

I would like to make a submission to the Finance and Administration Committee in relation to the Industrial Relations Bill 2016.

My first concern is to the status of my previous submission re “Industrial Relations Legislative Reform”...as presented here.....<https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations-legislative-reform/index.php>

My submission was lodged in my own name Timothy Bush.

The above webpage states ...

“Review process

The process for the review included a public consultation process and the release of issues papers. The public consultation period has now closed.

View the published submissions. “....<https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations-legislative-reform/review-submissions.php>

Submissions

The Reference Group invited submissions from people on any topic within the scope of the review. **The public consultation period for this review closed on 21 October 2015.**

Submissions received for the Industrial Relations Legislative Reform Review:

IR Reviews Read submissions

| | |
|---|-------------------------------|
| Australian Industry Group (AIG) | Read submission (PDF 1,130 K) |
| Australian Lawyers Alliance (ALA) | Read submission (PDF 570 K) |
| Australian Workers Union (AWU) | Read submission (PDF 455 K) |
| Brisbane City Council (BCC) | Read submission (PDF 340 K) |
| Building, Engineering and Maintenance Unions (BEMU) | Read submission (PDF 610 K) |
| Chamber of Commerce and Industry Queensland (CCIQ) | Read submission (PDF 1,025 K) |
| Dr Shalene Werth | Read submission (PDF 225 K) |
| Local Government Association of Queensland (LGAQ) | Read submission (PDF 395 K) |
| Queensland Nurses Union (QNU) | Read submission (PDF 915 K) |
| Queensland Teachers Union (QTU) | Read submission (PDF 895 K) |
| Queensland Council of Unions (QCU) | Read submission (PDF 575 K) |
| Queensland Law Society (QLS) | Read submission (PDF 7,745 K) |
| Together Queensland | Read submission (PDF 785 K) |
| United Firefighters Union Queensland | Read submission (PDF 675 K) |
| United Voice | Read submission (PDF 5,980 K) |
| Working Women Queensland (WWQ) | Read submission (PDF 345 K) |

By my count there are 16 submissions available online under the header “ Submissions received “.

I therefore found it most interesting to read...

“ Media Statements

Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs

The Honourable Grace Grace

Friday, March 04, 2016

IR Review paves way for modern, updated industrial relations laws.....

Ms Grace said 26 submissions from individuals, academics, unions and the Local Government Association of Queensland formed part of the review. “

I presume my submission is one of the 10 submissions not published on the above section of the Treasury website.

(I have never received confirmation that my submission was actually received by the Industrial Relations Legislative Reform Reference Group which is in itself most peculiar & not in keeping with my previous experience with NSW or Qld State or Federal government, ACCC or Productivity Commission inquiries/reference groups/reviews which have asked for public comment.)

I have jumped ahead somewhatonce again from the treasury website on the first page...

“ Industrial Relations Legislative Reform Reference Group

The report of the Industrial Relations Legislative Reform Reference Group ‘A review of the industrial relations framework in Queensland (PDF 3,605 K)’ was provided to the Queensland Government on 23 December 2015. The Government is now considering its response to the Report's recommendations. “

Below is the last Appendix (5) from the last 2 pages of

‘A review of the industrial relations framework in Queensland A report of the Industrial Relations Legislative Reform Reference Group December 2015’...

“ Appendix 5: Schedule of the persons and organisations who made written submissions to the Review²⁶⁶

Australian Industry Group

Australian Lawyers Alliance

Australian Workers’ Union

Brisbane City Council

Building, Engineering and Maintenance Unions (CFMEU, ETU, PGEU and AMWU)

Chamber of Commerce and Industry Queensland
Confidential – Individual
Confidential – Organisation
Dr Shalene Werth, University of Southern Queensland
Local Government Association of Queensland
Dr Meg Smith, University of Western Sydney
Queensland Council of Unions
Queensland Law Society
Queensland Nurses' Union
Queensland Teachers' Union
Professor Sara Charlesworth, RMIT University
Together Queensland
United Firefighters' Union of Australia, Union of Employees Queensland
United Voice
Work and Family Policy Roundtable
Working Women Queensland

²⁶⁶ There were some submissions received from individuals which have not been published. “

By my count there are 21 submissions in the “Appendix 5 schedule “.

(It is normal practice to list that Confidential submissions were received – I did not ask for my submission to be kept Confidential.)

I can only guess my 22 page submission is part of.... “There were some submissions received from individuals which have not been published.”...

As reported from the Media statement on the previous page “ *Ms Grace said 26 submissions from individuals, academics, unions and the Local Government Association of Queensland formed part of the review....* ”that leaves 5 individuals submissions (including mine) whom the Minister says *formed part of the review...* but they have not to my knowledge been published or even acknowledged.

My first suggestion to the Finance and Administration Committee is to read these ..”
submissions received from individuals which have not been published.”

You may well ask was Tim misguided in the criteria that the Industrial Relations Legislative Reform Reference Group requested of those who made submissions.

Once again...<https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations-legislative-reform/index.php>second heading...

“ Industrial Relations Legislative Reform Reference Group

The Industrial Relations Legislative Reform Reference Group included representatives of key stakeholders operating within the State's industrial relations system. These include trade unions, employer associations, local government, Queensland's legal fraternity and state government agencies

The reference group considered Queensland's industrial relations laws and tribunals, in line with the established terms of reference (PDF 120 K). “

Open the terms of reference documenton the second page the second heading is

“ Review process and timeframes

The IRLR Reference Group will determine the final process for its conduct of the legislative review. As a minimum, the IRLR Reference Group will be required to:

1. Establish an IRLR Reference Group website for publication of review material and to allow for broad consultation;
2. Publish a process with timelines for the legislative review on the website. The process must allow for formal written submissions from all interested stakeholders to be received and published;
3. Provide the final report to the Treasurer with recommendations for legislative reform in December 2015. “

It would seem in not publishing submissions from stakeholders such as myself that the IRLR Reference Group has breached its Terms of Reference.

Seven Issues Papers were available on the Industrial Relations Legislative Reform webpage hosted by Queensland Treasury...they are no longer publicly available to my knowledge.

I strongly agree with Jim McGowan AM Chair of the Industrial Relations Legislative Reform Reference Group in his Executive summary - Acknowledgements ‘A review of the industrial relations framework in Queensland A report of the Industrial Relations Legislative Reform Reference Group December 2015’ at page 14....

“I would like to thank Ms Tricia Rooney and all members of the Secretariat within the Office of Industrial Relations, Queensland Treasury, who worked diligently to develop the Issues Papers, explore ideas and draft the contents of the final Report.”

The Issues Papers were excellently produced & were thought provoking....I hope all seven have been provided to the members of the Finance and Administration Committee.

The third page on each of the seven Issues Papers was

“ How to participate in this review

This is a public review. The Reference Group welcomes submissions from interested individuals and organisations. The Issues Papers are intended to facilitate broader discussions regarding the need for legislative change and to assist people and organisations to participate in the review process.

The Reference Group welcomes brief submissions from people who want to share their experiences or view on any topic within the scope of the review. Alternatively, people and organisations may choose to make a more substantial submission covering a range of matters raised in the Issues Papers, or any other topic relevant to the Terms of Reference for the review.

All submissions will be published unless provided in confidence. Material provided in

confidence should be clearly marked '**IN CONFIDENCE**'. For submissions received from individuals, all personal details (for example, home and email address, signatures, phone, mobile and fax numbers) will be removed before it is published on the website for privacy reasons.....

Submissions can be made By email: irreview@qld.gov.au
By post: The Chair Industrial Relations Legislative Reform Reference Group C/o Office of Industrial Relations PO Box 69 BRISBANE QLD 4001

The Issues Papers and details on how to provide a submission are also available at www.treasury.qld.gov.au/irreview or via www.getinvolved.qld.gov.au. “

In summary no submissions from individuals.. “ *who want to share their experiences or view on any topic within the scope of the review.* ” ..were published.

All published submissions were from organisations , unions or academics.

My experience with the Queensland Industrial Relations resonates strongly with that portrayed by

“ Together Queensland: Submissions to Industrial Relations Legislative Reform Reference Group”

...page 14

“ Together Queensland's experience is that chief executives seldom present themselves to industrial scrutiny. They tend to be represented by delegates, often with relatively little authority and at lower classifications, primarily from the agency's human resource or industrial relations areas.

The lack of authority, and lower levels of competence, leads to blockages. Resolution of issues in the QIRC requires these less senior officials to seek authority before matters can progress. “

I sat in Deputy Commissioner O'Connor's private office at the QIRC & watched that happen...the meeting was not recorded as it should have been because there were no hearing rooms available that day.

...page 17

“ 2.1.3 The State as litigant

Together Queensland's experience is that the State is an especially aggressive litigant in industrial and employment matters. This applies across the board, but is especially obvious when Crown Law or private solicitors represent the State party. “

Could not agree more.

...page 26

“ (e) Ill-health

Decisions under Pt.7 of the PS Act (mental and physical incapacity) and ill-health retirement (including under the workers' compensation and superannuation schemes) have been open to management misuse as industrial and employment tools. A direction to undergo an independent medical examination is often very intimidating and can be unfairly used.

Together Queensland submits that the use of such powers should be subjected to a far higher degree of scrutiny and oversight. An employee should have an explicit right to dispute any such requirement and have independent determination in an appropriate tribunal of whether the direction is proper, made lawfully, and is appropriate in the circumstances. A direction to undergo an examination under Pt.7 should be treated as an extraordinary thing, and only be given in exceptional circumstances that warrant what amounts to an invasive examination without consent.

While Pt.7 on its face is concerned with a range of management interventions, of which retirement is just one, Together Queensland's experience is that it is seen, and used, primarily as a means to manage individuals out of a department or other organisation. “

The above scenario as outlined by Together Queensland combined with the Public Service Appeals process in a shambles as it is transferred across to the QIRC is exactly what I have been involved in.... First ...” A direction to undergo an examination under Pt.7 “

When you ask on what grounds is the direction made ?... it takes months for a reply.

Queensland Health ~~ask~~... “ direct” again ...they have previously said ...there are no performance issues.

Eventually it comes down to ...well why aren't you at work ...must be something wrong with you...(well I have not got a position anymore to work in)...terminate your employment...

Given that the termination of employment I have witnessed relates to Queensland Health...

Queensland Nurses' Union - Submission to the Industrial Relations Legislation Reform Reference Group

Page 17

“ Issues Paper 1:

Background paper

What legislative framework should apply to support organisational models which have devolved responsibility of industrial relations management to other internal structures?

Queensland Health (QH) employs the majority of public sector nurses and midwives and until the advent of Hospital and Health Service (HHS) districts run by individual boards in 2012, there was centralised management and standardised conditions of employment. Although centralised industrial relations in public sector health have been hitherto complex, they have been reasonably consistent.

With the introduction of HHS, conditions of employment remained standardised, however management of staff has been decentralised to the local HHS level. HHSs themselves fall into two categories, ‘prescribed’ and ‘non-prescribed’. At present, eight HHSs are ‘prescribed’ (which gives them greater decision making power in employment related matters), with the remainder being ‘non-prescribed’ employers. The Health Minister suspended the process for ‘prescribing’ the remaining 8 HHSs to 1 July 2016.

In our experience, the devolution of centralised management of QH employees to the HHS boards has produced inconsistent decision-making in respect to employment conditions, for example, each HHS has a different policy regarding Public Interest Disclosures. Our major concern however, is the increase in Public Service Commission Discipline Appeals that appear to have arisen from these inconsistent decisions. The relevant administrative law in Queensland is the Public Service Act 2008. This Act contains appeal provisions at s. 194, enabling an individual to challenge an unfavourable decision of the Public Service Commission via a Judicial Review (Supreme Court of Queensland).

The ability to appeal disciplinary decisions is an important entitlement as an unwarranted finding and/or the imposition of a disproportionate form of disciplinary action can have long term detrimental impacts on an individual public sector employee. For example,

- if an employee is found to have engaged in ‘serious disciplinary action’ (see s. 179A of the Public Service Act 2008), they must disclose this fact when seeking secondment/appointment to any other entity covered by this piece of legislation,
- an employee who is subject to a reduction in classification level and a consequential change of duties (such as permanent demotion from Clinical Nurse to Registered Nurse) will suffer substantial financial detriment (loss of wages, lesser superannuation accruals), be unlikely to be considered for promotion in the future, and suffer significant reputational damage. “

Or as quoted above from the Together Queensland experiences ...& as I have seen ...you are terminated from your employment.

...which is an even greater muddle as at that point in time the CEO of the ‘non-prescribed’ Hospital and Health Service (district) could not legally terminate a person’s employment.... It must be done by a delegate of Queensland Health from Corporate Head office in Brisbane.

What a mess.

I have just reviewed (Sept 29, 2016) the Supreme Court Library Queensland website ...<http://www.sclqld.org.au/caselaw/QIRC>. It shows that 99 Queensland Industrial Relations Commission cases have been published to date in the 2016 calendar year.

Extrapolating that figure indications would be 135 cases for the full 2016 calendar year.

This compares with 216 cases for the full 2015 calendar year... 225 cases for the full 2015 calendar year.

These are fairly subjective figures as some issues are not reported on the Supreme Court Library Queensland website, but are on the QIRC's own website....it does seem to indicate a fairly large drop in cases .

But the most telling issue is if you review the QIRC cases there is only ONE case involving a union representation to date in the 2016 calendar year.... The Australian Workers' Union of Employees, Queensland v State of Queensland (Department of Justice and Attorney-General) [2016] QIRC 069 (TD/2016/45).

Looking at the Industrial Court of Queensland, with 22 reported cases to date in the 2016 calendar year there are NO cases involving a union.

The conclusion I come to is that the experience of public sector unions of Queensland is the same as mine (having gone there) ...that going to the QIRC (or the Industrial Court of Qld) is the absolute last place to take an industrial or employment grievance as you will “get done over”...avoid these institutions at all costs.

I do not believe the Industrial Relations Reform Reference Group understand the level of frustration with the QIRC...& to be fair another 12 months have passed since the report was prepared....

In Chapter 11: Queensland Industrial Relations Commission and the Industrial Court of Queensland of “A review of the industrial relations framework in Queensland “..

11.3 Independence at page 134 ..reads.....” During the Review, a number of stakeholders expressed concern at the lack of independence of some members of the QIRC. These views were genuinely held. “

...some members ...not all ...is that why no individual's experiences of the QIRC were published..??

Chapter 11: page 135

“ This Review, while conscious of the concerns of some stakeholders, is strongly of the belief that legislative changes in response to perceptions held about individuals does not make for good public policy. “

Well yes But it depends why stakeholders have those perceptions....are these published or unpublished stakeholders ..or both ? ...it appears the perceptions of all the public sector unions of Queensland is to avoid the QIRC like the plague, given the analysis above... just happens they all have the SAME perception.

So if you genuinely feel that a decision of the QIRC lacked independence you should appeal that decision.

(Chapter) 11.8 Appeal mechanisms... Page 145

“ Both individuals and organisations have been reluctant for a variety of reasons to appeal matters in the QIRC and ICQ.”

.....Page 146

“ During the course of the Review, issues were raised concerning the operation of current appeal mechanisms from decisions of the QIRC. Specifically the difference in the various appellate functions in relation to appeals on questions of law, appeals regarding errors of fact, and those matters in which both are alleged (compared to the appeal mechanisms under the FW Act) was raised. These matters should be canvassed further in preparation of the new Act. “

So the appeals process is not very effectivewho has looked into these matters so they can be included in the new Act...???

Much good work has been donebut there are a number of issues which require more attention ...

Regards,

Timothy Bush