

Industrial Relations and Other Legislation Amendment Bill 2022

Submission No: 18
Submitted by: United Workers Union
Publication:
Attachments: See attachment



*Submission to the
Education, Employment and Training
Committee*

*Industrial Relations and Other Legislation
Amendment Bill 2022*

Background

United Workers Union¹ ('**UWU**') makes the following submission to the Education, Employment and Training Committee ('**the Committee**') in relation to the *Industrial Relations and Other Legislation Amendment Bill 2022* ('**the Bill**').

Overview of UWU

UWU represents almost 30,000 workers in Queensland across public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

Our membership includes ambulance officers, health professionals and operational staff, school cleaners, teacher aides, early childhood educators, those employed in the contracting industries including but not limited to cleaning, security and hospitality, private prisons and detention centres, aged care workers, logistics and supply chain, and farm workers.

UWU has a long and proud history of advocating for and representing the industrial interests of our members employed in a myriad of industries including those employed in public sector entities in education, health, and ambulance.

As it pertains to certain aspects of the Bill, UWU also proudly represents and advocates for the interests of workers in traditionally female-dominated industries.

The Bill

UWU broadly supports the Bill and its objectives. There are aspects of the Bill which require reconsideration, which is that could be improved, this is discussed below.

Queensland Council of Unions

UWU is affiliated with the peak union body, the Queensland Council of Unions ('**QCU**'). UWU has had the benefit of seeing a draft of the submission made by the QCU to the Committee, and UWU supports the QCU's submission wholly with respect to the following matters:

1. Sexual, Sex and Gender-based Harassment;
2. Pay equity and Equal Remuneration;
3. Parental and Other Leave Arrangements;
4. Parental and other leave arrangements;
5. Access of casual employees to unfair dismissal protections; and
6. Courier Drivers.

Registered organisations

UWU supports the legislative amendments related to registered organisations and echoes the QCU's submission with respect to *Consumer Law Protections for Workers*.

The amendments maintain the primacy of collective industrial relations.

The amendments strike the correct balance between ensuring a worker's right to freely associate with a registered organisation, and the responsibility and accountability with which such registered organisations must operate.

Arbitration by a single member

UWU wholly supports the proposed suite of amendments which will enable access to arbitration by a single Commissioner during enterprise bargaining negotiations.

Provision about General Ruling for State wage case – section 459A

UWU firmly opposes the insertion of new section 459A. The new section is unnecessary, as the Queensland Industrial Relations Commission ('QIRC') already has the power to exclude any award from a General Ruling under s.459(2).

A new provision with the same purpose as the existing s.459(2) is unnecessary and will have the potential for unforeseen consequences.

Recommendation 25 of the *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report* ("the Five-year review"), upon which the legislative amendments are premised, proceeds on a misconceived basis. The Five-year review states at page 45, in reference to circumstances in which minimum award rates may exceed the minimum pay rates included in a certified agreement, that:

"The QIRC does not have the discretion to take account of this phenomenon when determining SWC outcomes."

The QIRC has a wide discretion to consider all material, and applications brought before it. For examples, the QIRC has taken account of the '*phenomenon*' in the 2018² and 2019³ State Wage Cases.

Moreover, the tribunal already maintains an explicit power under s.459(2) to exclude awards from General Rulings. QIRC has determined applications to exclude awards from General

¹ United Voice, Industrial Union of Employees, Queensland is now known as United Workers Union.

² [2018] QIRC 113.

³ [2019] QIRC 169.

Rulings. QIRC has granted '*Statements of Policy*' as alternative relief when a General Ruling has been sought.

The Five-year review, and in turn the legislative amendments, adopt a cursory perspective of the potential for award rates to exceed certified agreement rates.

Most public sector certified agreements include provisions which ensure that the rates paid under the certified agreement do not fall below the relevant award rates. In that sense, the circumstances expressed in the Five-year review about "*pay rates in awards... exceeding the rates settled upon in their certified agreements*"⁴ is therefore a rare exception.

Public sector agreements have over decades included agreed packages which included the effects of state wage case increases as part of the '*settled rates*'. For example, agreements were made which included terms providing for a specified wage increase, or an amount equivalent to the state wage case increases, whichever was the greater. The parties agreed to these arrangements to account for lower paid classifications and included an anticipated '*top up*' during the period of operation of an agreement as part of the wage settlement.

Similarly, many agreements included terms providing that no employee would receive a rate of pay less than the equivalent minimum award rate. These agreements also included an anticipated '*top up*' as part of the wage settlement.

Many certified agreements also included specific terms identifying which state wage case increases were intended to be absorbed into agreement rates.

In the absence of certified agreement provisions, or a state government directive, awards rate do not apply during the term of a certified agreement. Contemporary award rates would only assume relevance after the expiry of a certified agreement, for the purposes of the global *no-disadvantage* test.

If a party is concerned about the potential for published wage rates included in certified agreement documents falling below minimum award rates, then the best opportunity to address the concern is during certified agreement negotiations.

Any potential for award rates to exceed certified agreement rates can be limited by ensuring that certified agreements maintain provisions which provide that the certified agreement rates are no less than the comparable award rates.

⁴ The Five-year review, Page 45

By maintaining that practice, minimum certified agreement rates would be no less than award rates. Wages payable to employees under the award would not exceed the wages payable to employees under a certified agreement.

Several state public sector awards have been adjusted over the past 20 years to incorporate bargaining rates from certified agreements. In such cases where the QIRC has incorporated certified agreement rates into awards, the question of absorption of the new rates was resolved.

The incorporation of certified agreement rates into awards has not been found to serve as a disincentive to bargaining. In public sector bargaining, wage rates are but one of a multitude of issues which are relevant to the parties.

A customary practice of QIRC has been to amend public sector awards to incorporate expired certified agreement rates as the new minimum award rates. Those new award rates commonly absorbed all state wage increases operative during the period up until the expiry date of the expired certified agreement.

The new award rates were subject to minimum award rates increases, which were absorbable into the wage increases provided by the replacement agreement. The absorption was subject to the terms of the replacement certified agreement, where parties agreed upon the effect of state wage case increases during the term of the agreement.

The relevant parties commonly understood the general approach to state public sector awards and public sector bargaining. Dispute about these matters have been infrequent.

More recent disputes are more generally related to the relevant timing and operative dates of wage increases, not the operation of the General Ruling provisions.

The State Wage Case decisions of 2018 and 2019 are instructive. In those proceedings, the State government was aware of the existing provisions which provide QIRC with a broad discretion to exclude awards from the application of a general ruling. Those provisions remain untouched by the amendments.

There are range of solutions available to industrial parties to clarify the application of State Wage Case increases during the term of a certified agreement, including:

- Incorporating agreed terms in a certified agreement which prescribe the effect of State Wage Case increases during the term of an agreement;
- Agreeing upon the terms of absorption when incorporating bargained settlements into awards;

- Incorporating current certified agreement rates into awards rather than ‘*expired*’ rates;
- Settling bargaining in awards instead of certified agreements; and
- Timing pay increase dates, operative dates and expiry dates of certified agreements by reference to award rate increases.

The ‘*solution*’ (to the extent that a solution is needed) is best resolved in bargaining of certified agreements and not in State Wage Cases, or by suppression of minimum award rates. Such solution may be associated with a level of complexity capable only of being understood by industrial practitioners, but the remedy to any perceived problem does not lie in amending the General Ruling provisions of the Act.

The amendment is based upon an entirely spurious premise:

“The amending provision provides explicit discretion for the QIRC to consider the unique features of the Queensland industrial relations jurisdiction when making its determination as to the application of a State Wage outcome on awards.”⁵

The QIRC’s *explicit discretion* is currently available to it and has been for over 30 years.

Authorised by Sharron Caddie – Public Sector Director, National Executive member, United Workers Union.

Address: 27 Peel Street, South Brisbane, Qld, 4101;

Telephone: (07) 3291 4600; Email: qldind@unitedworkers.org.au.

⁵ Explanatory notes for the *Industrial Relations and Other Legislation Amendment Bill 2022*