital Territory has a controlling interest;

(F) *a company or business within the definition of "telecommunications services industry" in the TSI Award 2002 as contained in Print PR924702.*

(2). Amend Rule A.1 in Part 1 of Rule 2, Chapter A, by inserting after sub-rule P the following:

Q.1 Notwithstanding anything to the contrary in these rules, the following persons are eligible for membership of the union:

- (i) persons employed by Sensis or a subsidiary of Sensis within the meaning of the Corporations Act;*
- (ii) persons performing work as a customer service representative or telephone operator or a sales representative or a supervisor of the foregoing in Teletech, Salmat, Stellar or Sirius, or any subsidiary of those companies within the meaning of the Corporations Act;*
- (iii) subject to the proviso in subrule F(7), persons employed as a labour hire employee who, if they were employees performing work of the kind which they usually perform as labour hire employees, would be eligible for membership of the union under sub-paragraph (i) or (ii) of this subrule, or Rule 2 Part 1 A.1(i)(g) or A.1(iv);*

Q.2 Provided that persons eligible to be members of CEPU and employed as tradesman, artisan, draftsman, technical assistant, technical officer, telecommunications electrical worker, postmaster, telegraphist, labourer, or theatrical, film, television and video technician will not be eligible under this rule.

[3] Four organisations of employees and eight corporations lodged objections to the application. The objectors were:

Australian Municipal, Administrative, Clerical and Services Union (ASU);
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU);
Australian Workers' Union (AWU);
National Union of Workers (NUW);
Sensis Pty Ltd, Trading Post Group Pty Limited;
The Melbourne Trading Post Pty Limited, The Personal Trading Post Pty Limited;
WA Auto Trader Pty Ltd, Just Listed Pty Limited;
Trading Post Australia Pty Limited;
Invizage Pty Ltd; and
Universal Publishers Pty Ltd.

[4] I will refer to the corporate objectors collectively as *Employer Objectors*, unless the context otherwise demands.

[5] The stated effect of the proposed alteration was as follows:

Provide coverage of a call centre contracted to any company in the telecommunications industry.

- Provide coverage of persons employed in Sensis, Teletech, Stellar Salmat and Sirius or an subsidiaries, subject to certain exclusions of persons eligible for membership of the CEPU.

- With regards to Sensis the company has been expanding and broadening its business base from just a directory to now providing call connect, street directory, search engine and classified advertising through the trading post. The areas of business are becoming more integrated. The rule change will ensure our coverage of the newer areas and remove any possibility of doubt about the CPSU coverage of all areas within Sensis (although persons in trades areas eligible under CEPU rules will not be eligible for membership of the CPSU under rule Q) and will allow us to continue to be the primary Sensis union.
- The final aspect of the rule change ensures unambiguous coverage of any labour hire worker, performing work that we cover in: Sensis, Teletech, Stellar Salmat and Sirius, in a contract call centre providing a service to the Commonwealth, ACT or NT Government, or a call centre in a company or body corporate established by or controlled by one of those governments, or any company or business in the telecommunications services industry.

[6] The matter was initially listed before Vice President Ross for mention and programming in Sydney on 25 August 2005. The parties sought and were granted time for discussions directed to settling the objections. Further listings occurred for mention and/or conciliation on 8, 21 and 29 November and 6 December 2005, 10 February, 22 February and 11 April 2006. The matter was finally listed for hearing on 14 June 2006, by which time all objections had been settled.

[7] On 7 November 2005 the NUW gave written notice that it had reached agreement with the CPSU settling its objections. The AWU gave written notice to the Commission on 13 February 2006 that it had reached agreement with the CPSU and resolved to withdraw its objection. The AMWU objection was settled by Memorandum of Agreement which was finalised on 8 March 2006 and it notified the Commission by letter dated 9 June 2006 that, subject to the CPSU amending its application in the terms set out in the Memorandum of Agreement filed on 23 March 2006 and the undertakings given therein, it withdrew its objection.¹ The ASU withdrew its objections subject to the terms of its Memorandum of Agreement with CPSU finalised on 1 May 2006.² The Employer Objectors withdrew their objections subject to CPSU's agreement to amend its rules in the terms set out in its written agreement dated 9 May 2006.³

[8] When the matter came on for hearing on 14 June 2006, the CPSU announced the terms of settlement between it and the several objectors and applied to amend its application, the final form of which is in the following terms:

In Part 1 of Rule 2 of Chapter A, insert the following words after sub-rule P:

Q.1 Despite anything to the contrary in these rules, the following persons are eligible for membership of the Union:

(i) persons employed by:

(A) Sensis Pty Ltd but excluding any employee who is eligible to become a member of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and whose employment is subject to the Sensis Advertising & Design Agreement 2003-2004 AG828506

¹ See Exhibit AMWU-1.

² See Exhibit ASU-1.

³ See Exhibit Sensis-1.

PR938287 and any successor or replacement agreement whether certified, lodged, registered or however constituted; or

(B) Invizage Pty Ltd.

- (ii) persons performing work as customer service representatives or telephone operator or a sales representative or a supervisor of the foregoing in or Teletech International or any subsidiary of the company within the meaning of the Corporations Act who in the past or are currently performing work for the Commonwealth;
- (iii) persons performing work as customer service representatives or telephone operator or a sales representative or a supervisor of the foregoing in Stellar or Sirius or any subsidiary of the companies with the meaning of the Corporations Act;
- (iv) subject to the proviso in subrule F(7), persons employed as labour hire employees who, if they were employees performing work of the kind which they usually perform as labour hire employees, would be eligible for membership of the union under sub-paragraph (i) or (ii) of this subrule, or Rule 2 Part A.1(i)(g) of A.1(iv).

Q.2 Provided that persons eligible to be members of the CEPU and employed as tradesman, artisan, draftsman, technical assistant, technical officer, mail officer, linesman, telecommunication technician, telecommunications technical officer, telecommunications electrical worker, postmaster, telegraphist or theatrical, film, television and video technician will not be eligible under this rule.

[9] The amended application narrows the scope of the persons sought to be covered by the original application and is consistent with the requirements of agreements reached with the objectors. I granted leave to amend the application.

[10] I am satisfied that the rule alterations were made in accordance with the rules of the organisation. In so finding I rely on the declaration of Adrian O'Connell, Joint National Secretary of the CPSU.

[11] There is no evidence before me to suggest that there is another organisation to which the persons who would be eligible for membership of CPSU because of the rule alteration, that could more conveniently belong or that would more effectively represent those members. In any event I am satisfied that the undertakings given by the parties in this matter are relevant and appropriate to avoid demarcation disputes that might arise from any overlap in coverage.

[12] There are no grounds additional to those set out in s.158 of Schedule 1 of the WR Act that would persuade me to withhold my consent to the alteration.

[13] Subject to the deletion of the word *or*, as it appears in paragraph (ii) of sub-rule Q.1. in the expression ... *a supervisor of the foregoing in or Teletech International*, and substitution of the word *or* for the word *of* as it appears in paragraph (iv) of sub-rule Q.1 in the expression ... *Rule 2 Part A.1(i)(g) of A.1(iv)*, I consent to the alteration to the CPSU rules as disclosed by its further amended application and set out in paragraph [8] above.⁴ The words *or* and *of* appear to be typographical errors and, in any event, the word *or* is unnecessary.

⁴ Exhibit CPSU-2.

[14] Accordingly I consent to the following alteration:

In Part 1 of Rule 2 of Chapter A, insert the following words after sub-rule P:

“Q.1 Despite anything to the contrary in these rules, the following persons are eligible for membership of the Union:

(i) persons employed by:

(C) Sensis Pty Ltd but excluding any employee who is eligible to become a member of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and whose employment is subject to the Sensis Advertising & Design Agreement 2003-2004 AG828506 PR938287 and any successor or replacement agreement whether certified, lodged, registered or however constituted; or

(D) Invizage Pty Ltd.

(ii) persons performing work as customer service representatives or telephone operator or a sales representative or a supervisor of the foregoing in Teletech International or any subsidiary of the company within the meaning of the Corporations Act who in the past or are currently performing work for the Commonwealth;

(iii) persons performing work as customer service representatives or telephone operator or a sales representative or a supervisor of the foregoing in Stellar or Sirius or any subsidiary of the companies with the meaning of the Corporations Act;

(iv) subject to the proviso in subrule F(7), persons employed as labour hire employees who, if they were employees performing work of the kind which they usually perform as labour hire employees, would be eligible for membership of the union under sub-paragraph (i) or (ii) of this subrule, or Rule 2 Part A.1(i)(g) or A.1(iv).

Q.2 Provided that persons eligible to be members of the CEPU and employed as tradesman, artisan, draftsman, technical assistant, technical officer, mail officer, linesman, telecommunication technician, telecommunications technical officer, telecommunications electrical worker, postmaster, telegraphist or theatrical, film, television and video technician will not be eligible under this rule.”

[15] The alteration set out in paragraph [14] above will come into effect on and from Friday 14 July 2006.

BY THE COMMISSION:



Appearances:

L Andelman and *M Donnelly* for CPSU, the Community and Public Sector Union.
J Nucifora for Australian Municipal, Administrative, Clerical and Services Union.
A Kentish for Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union.
G Beard for Australian Workers' Union.
P Richardson for National Union of Workers.
V Gostencnik of Counsel for Sensis Pty Ltd and its subsidiaries.

Hearing details:

2005.

Sydney and Melbourne:
August 25.

2006.

Melbourne and Sydney:
June 14.