Industrial Relations and Other Legislation Amendment Bill 2022

Submission No:	4
Submitted by:	Retail and Fast Food Workers Union Incorporated
Publication:	Make the submission and your name public
Attachments:	See attachment

Retail and Fast Food Workers Union

Submission

Submission to the Education, Employment and Training Committee inquiry into the provisions of the Industrial Relations and Other Legislation Amendment Bill 2022 (Qld)

Contact: Josh Cullinan, Secretary,
[redacted]

1. The Retail and Fast Food Workers Union Incorporated (**RAFFWU**) is a trade union representing workers in the retail and fast food industry. The union launched in November 2016 following the exposure of widespread wage theft and rights stripping in the retail and fast food sectors. The union has approximately 3000 members across the country and employs officials in most states.

2. The union has been responsible for returning over a billion dollars per annum in penalty rates, casual loading, higher junior rates, overtime rates and other rights in its short life. Many of the workers who have benefited from the work of RAFFWU are in Queensland.

3. More information about RAFFWU is available on its website www.raffwu.org.au

4. We welcome the opportunity to make a submission to the Inquiry and thank the Education, Employment and Training Committee for its invitation to make this submission.

5. We note that we have made earlier submissions to inquiries of other Parliaments, including Federal Senate Committees.

6. This submission focuses on the changes identified as potentially impacting unions not registered as Organisations of Employees.

7. The Bill seeks to put beyond any doubt that representatives of workers, including genuine unions, that are not registered as 'registered organisations' cannot represent workers under the IR Act and goes further to impose penalties on those which mistakenly or otherwise represent they can or do represent workers under the IR Act.

8. In so doing, the legislation seeks to impose radically anti-union and anti-worker changes on Queensland workers.

9. RAFFWU understands the changes are claimed to represent codification of the decision in *Gilbert*. Of course, that there was a decision makes plain changes are not required.

10. The peculiar language of the Act appears to have allowed the QIRC to make its *Gilbert* decision which is clearly not available under the Fair Work Act or other similar legislation. It is a peculiarly Queensland peculiarity.

11. RAFFWU does not and has not ever held out an interest or capacity to represent members in Queensland under the IR Act as if it were a registered organisation. Fortunately, retail and fast food workers in Queensland do not need to rely on that Act as a source for rights and protections.

12. That said, something must be said about the rhetoric of the Queensland Government relating to unions which are not registered organisations.

13. The Statement of Compatibility purports some nonsensical confusion exists and that workers could be misled about the capacity to be represented by their chosen union. Simultaneously, a position is taken which prohibits such representation by unions which are not registered organisations.

14. There is a fundamental failure to recognise responsible modern representation of workers starts with that worker's right to freedom of association and choice of representation. The Act should have been changed to enshrine those rights in a way which acknowledges not all unions will choose to be registered organisations but which, in any event, are effective union representatives.

15. Instead, the Bill would double down on old exclusionary, monopolistic and protectionist systems which have cost Queensland retail and fast food workers billions of dollars.

16. There are international covenants dealing with the right to freedom of assembly and association. As noted by the Attorney General's department, the "right to freedom of association protects the right to form and join associations to pursue common goals".

17. As a direct quote from the Attorney General's department:

> *"Australia is a party to seven core international human rights treaties. The right to freedom of assembly and association is contained in articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) and article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)."*
>
> *"The right to freedom of association protects the right of all persons to group together voluntarily for a common goal and to form and join an association. Examples are political parties, professional or sporting clubs, non-governmental organisations and trade unions.*
>
> *The right to form and join trade unions is specifically protected in article 8 of the ICESCR. It is also protected in International Labour Organization (ILO) Convention No 87 (referred to in article 22(3) of the ICCPR and article 8(3) of ICESCR). Australia is a party to ILO Convention No 87."*

18. Clearly all retail and fast food workers have a fundamental right to form and join a union as they see fit.

> *"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."*
>
> *"The States Parties to the present Covenant undertake to ensure the right of everyone*

to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests."

19. Very many Queensland workers have chosen to join and participate in RAFFWU. They include many workers who choose to not be a member of the ALP affiliate, *Shop, Distributive and Allied Employees Association* (SDA). Some of the reasons they choose to not be a member of the SDA is because of the long stated and pursued policy objectives of the SDA which include on abortion (here stated in a Victorian inquiry but a longstanding similar position held in Queensland):

Abortion is the deliberate destruction of a human life. There is not and can never be a right to have an abortion.

Since it destroys human life, abortion is a serious and immoral act. That is why it has been a serious offence under the Victorian Crimes Act for many years.

Clearly, abortion should not be de-criminalised. It should remain a serious criminal offence under Victorian law, and this law should be enforced with justice in order to protect innocent human life, and to maintain due respect for the sanctity of life.

20. On marriage equality, the SDA stated:

The SDA has a longstanding policy in support of marriage being a union between a man and a woman. Marriage has long being (sic) regarded as the entry point for the procreation of children. Societies and communities well before the advent of political states believed that the union of a man and woman gave rise to child bearing.

Furthermore, the SDA has maintained a consistent policy that a child is better served within a household where both biological parents attend to their needs, welfare, and development and impart the moral laws. This becomes an essential preparation for the child in becoming a future participant in his/her community.

It is not by coincidence that the family is commonly referred to as the basic unit on which society is organised. It is at the point of the family that children are provided with the core values on which they shape their lives. The whole construction of the regeneration of society has at its foundational level the family based on marriage between a man and a woman.

An attempt to change the essence of what is in fact the basic unit of Society is ill-conceived and derives from a motivation alien to the best interests of the child and the common good of Society.

21. Of course, SDA also oversaw our nation's greatest wage theft which it imposed, with employers, across the retail and fast food sectors. Millions of workers – including many Queenslanders – had billions of dollars stripped from their pay packets because of the deals done by SDA.

22. Retail and fast food workers have every reason to not want to be members of SDA and to organise, join, and build, democratic, worker led unions like RAFFWU.

23. The Statement of Compatibility purports some fundamental difference between the regulation of unions like RAFFWU and registered organisations. Obviously, the regulation is different but those who steal from workers treat them like idiots with phrases like "not subject to the obligations regarding rules, financial reporting and filing of documentation with" a specific entity. This is a rotten straw man.

24. RAFFWU is subject to more onerous requirements than many federally 'registered organisations of employees' – including SDA. In any event, RAFFWU is obliged to have independent audits, to submit documentation to authorities, to maintain specific rules and many other matters. It is unprofessional and lacking in authenticity to insinuate unions which are incorporated associations, with specific rules and registered as registered Australian bodies are not subject to similar or more onerous obligations than 'registered organisations of employees'.

25. Here lies the rub. Once that nonsense washes away, the Bill is left only as denuding the ability of workers to choose their representative. It is well accepted Federal legislation is directed at that choice. Such was found by the High Court in *Rex* ([2017] HCA 55) where at [50]:

> *That is not to say that s 540(6) is necessarily limited to registered organisations. It may be that the Dunlop Rubber principle sense of entitlement to represent the industrial interests of persons applies, mutatis mutandis, to other forms of industrial organisation having a real interest in ensuring compliance with civil remedy provisions in relation to a particular class of persons. Contrary to Rex's submission,* ***so to conclude would not be inconsistent with the objects of freedom of choice for which Pt 3-1 of the Fair Work Act provides. They are directed to the rights of an employee to choose his or her representative in relation to a matter affecting the employee.***

26. We identify that it is the *IR Act* which is outdated and it is a *technicality* which allowed the *Gilbert* decision contrary to the prevailing approach in modern democratic states. The critical distinction in how "association" is defined allowed for *Gilbert*.

27. RAFFWU is not surprised that the Queensland Labor Government would seek to leap on *Gilbert* to make changes contrary to freedom of association in its monopolistic support of registered organisations of employees. Organisations like SDA rely entirely on that protectionism.

28. However, that does not make good law.

29. All workers should be protected in forming, joining, organising and building unions – whether registered or not, whether incorporated associations or not. A labour Government would ensure such protections. A labour Government would ensure workers are able to be represented by their chosen representative.

30. Instead, the Labor Government would prohibit the forming of an *incorporated association* to the extent that association might contest the organisation of workers.

31. Further, the conduct of the Labor Government shows it does not hold genuine interest for workers affected.

32. For example, many workers had representations made to them by the QAS Group/RUSH Group regarding vaccinations, mandates and employer requirements. Many workers relied on those representations. Many workers have lost their employment in reliance on those representations.

33. In making representations, careful consideration must be given as to whether there are reasonable prospects of success seeking remedies when refusing requirements, not being vaccinated and/or being dismissed.

34. RAFFWU is not aware of any action by the Labor Government to support workers who relied on those representations despite there being no basis for most if not all such representations.

35. Obviously the QAS Group/RUSH Group approach is to monetise and profiteer on worker organisation. The approach is as ruthless as it is simple. Establish a non-profit entity, impose a critical decision maker, churn the non-imposed elected officers, licence the name, contract all administrative, financial, membership, industrial and advocacy support. The contracting and licencing entity do that by way of a profiting entity.

36. This is vastly different to the approach of RAFFWU which is a simple, democratic, transparent union with a far more democratic election structure than any comparable retail or fast food union.

37. It would appear to RAFFWU that a far more appropriate way for the Labor Government to protect the interests of those joining the QAS Group/RUSH Group entities would be to not permit incorporated associations to be used as cover for a for-profit entity. Of course, direct and uncompromising support should be offered to workers who relied on the representations of anyone that they could avoid mandates, vaccines or job requirements with a promise of remedies if they were dismissed.

38. In case it be lost in political dogma, RAFFWU holds special standing when speaking about the interests of retail and fast food workers in Queensland.

39. It was RAFFWU which helped return billions of dollars in stolen wages under SDA agreements. It was RAFFWU which offered Queensland workers a genuine democratic union to organise,

agitate and campaign for better working conditions. It was RAFFWU which exposed the structural approach used by SDA and its business partner employers to strip worker wages in Senate submissions such as that annexed to this submission.

40. Of course, shortly before forming RAFFWU it was RAFFWU founding executive members who represented Duncan Hart – a Queensland worker – in the famous *Hart v Coles* case which exposed the scale of wage theft perpetrated through SDA agreements.

41. It was Queensland worker, Casey Salt, supported by RAFFWU which terminated the rotten SDA deal imposed on Domino's Pizza delivery drivers for more than a decade stripping them of casual loading, penalty rates and more. It is Queensland worker, Riley Gall who leads the class action at Domino's Pizza.

42. It was Queensland worker and RAFFWU member, Penny Vickers, who applied to terminate the Coles agreement after the successful *Hart* case. It was Queensland worker, RAFFWU member and RAFFWU official, Bill Smith who joined that termination case.

43. It was Queensland worker and RAFFWU member, Chiara Staines, who joined with RAFFWU to litigate notorious coercer of children and major McDonald's franchisee *Tantex*. That case (*Retail and Fast Food Workers Union Incorporated v Tantex Holdings Pty Ltd* [2020] FCA 1258 and then *Retail and Fast Food Workers Union Incorporated v Tantex Holdings Pty Ltd (No 2)* [2020] FCA 1644) was a landmark in Queensland jurisprudence. RAFFWU successfully argued – for the first time in Australia - workers had a right to reasonable access to water and toilets.

44. Further, RAFFWU successfully prosecuted *Tantex* for coercing children over access to toilets, water and rest breaks. The Federal Court found RAFFWU acted in the national interest at [66]:

> *"**Ms Staines and the Union have each well-served the public interest. That is not an abstract concept.** All Australians have an interest in the conduct of industrial relations, including the employment of workers, according to law. Parliament has provided for civil penalties to be imposed for contraventions of the FWA. Under our system of justice, part of Australia's constitutional inheritance from the United Kingdom, the courts are adversarial, not inquisitorial. That means that the power to impose civil penalties where contraventions are proven only falls for its exercise when a proceeding is instituted. Public resources allocated to police the FWA are limited. The financial ability of an individual worker to police a perceived contravention of the FWA is also in most cases limited. **Workers, collectively, via a trade union, are thereby better equipped to do this. The policing by trade unions of compliance with industrial laws is a longstanding, legitimate role of trade unions.** This does not just serve the interests of the particular workers concerned, or the trade union. **It serves the national interest.** As a study of the judgments of this Court discloses, there are occasions, for cause, when the Court has been adversely critical of the conduct of particular trade unions. **It is just as important and necessary that the service of a trade union of a**

> ***national interest be noted. For that reason, I conclude these reasons for judgment by recognising the service to the national interest by the Union in the circumstances of the present case.***"

45. In must not be lost on the Queensland Parliament that the Bill would stop some workers and some unions from acting in the national interest described by the Federal Court. It is reiterated that it was not the Queensland Government, WorkSafe, SDA or any other body which held the coercers of Queensland children to account. It was RAFFWU.

46. The action of RAFFWU is readily comparable to SDA. The example at [27] – [34] of the annexure identifies how KFC in Queensland avoided minimum wages at the gross expense of many Queensland workers, including many children. We cannot identify any action by any Queensland agency to act to hold SDA officials and employers responsible for these attacks on workers. It beggars belief that Queensland Labor would entrench monopolistic protectionism in the face of the conduct of its largest benefactor.

47. Obviously RAFFWU will continue to support our Queensland members in the Federal jurisdiction.

48. However, the Queensland Labor approach is anathema to a modern democracy or a genuine labour government. The effect of *Gilbert* was to identify a loophole which ought be closed by redefining *association* to mean the same as in the Fair Work Act.

49. No doubt criticism will be levelled at this submission by politicians who have enjoyed the favour of SDA or its partners in big business. It is no criticism that workers could apply to register their new union under the IR Act. That is a furphy of grand design and fetid intent. Such cases would exhaust millions of dollars and years of litigation. The cabal knows this yet bandies about such notions as simple. There is nothing simple in such an approach and those with a modicum of intelligence and sincerity should not permit the cabal to control that discourse.

50. For those good unionists who see some hope in the proposed legislation helping control the anti-union agenda of QAS Group/RUSH Group we remind that anti-worker and anti-union legislation will be weaponised against workers. Monopolistic protectionism will not stop bosses and capital organising against workers. They will end up using bad laws against all workers. These are bad laws.

51. As described earlier, the proposals to which this submission is directed are anti-worker and anti-union. They ought be abandoned and, instead, the IR Act should be changed to ensure every worker can join, build, form, participate in and be represented by any entity of their choice.

Attachment

The RFFWU submission to the Education, Employment and Training Committee (EETC) included, as an attachment, a submission the RFFWU made in 2020 to the Senate Economic References Committee inquiry into the unlawful underpayment of employees' Remuneration.

The EETC resolved not to publish the attachment but to include a link to the submission (no. 99) published by the Senate Economic References Committee. The submission can be accessed at:

aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Underpaymentofwages/Submissions