Industrial Relations and Other Legislation Amendment Bill 2022

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Submitted by:	United Firefighters' Union of Australia, Union of Employees, Queensland
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UNITED FIRE FIGHTERS UNION QUEENSLAND

Monday 11 July 2022

Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
Brisbane Q 4000

Delivered via email: EETC@parliament.qld.gov.au

Dear Secretary

Re: Inquiry into the Industrial Relations and Other Legislation Amendment Bill 2022

I refer to the above inquiry and attach submissions on behalf of members of the United Firefighters' Union of Australia, Union of Employees, Queensland.

Further information regarding these submissions can be obtained by contacting industrial officer Mr Anthony Cooke at [redacted] or on [redacted].

Regards

John Oliver
General Secretary

INQUIRY INTO THE INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 2022

UFUQ SUBMISSION
Monday 11 July 2022

1. Introduction

The United Firefighters' Union of Australia, Union of Employees, Queensland (the UFUQ) is pleased to provide this submission to the Education, Employment and Training Committee's (the Committee) inquiry into the *Industrial Relations and Other Legislation Amendment Bill 2022* (the Bill).

The UFUQ is a registered industrial organisation under the *Industrial Relations Act 2016 (Queensland)* (the Act). The predominance of our approximately 2650 members are employed by Queensland Fire and Emergency Services (QFES) and as employees of the State of Queensland subject to the provisions of the Act.

The UFUQ acknowledges that this submission will be published by the Committee and advises that unless the Committee advises otherwise, we intend to publish this submission to our membership.

2. Submissions in support of the Bill

Sick leave

The UFUQ supports the amendments to sick leave (including carer's leave) provisions within the Bill.

Amending the Queensland Employment Standards (QES) to expressly exclude public holidays from sick leave will clarify a common point of confusion experienced by our members when completing their timesheets and also for those that manage their timesheets and remuneration, and on occasion, unfortunately and alarmingly, Queensland Shared Services (QSS).

Amending the QES to align with the federal provisions regarding evidence required of an worker absent for more than 2 days will also provide benefit to our members.

The ongoing experience of our members being absent from work because they contracted COVID-19 has demonstrated that a provision of information that when a positive test result was obtained, this is entirely equal to the archaic requirement to produce a medical certificate as reasonable evidence of the required sick leave.

This is a simple and contemporary example of how evidence and illness that would satisfy a reasonable person is a more manageable way of providing evidence of a reason for a sick leave absence. It need not be the case that someone is only sick when a medical practitioner says so.

Shifting the QES to a requirement for a worker to provide reasonable evidence to satisfy a reasonable person will likely take education, training, and a cultural shift in employing agencies, given the common experience of workers that management have developed a comfortable reliance on the requirement for a medical certificate to justify taking sick leave, too often without reasonable consideration of other options a worker could provide.

The UFUQ also considers that this change to the QES ought to be supported by ensuring compliance with s21(1) of the Act –
'*…minimum standards of employment…can not be displaced except under this chapter.*'.

The Act at s143(1)(b) requires that a Modern Award cannot displace or be inconsistent with QES unless the provision is at least as favourable. The UFUQ suggests it cannot be disputed that the requirement to obtain a medical certificate from a medical practitioner is more onerous and clearly less favourable than the provision which requires reasonable evidence to satisfy a reasonable person.

The Act at s147(1 & 2) provides the opportunity for the Queensland Industrial Relations Commission (QIRC) to vary Modern Awards, and to exercise this power of its own volition.

The UFUQ suggests that this power to amend as required all Modern Awards ought to be exercised by the QIRC.

Parental leave

The UFUQ acknowledges the positive movement towards acknowledging that the birth of a baby creates an opportunity for more than just the traditional view that it is the 'mother' that takes leave in support of the newborn child.

The UFUQ supports the Bill's introduction of increased flexibility in leave arrangements for families and parents of children, and for clarifying and expanding the range of opportunities for this leave to be taken.

Pay equity and equal remuneration

The Bill contains numerous reforms that work to require pay equity and equal remuneration and these are supported by the UFUQ. The UFUQ considers wording in these matters must require parties to take proactive steps to ensure equity, and that these steps must include all aspects of remuneration, beyond equal wage rates.

Inclusion in the Bill of the proposed requirement to include equity matters in bargaining is also supported by the UFUQ.

Sexual harassment and sex and gender-based harassment

The UFUQ supports the Bill's proposed implementation of relevant recommendations of the *Respect@Work: National Inquiry into Sexual harassment in Australian Workplaces* Report. In particular, the inclusion of sexual harassment within the range of 'industrial matters' in the Act.

The UFUQ further supports the amendment to Schedule 5 of the Act regarding the introduction of a definition of sex or gender-based harassment.

The UFUQ supports the enhancement of injunctive powers that apply to sexual harassment and sex and gender-based harassment. These powers will clearly provide enhanced protections to a complainant.

Finally, the UFUQ supports the Bill's proposed insertion of sexual harassment or sex or gender-based harassment into the grounds for an employing agency not being required to provide a notice period for termination of employment.

Registered industrial organisations and associations

The UFUQ has ongoing first-hand experience with the problematic inter-relationship between a particular category of workers (in this case auxiliary firefighters employed by QFES at approximately 180 regional fire stations across Queensland) and two 'representative' bodies (the UFUQ and an association).

Whilst the UFUQ has legitimate industrial coverage of these workers within our rules, the existence of an association (the Queensland Auxiliary Firefighter Association (QAFA)) has caused confusion amongst workers as to which body represents their interests.

This confusion has been compounded for over 20 years by QFES at various times not only permitting access by QAFA to involvement with QFES in what the UFUQ considers to be industrial matters, but also on occasion, active encouragement of QAFA as an alternative to the UFUQ when it comes to representing their interests in industrial matters.

Due to the lack of legislative comfort to the UFUQ regarding representation rights, and due to the promotion by QFES of QAFA as an alternative to the UFUQ, in 2017 and 2018 the UFUQ made application (B/2017/29) to the QIRC in an attempt to clarify (in the context of auxiliary firefighters) the different rights of a registered industrial organisation (the UFUQ) and an association (QAFA).

Whilst the Decision in B/2017/29 was largely favourable to the UFUQ, the QIRC exercised its discretion not to grant the application.

Given the paucity of existing laws providing security for registered industrial organisations (such as the UFUQ) with regard to being the rightful body to provide coverage to and therefore represent (where and as required) workers regarding industrial matters, the UFUQ is extremely supportive of the tranche of amendments to the Act and to other legislation arising from the Bill.

Specifically, the UFUQ supports legislation and guidance available to workers to absolutely determine for those seeking to understand, who is a union and who is not.

Only 'unions' who are organisations registered (or pre-registered) under the Act and therefore subject to the strict governance requirements of the Act, ought to be recognised as capable of representing a worker's interests in industrial matters in any context. And misrepresentations of that capacity ought to be subject to sanctions as proposed within the Bill.

On this matter, the UFUQ notes the substantial contribution in the QCU submissions to this matter and specifically informs the Committee of support in full for those contributions on pages 21-29 of those QCU submissions.

Amendment to Anti-Discrimination Act 1991

The UFUQ supports the re-introduction of the provisions to the *Anti-Discrimination Act 1991 (Queensland)*, specifically the re-introduction of the proposed s190 to provide for application to the tribunal for an order prohibiting a person doing something that may prejudice an order made by the tribunal after a hearing.

The UFUQ also supports the Bill's proposed retrospectivity of this re-inserted provision.

Support for submissions by the QCU

In addition to specific references to QCU submissions within this submission, the UFUQ, as an affiliate union of the Queensland Council of Unions (the QCU), supports in their entirety the remainder of the submissions of the QCU.

3. Submissions not in support of the Bill

State Wage Case Decision and General Ruling flow on effects

The Bill currently proposes to include provisions within the Act for the QIRC to have discretion not to apply a General Ruling from a State Wage Case Decision to particular classifications of workers in particular awards if that would result in the workers receiving wages equal to or greater than that within a bargaining instrument.

The UFUQ does not support these amendments.

The UFUQ suggests exemptions exist in the current construction of s459(2) of the Act and as such this aspect of the Bill is unnecessary.

The explanatory notes to the Bill state that the inclusion of this proposed amendment to the Bill is drawn from a unique circumstance whereby the Act at s145 provides for an Award to include 'rolled up' wages from previous bargaining instruments.

Certain classifications of QFES workers have benefitted for some years now from the General Ruling on wage increases applying to the QFES Award, given a clause in the current QFES certified agreement which states that wages under the agreement cannot be below relevant award rates. This is necessary, as the wage rates for those classifications have fallen below the levels being provided by the State Wage Case.

The reliance on that benefit flowing on to QFES workers has arisen from a combination of various factors, including –

- fixed wage positions by the Queensland government during bargaining lower than State Wage Case Decision amounts, and
- arbitration between QFES and the UFUQ holding wage rises back for approximately 2 years in 2012 and 2013, and
- the deferral of an annual wage rise by the Queensland government in response to fiscal conditions arising from the COVID-19 pandemic.

The UFUQ suggests it ought to remain a decision available to the QIRC arising from submissions by the state government, the QCU and other unions, and their existing power at s459(2) of the Act that determines the flow on effects of State Wage Case Decisions, rather than an express clause resulting from the fact that some unions have historically been able to bargain rolling up wages from expired agreements into awards.

The amendments proposed by the Bill effectively punish unions for positive outcomes they've obtained in bargaining. Given the objects of the Act, which include positive and proactive reference to the right of workers to be represented by unions and for unions to strive for positive outcomes for their members, encouraged by employing agencies, the UFUQ suggests this proposed amendment ought to be withdrawn.

4. Additional submission (matters not in the Bill)

Expansion of civil penalty provisions

The UFUQ suggests the Committee consider making amendments to the Act to expand the range of offences within the Act where civil penalties apply.

This will allow for a greater range of matters whereby unions have successfully prosecuted a case and the QIRC has found the employing agency to have erred, utilising capacity for an order under s576 of the Act for penalties to be paid to those unions, compensating in part for the costs associated with holding employing agencies to account when required.

The current requirements for matters to be pursued for costs in the Industrial Court or Magistrates Court (contained within the existing s 569 of the Act) are holding the UFUQ and other unions back from pursuing such claims due to a combination of –

- requiring legal representation and those associated costs, and
- the prospect of costs orders being made against the union in those courts, and
- prospect of costs not being awarded under s 5454 of the Act even in circumstances where a case has been successfully prosecuted by the union.

Compounding this problem is that within the Queensland industrial relations framework, there is no longer any 'cop on the beat'.

As far as the UFUQ is aware, there is currently no compliance capacity within the Industrial Relations Regulations and Compliance division of the Office of Industrial Relations (OIR), or elsewhere. A review of the OIR website indicates they promote their capacity to do the sort of work that unions are required to do. Yet by choice or by direction, this compliance work is not being performed by OIR.

As such, employing agencies knowingly fail to comply with various aspects of the current Act (they break the law), and they are not held to account for this often documented and systematic failure to comply with the current Act. They know they won't be pursued, despite this being in the public interest, unless unions do it.

Given the predominantly public sector workforce covered by the Act, the UFUQ suggests this needs significant reform. Whilst those broader reforms are not the remit of the Committee in the context of this Bill, extension of the civil penalties provisions will allow the only cop on

the beat (unions) to take up the slack in ensuring employing agencies comply with relevant laws.

Employing agencies should not be permitted to knowingly break the law being aware they are immune from sanction other than a union chasing them through the relevant tribunal.

A single ongoing example of this is that the UFUQ is aware of is QFES repeatedly advising our members that they are unable to pay out entitlements within 3 days (as required by the Act). They often report that a payout will take approximately 2 to 4 weeks depending on the circumstances of employment separation and other matters, such as time of year and other workload priorities.

The UFUQ suggests that it would be an improvement to the role unions play to as the only cop on the beat to take these compliance matters on, by providing the opportunity to obtain civil penalties. It could be said that employing agencies won't like paying unions and this may unfortunately be the only incentive to get them to comply with an Act written specifically to cover their employment matters.

5. Further information available on request

The UFUQ is available to providing further information regarding any matter contained in our submissions and would be willing to appear at any proposed hearing of the Committee regarding these submissions and/or the Bill.

UFUQ contact details for any further information sought by the Committee are contained within the cover letter to these submissions.

UNITED FIREFIGHTERS' UNION OF AUSTRALIA,
UNION OF EMPLOYEES, QUEENSLAND

MONDAY 11 JULY 2022