United Firefighters' Union of Australia, Union of Employees, Queensland

Submission regarding the Industrial Relations (Restoring Fairness) and other Legislation Amendment Bill 2015

United Firefighters' Union of Australia, Union of Employees, Queensland (United Firefighters' Union Queensland) – 18 May 2015

Contact: John Oliver
State Secretary
johnoliver@ufuq.com.au

Submissions regarding the "Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015."

1. Request for permission to publish this submission

UFUQ requests permission from the committee to publish this submission, particularly for the information of our members, interstate firefighter unions, and Queensland unions affiliated with the Queensland Council of Unions (QCU).

We authorise the publication by the parliament.

2. United Firefighters' Union Australia, Union of Employees Queensland (UFUQ)

The United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) is an industrial organisation of employees registered under the *Industrial Relations Act 1999*.

United Firefighters' Union Queensland is affiliated with the Queensland Council of Unions (QCU).

United Firefighters' Union Queensland is bound by awards of the Queensland Industrial Relations Commission and is party to a number of certified agreements made and registered under the Act. United Firefighters' Union Queensland has a history of representing our members and bargaining under the Act.

United Firefighters' Union Queensland have approximately 2500 Members, both full time and part time, who are affected by the Bill. Our members respond to almost every emergency situation not only in Queensland but interstate and internationally. Our members are extremely dedicated in all facets of firefighting and rescue.

Our members are highly regarded by the Queensland community.

3. Consultation about the Bill

UFUQ is pleased to be able to provide this brief submission about the Bill.

We acknowledge that many of the legislative amendments proposed in the Bill, address notorious issues arising from some of the legislative amendments to industrial laws enacted by the previous parliament. The issues are well known and employee organisations, including UFUQ, and many employees, including our members, were adversely affected and subjected to the unfairness sought to be addressed by the Bill.

We acknowledge that the policy objectives addressed in the Bill were foreshadowed in pre-election announcements by the current government.

We are satisfied that the timetable for consultation about this particular Bill, provides adequate time to consider and provide submissions to the parliamentary committee.

UFUQ has raised in committee inquiries conducted in the previous parliament, that some of the time periods scheduled for consultation about Bills introduced in the previous parliament, impacting upon our members, were inadequate and inhibited our full and considered participation.

We welcome this opportunity to participate and provide comment within a sensible time frame and process.

4. Policy objectives

UFUQ submits that the policy objectives of the Bill are sound and in the public interest.

The policy objectives are consistent with those foreshadowed by the government prior to forming government in the new parliament, on that basis our members have not been taken by surprise as occurred during numerous legislative changes enacted by the previous parliament.

The policy objectives are consistent with restoring fairness as described in the title of the Bill and primarily rectify some of the problems which arose from amendments to the *Industrial Relations Act 1999* enacted during the previous parliament.

There are imminent practical considerations affecting industrial relations under the current legislation and there are sound policy objectives in introducing these timely amendments, in advance of a more comprehensive review.

Industrial legislation introduced in the previous parliament, was in many cases, impetuous, hasty, patently unfair and designed to consolidate a distorted power imbalance in favour of the government as both legislator and employer.

Confidence was severely diminished in the parliamentary processes, as well as in the industrial system, its institutions and processes.

There are sound policy objectives in legislating to reverse the unfairness and attempting to restore some of the diminished confidence in the industrial jurisdiction.

The policies are supportive of a shift towards a more mature, constructive relationship between the government as an employer and its employees, and a departure from some of the pointless and costly adversarial policies reflected in the current legislation.

5. Removal of mandatory content provisions and non-allowable content

UFUQ supports those amendments which remove the requirements to include certain specified mandatory content in industrial instruments. Similarly, we support those amendments which remove certain restrictions on the inclusion of specified non allowable content in industrial instruments.

The Bill addresses these issues in awards and agreements.

The amendments will have a practical effect on restoring fair employment arrangements, including in some cases previously agreed or arbitrated arrangements which had been disturbed by legislation.

The amendments will also allow for more flexible bargaining, which should facilitate parties arriving at agreed packages reflective of the parties' priorities and commitments, rather than agreements distorted by excessive parliamentary interference.

6. Award modernisation

UFUQ currently have two main awards which have not been subject to the award modernisation process.

Queensland Fire and Rescue Service Award – State 2012 and *Queensland Fire and Rescue Service Communications Centres Award – State 2012.*

An 'award modernisation process' of our two awards commenced in late 2014, but did not conclude.

We are supportive of the amendments to the Act, which dispense with prescriptive provisions regarding award content.

We are also supportive, of the amendments to the Act, which allow the tribunal more time to complete the work necessary.

Our two awards had already been reviewed in June 2012 and are current.

There is minimal or no benefit in mandating a further review such as inflicted by the 'award modernisation process' introduced in the last parliament.

With the removal of inflexible legislative provisions mandating some compulsory content and deeming some content as non-allowable , the inclusion of an option for realistic time frames and given our two awards have recently been reviewed, we submit that the proposed amendments to the award modernisation provisions are eminently sensible.

Although our two awards had not been finalised through the process, we support the amendments in the Bill which seek to rectify those awards which have been 'modernised'.

Those modernised awards do not apply to our members ,although some of the principles applied by the industrial tribunal when creating those awards might be also be considered when modernising our two awards.

It would be incongruous and unfair to allow ten modern awards to continue to operate without further review to address issues arising, such as the removal of provisions, inclusion of mandatory content, amalgamation of awards, and other matters.

While the award modernisation processes introduced during the last parliament, was diverting and pre occupying the state industrial tribunal, a continuing disadvantage was experienced by our members employed as auxiliary firefighters.

The previous parliament had cognisance that these employees do not have any award at all. The state industrial tribunal has cognisance for over three years of applications for a first award to cover these employees.

The diversion of the industrial tribunal away from its traditional responsibility to ensure that these minimum wage workers have award protection ,towards a complicated, hasty process of 'modernising' awards for employees who are already covered by an award, evidences the misplaced priority of the 'award modernisation' legislation and the industrial tribunal dealing with it.

An objective measure of the current system is the failure of the industrial institutions to produce an award to cover award free auxiliary firefighters employed by the state government in over three years of dealing with the matter.

The proposed amendments in this Bill will assist to restore an orderly process of dealing with these matters and a rational prioritisation of the tribunal's work.

7. Certified agreements

We note that 7 relevant certified agreements have been made with underpinning modern awards. It is evident that the agreements and the relevant awards have been made under the unfair and inflexible legislation introduced under the last parliament.

The Committee should note that none of those awards or agreements affect the UFUQ or our members.

Our union is supportive of the policy and legislative intention to allow those instruments to be revisited by the parties under new legislative parameters.

In our view that would be fair to all concerned.

8. Section 849

UFUQ submits that the Bill ought to be amended to omit or amend the transitional provision at section 849.

"849 Regulation may vary relevant certified agreement

(1) A regulation may vary a relevant certified agreement in the way state in the regulation.

(2) The variation takes effect from the day the regulation commences or, if the regulation states a later day, the later day.

(3) This section applies subject to Chapter 2A, part 3, of the amended Act."

Legislators ought to be reluctant to reach into agreements which have been made, or legislate powers to directly and unilaterally vary the terms of such agreements. If such a power were to be seen as acceptable by legislators, and used as such, then parties to agreements would have diminished certainty when negotiating, and operating under such agreements.

It was evident during the previous parliament, that agreements were disturbed, and terms invalidated by the parliament. See for example, section 691C, introduced during the previous parliament, which rendered existing terms of operating agreements to "have no effect". Such unilateral legislative interference into existing operating agreements was a poor policy principle, and disturbed agreed packages.

These legislative incursions into agreements, ought to ordinarily be viewed as a bridge too far.

The policy intent, of the current Bill, is designed to redress a specific, unusual set of circumstances and to provide a mechanism to provide beneficial, or otherwise practical

variations to short lived agreements which were entered into under unduly restrictive legislation regarding agreement content. The policy intent is valid and in the public interest, however UFUQ is concerned about the mechanism of using statutory regulation as proposed by section 849 in the Bill. .

If the state government wishes to provide beneficial terms to compensate for the unusual and undue constraints impacting on those few agreements, they ought to be able to do so without taking the step of legislating to allow unilateral variation by government regulation.

Where there are no legislative options, available to vary the specific collective agreements in a more regular way, other policy options are available to employers, and particularly, the state government as employer, to provide additional benefits by way of policy, or government directive.

In the event that, the parliament disagrees with the UFUQ submission, that section 849 should be removed from the Bill, then parliament may consider alternative options of attaining the policy intent such as amending the section to clarify that a variation can only provide additional beneficial terms, or to include provisions that were otherwise- non allowable and where the outcome, passes the 'no disadvantage' test.

The proposal to use the Regulations to clarify how the section would operate is less than ideal.

Whilst, the motivation behind the legislative proposal might be simply to allow a mechanism to remedy problematic outcomes of the previous bargaining restrictions, in our view the end does not justify the means in this instance, and parliament should be reluctant to take the power to unilaterally vary collective agreements by regulation.

In the event, that parliament does proceed to legislate for a mechanism to unilaterally vary existing collective agreements, UFUQ submit that the power should be carefully circumscribed, and the statute should restrict the scope of allowable variations.

The only variations allowed by law should be variations specifically designed to redress the bargaining disadvantages arising from the restrictive laws introduced in the previous parliament.

9. Arbitrating matters at issue under section 149 of the Act.

UFUQ supports the policy intent and proposed amendments to s 149 of the Act.

In particular, those amendments to s149D, which remove the express requirement for the tribunal to consider:

"(f) for a matter involving a public sector entity—

(i) the State's financial position and fiscal strategy; and

(ii) the financial position of the public sector entity; and

(iii) the likely effect of the proposed arbitration determination on the matters

mentioned in subparagraphs (i) and (ii); and

(g) for a matter other than a matter involving a public sector entity—the employer's financial position and the likely effect of the proposed arbitration determination on it."

Prior to the inclusion of those provisions in legislative amendments enacted by the previous parliament, the state industrial tribunal in arbitrating matters, was expected to balance the interests of all parties, and consider all relevant financial and economic matters.

The introduction of those express requirements during the previous parliament, distorted the tribunal's will to balance the interests of all parties to an arbitration and diminished confidence in the independence of the tribunal.

A number of major arbitrations were significantly affected by the application of the provisions in practice. Whilst, on their face the provisions might be seen as a reiteration of long standing considerations always made by the tribunal during arbitrations , their application was linked with government submissions which stated that the *'fiscal strategy'* was to withhold funds from agencies, so as to manufacture an 'incapacity to pay' any arbitrated wages outcome other than as submitted by government.

The state industrial tribunal abrogated its perceived independence in the face of explicit threats to cut services or sack staff if the government didn't get its way in the arbitration.

State of Queensland (Department of Community Safety - Queensland Ambulance Service) v United Voice, Industrial Union of Employees, Queensland (No. 2) [2014] QIRC 093

"Although the Commission has always been required under s 149 of the IR Act to consider the cost impact of a decision on the economy and the particular enterprise concerned, the present provisions require more sharply focussed consideration of the financial effect of the Determination on the State and the public sector entity concerned as well as consideration of the State's fiscal strategy.

We consider that s 149(5) (c) (ii) introduces a "capacity to pay" factor, such that in considering appropriate wage increases to be awarded, the Commission must consider how its decision can be accommodated within the State's financial position as well as its impact on the State's fiscal strategy, the public sector entity concerned and the economy and community generally."

State of Queensland (Department of Community Safety - Queensland Fire and Emergency Services) v United Firefighters' Union of Australia, Union of Employees, Queensland and Queensland Fire and Rescue - Senior Officers Union of Employees (No. 2) [2014] QIRC 224

... *"while s 149(5) (c) (ii) of the IR Act does not compel the Commission to apply the Government's position on wages and employment conditions, the reality is that any increases in wages and employment-related costs which exceed the figure set out in the Minute will (not might) lead to reductions in employee numbers in the agency concerned and/or reductions in areas of service delivery and/or reductions in capital expenditure, and the like.*

QFES said that if the Commission was considering whether to award a wage increase in excess of 2.2% per annum it was required to consider the financial position of the agency concerned and the effect of its decision on the agency. In particular the Commission was required to understand and accept that QFES would be required by strict Government policy to sacrifice other programs and/or employment numbers in order to provide the necessary supplementation of funding to meet any increase in wages which exceed the Government's wages policy."

Relevantly the state government included the following in their extensive written submissions provided to the tribunal:

Fire Service arbitration written submissions 1 November 2013

"In short terms, by deliberate government policy, as part of the government fiscal strategy adopted as a consequence of the difficult financial position of the State, it must be accepted that QFRS will not be provided with the additional capacity to pay a wage increase in excess of the proposal by QFRS in these proceedings consistently with the government's wages policy, namely 2.2% per annum.

This is an impact that should be accepted by the Commission as a reality, and accordingly the Commission must consider whether it is appropriate to inflict that impact upon QFRS in order to achieve a wage increase for existing QFRS employees in excess of the wages policy."

The proposition put by the government to the industrial tribunal is that the tribunal was expected to consider whether it was appropriate to 'inflict that impact' on the fire service, with a connotation that it was the tribunal inflicting the impact, rather than the government.

The practical effect of the particular provisions, now being sought to be removed by the Bill, extended far beyond arbitration proceedings and outcomes, and beyond the diminished independence of the tribunal.

The practical effect was, to significantly retard the government's and agencies motivation to genuinely seek to reach agreement, or participate constructively in conciliation proceedings.

Government agencies seemed to focus more on submitting that negotiations and conciliation be quickly curtailed so that matters could be arbitrated.

The proposed amendments are consistent with a mature policy direction, which would refrain from threatening or blaming the state industrial tribunal for service or employment cuts, anticipated from the treasury refusing to fund arbitrated outcomes which differ from those proposed by the state of Queensland as employer.

Moreover, the proposed amendments will encourage parties towards a diligent approach to formulating agreements as distinct from agency representatives prematurely referring matters to the industrial tribunal in anticipation of a predetermined result.

An objective measure can be assessed in the circumstances of the negotiations for an agreement to replace the fire and emergency services agreement.

After approximately four weeks of discussions between the parties, the government agency referred the matter to the industrial tribunal for assistance in July 2012.

A decision was released by the tribunal some 30 months later in December 2014. As at the date of this submission, 18 May 2015, the tribunal has not released a final order arising from the fire service arbitration.

10. Representation of the parties

UFUQ support the return of the provisions regarding legal representation to those preceding the legislative changes introduced in the last parliament.

The changes were introduced merely for the convenience of the government as employer which wished to outsource its representation in tribunal matters to law firms. There was no public policy benefit.

The tribunal, has increasingly adopted a practice of simply 'waving through' legal representation in any event with cursory reference to the statutory considerations.

In practice, the increase in legal representation has not been demonstrated to result in a more efficient and effective conduct or disposition of matters.

Similarly, there is little obvious objective benefit apparent from the text of published decisions.

Industrial issues tend to descend more rapidly into a party versus party litigation process, which is often mismatched to industrial matters.

It would be instructive to examine the cost to the state of its extensive use of legal firms in its dealings with its own employees.

11. Summary

UFUQ supports the policy intent underpinning this Bill.

The Bill introduces sensible amendments designed to further mature policy objectives.

The union has concerns with the mechanism proposed under section 849 to vary certified agreements by regulation, although we acknowledge the prevailing unusual circumstances regarding the specified certified agreements in question.

The union submits that the policy direction evinced by industrial legislation introduced during the previous parliament was misconceived and resulted in a diminished confidence in the industrial system and unnecessary industrial and political conflict.

The Bill will go some ways to rectifying the situation for the benefit of all parties affected.

UFUQ thanks the committee for providing our opportunity for feedback.

United Firefighters Union of Australia, Union of Employees, Queensland
John Oliver
State Secretary
Ground Floor
286 Montague Road
West End QLD 4101
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Contact: John Oliver State Secretary on 07 3844 0366 or johnoliver@ufuq.com.au