CFMEU

REGIONAL OFFICES
Darwin – Ph (08) 8981 5280
Townsville – Ph (07) 4766 8715

HEAD OFFICE
16 Campbell Street
Bowen Hills QLD 4006
Ph (07) 3231 4600
Fax (07) 3231 4699
queries@qld.cfmeu.asn.au

# Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU)

## Submission to the Finance and Administration Committee of the Queensland Parliament

---

## Industrial Relations Bill 2016

---

**30 September 2016**

Sent via email: fac@parliament.qld.gov.au

Friday, 30 September 2016

Michael Ravbar

Secretary

Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland

16 Campbell Street

Bowen Hills QLD 4006

Tel: 07 3231 4600

Fax: 07 3231 4699

Email: queries@qld.cfmeu.asn.au

Web: www.qld.cfmeu.asn.au

1. The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU) welcomes the opportunity to make this submission to the Finance and Administration Committee of the Queensland Parliament in relation to the Industrial Relations Bill 2016.

2. The CFMEU is the major union amongst private sector, public sector and local government employees in construction and maintenance trades and non-trades classifications, and has been at the forefront in campaigning for its members' workplace rights throughout Queensland.

3. The CFMEU commends the Palaszczuk Government on conducting a comprehensive review of the State's industrial relations laws and tribunals, and fulfilling its commitment to enact the recommendations of the review.

4. In that vein, the CFMEU notes that Queensland's industrial laws and tribunals had not undergone any comprehensive review since the late 1990s, despite the fact that its industrial relations framework was significantly impacted by the federal Work Choices legislation, which resulted in a significant majority of employees and employers in Queensland falling under the Commonwealth jurisdiction.

5. Further, Queensland's industrial laws went through a series of swift, ad hoc, changes during the brief period of the then-LNP Newman Government, which occurred alongside an award "modernisation" process, which together saw the withdrawal of longstanding entitlements for public sector and local government employees.

6. Whilst the ALP Palaszczuk Government has rolled-back a number of the Newman Government's changes, some changes have remained outstanding, making a comprehensive review of the State's industrial laws and tribunals all the more necessary.

7. In particular, the CFMEU notes the importance of the present Bill for workers and their families in regional and remote Queensland, who have been most severely impacted by the Newman Government's changes, and where public sector and local government employment is most critical to the economic prosperity of regional and local government areas.

8. In a period of dire wage stagnation, under-employment, high unemployment (particularly in the regions), and contracting out, this Bill could not be more timely as a matter of economic growth for Queensland overall, particularly where it enables the restoration of wages and conditions for local government workers through the requirement that there be three awards in that sector.

9. The making of three separate awards for the local government sector is an important facilitative provision of the Bill, which would allow the Queensland Industrial Relations Commission to more properly safeguard longstanding entitlements through award modernisation, which had been ripped away under the LNP. To that end, the administrative requirement that there be three awards for local government employees is an important step in the modernisation of industrial awards made by QIRC, and which reflects the organisational distinctiveness of workforces across the sector.

10. The CFMEU commends the ALP Government for acting to restore fairness and opportunity to workers in Queensland through this Bill.

11. The CFMEU has had the benefit of reading the submissions of the Queensland Council of Unions (QCU), and endorses those submissions.

12. Further, the CFMEU thanks the Queensland Government for the opportunity to participate in its Review of Industrial Relations Laws and Tribunals, as part of the Building, Engineering and Maintenance (BEMS) group of unions. We attach to this brief submission, the submissions of the BEMS Unions made during that Review for the Committee's consideration.

30 September 2016

CFMEU

# REVIEW OF INDUSTRIAL RELATIONS LAWS AND TRIBUNALS–QUEENSLAND

## SUBMISSIONS OF

**The Australian Manufacturing Workers' Union**

**The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland**

**The Electrical Trades Union of Employees Queensland**

**The Plumbers & Gasfitters Employees' Union Queensland**

**("Building, Engineering and Maintenance Unions")**

Thursday, 22 October 2015

## INTRODUCTION

The Australian Manufacturing Workers' Union ("AMWU")[1], the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland ("CFMEU")[2], the Electrical Trades Union of Employees Queensland ("ETU")[3], and the Plumbers & Gasfitters Employees' Union Queensland ("PGEU")[4] welcome the opportunity to make this joint submission to the Industrial Relations Legislative Reform Reference Group review into the State's industrial relations laws and tribunals.

The AMWU, CFMEU, ETU and PGEU (together, the "BEMS Unions") are the major unions in the building and construction, engineering, manufacturing, and maintenance services ("BEMS") industries and have a substantial membership across trades and non-trades classifications of employees across Queensland. The BEMS Unions have membership across the both the private and public sectors, including at the State and Local Government level.

The BEMS Unions note that Queensland's industrial laws and tribunals have not undergone any comprehensive review since 1998, despite the fact that in 2005, the then Howard Government took steps to expand the remit of national workplace relations laws under the (now repealed) *Workplace Relations Amendment (WorkChoices) Act 2005* (Cth) ("Work Choices"), resulting in a significant majority of employees and employers in Queensland falling under the Commonwealth jurisdiction (as is still the case under the *Fair Work Act 2009* (Cth)).

This was compounded by the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld), which referred the remainder of Queensland's private sector industrial relations

---

[1] The AMWU, as known on a collective and public basis, is made up of the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (the state registered Union) and the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) (the federal registered Union).

[2] As registered under the *Industrial Relations Act 1999* (Qld), the Construction, Forestry, Mining and Energy Union being the federally-registered counterpart union.

[3] As registered under the *Industrial Relations Act 1999* (Qld), the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia being the federally-registered counterpart union.

[4] As registered under the *Industrial Relations Act 1999* (Qld), the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia being the federally-registered counterpart union.

to the federal system. As a consequence, the scope of the *Industrial Relations Act 1999* (Qld) and the jurisdiction of the Queensland Industrial Relations Commission ("QIRC") have been substantially altered at a fundamental level, albeit on a piecemeal basis. It is in this vein that the BEMS Unions regard the review as both pressing and important, and make this submission as a first step in more extensive consultation with key stakeholders such as our organisations.

The focus of the BEMS Unions' submission will be on the need for institutional reform of the current Queensland Industrial Relations system, including through the establishment of a successor tribunal to the QIRC to bring a broader range of workplace matters into a single tribunal. A successor tribunal, with reviewed powers and functions, would more aptly reflect the State jurisdiction in the post-Work Choices era, and fill the void that exists in the current workplace relations institutional framework. In broad outline, the BEMS Unions propose:

- the establishment of a successor tribunal to the QIRC through separate legislation to the current *Industrial Relations Act 1999*, as modelled on the *South Australian Employment Tribunal Act 2014* (SA);

- the reinstatement of powers previously held by the QIRC in respect of apprentices, trainees and workplace health and safety;

- the capacity for the successor tribunal to deal with disputes and prosecutions under the *Work Health and Safety Act 2011*;

- the retention of the Work Cover appeals within the jurisdiction of any successor tribunal or within it's a own specialist stream;

With regard to substantive industrial law, the BEMS Unions propose that it include provisions in relation to:

- providing clarity about the rights of union officials under the legislative 'right of entry' regime;

- streamlining wages recovery processes into a single jurisdiction;

- removing the arbitrary cap for compensation under unfair dismissals laws;
- importing aspects of the general protections provisions under the *Fair Work Act 2009* ("FW Act") to include circumstances other than dismissal; and
- providing administrative exemptions from compliance requirements for counterpart industrial organisations.

The BEMS Unions have had the benefit of reading the submissions of the QCU and endorse those submissions. The BEMS Unions make these further submissions in relation to specific aspects of the IR Review.

**FUNCTIONS OF THE TRIBUNAL**

**Institutional framework**

As previously discussed, the scope of the IR Act has fundamentally diminished as a consequence of Work Choices, and other legislation since then. This has had a profound effect on the functions of the QIRC. Indeed, Issues Paper 5 identifies that in 2013-14, core industrial matters, such as certified agreements and unfair dismissal applications, accounted for less than 1% of total matters listed.[5] Conversely, the QIRC has broadened its jurisdiction to matters that are beyond the traditional core of industrial relations per se. Most notably, the QIRC has had sole responsibility for hearing Workers' Compensation Regulator appeals, has heard Public Service appeals, since 2012.

As regards the workload of the members of the QIRC (as opposed to listings), core industrial matters accounted for between approximately 5-7% in the period from 1 January 2015 to 21 August 2015, whereas appeals against the Workers' Compensation Regulator accounted for between 80-85% and Public Service Appeals accounted for 8-10% of that workload.[6]

Further, as noted in Issues Paper 5, the QIRC has powers and responsibilities under several pieces of legislation, including the IR Act, the *Workers' Compensation and Rehabilitation Act*

[5] P. 7. Issues Paper 5.

[6] P. 9. Issues Paper 5.

*2003* ("WCR Act"), the *Further Education and Training Act 2014* ("FET Act"), the *Trading (Allowable Hours) Act 1990* ("TAH Act"), the *Public Service Act 2008* ("PS Act"), the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* ("CCIPSLS Act"), the *Public Interest Disclosure Act 2010* ("PID Act"), the *Work Health and Safety Act 2011* ("WHS Act"), the *Child Employment Act 2006* ("CE Act"), the *Magistrates Courts Act 1921* ("MC Act"), and the *Local Government Act 2009* ("LG Act").

Yet, notwithstanding the diminished scope of the IR Act, the reduced role of QIRC Members in 'core' or traditional industrial matters, and the fact that the QIRC derives a substantial amount of its jurisdiction from other Acts of Parliament, the so-described "industrial tribunals and registry" continue to exist under the IR Act alone.[7] Indeed, given the QIRC's current jurisdiction and workload, it is something of a misnomer to describe it as an "industrial tribunal" – even though the QIRC's core industrial function remains an important part of its work, covering approximately 340,000 Queensland employees (many of whom work in critical services), and is predicated on the objective of "providing effective, responsive and accessible support for negotiations and resolution of industrial disputes."[8]

At this juncture it is worthwhile to consider the reforms that are currently occurring in South Australia, most notably through the establishment of the South Australian Employment Tribunal ("SAET") under the *South Australian Employment Tribunal Act 2014* (SA) ("SAET Act"). For its part, the SAET is designed to be a dedicated "one stop shop" for all employment-related disputes.

As a tribunal, it has similar functions, powers and operations to the newly established South Australian Civil and Administrative Tribunal (the equivalent of the Queensland Civil and Administrative Tribunal), but operates as a specialist employment body with tribunal members who have relevant specialist experience and expertise in employment-related matters. The SAET is designed to operate through separate "streams", and at the commencement of its operations, its only jurisdiction is the "return to work" stream (the

[7] Chapter 8, IR Act 1999.
[8] Subsection 3(m) IR Act 1999.

equivalent of Work Cover in Queensland). However, the SAET Act provides for further "streams" (separate divisions) to be established as a consequence of wider reforms.

It is anticipated that the SAET will assume the jurisdiction of the South Australian Industrial Relations Commission, public sector employment appeals, apprentices and trainee disputes, and employment-related equal opportunity disputes in due course.[9] Importantly, however, the Act that establishes the SAET, and the rules that apply to it, have been drafted in such a way to have general provisions that will be common across all streams, as well as provisions that are specific to individual streams.

The adaptability of the "South Australian model" is appealing in a number of respects. Firstly, the establishment of the SAET is not tied to any single set of employment laws. Rather, the SAET Act creates a broad institutional framework through which various jurisdictions can be accommodated, thereby having the capacity to meet demands of reform over time. Currently, the QIRC and ICQ, their membership, functions and objectives are embedded in the IR Act as a matter of historical accident, and do not reflect their full gamut of operations. Much of the institutional structure currently in place was designed many decades ago.

Secondly, in its current form, the IR Act is rendered unnecessarily complex through the inclusion of institutional provisions that could be better dealt with through separate legislation. The IR Act could better serve as a catalogue of provisions about the relationship between employees, their representatives, and employers. Indeed, this could remove the need to replicate the "Fair Work Information Statement" in the State system.

Thirdly, whilst the SAET reflects a broader employment jurisdiction than traditional Statebased industrial relations commissions (as does the QIRC), its specialist "streams" enable it to harness specialist expertise of tribunal members in relevant areas. Currently, members of the Queensland Industrial Relations Commission risk being overwhelmed with Work Cover appeals, which also require specialist knowledge. The adoption of the South Australian model, on the other hand, would provide for work to be allocated according to tribunal members' expertise, including a separate stream for worker compensation matters with its own

[9] Transforming Employment Dispute Resolution, Attorney-General's Department, Government of South Australia, April 2015.

dedicated tribunal members. Other potential streams might be a core industrial stream, a public service appeals stream, a stream for dealing with work health and safety matters (including bullying), and a stream for dealing with apprenticeship and traineeship disputes.

**Recommendations**

The BEMS Unions recommend that:

1. A successor tribunal to the QIRC be established under a separate "institutional" Act per the model under the *South Australian Employment Tribunal Act 2014*;

2. The separate "institutional" Act would deal with the composition of the successor tribunal, its powers and procedures, representation, appeal mechanisms, a central registry, codes of conduct, performance benchmarks, accountability mechanisms, and regulatory mechanisms;

3. The successor tribunal would retain the jurisdiction of the QIRC and ICQ in a single body, and would be capable of expanding its jurisdiction to more comprehensively cover circumstances arising out of, or in the course of, employment, that is, a "one stop shop" for employment matters affecting Queensland workers;

4. The successor tribunal would be "divisionalised" or "streamlined" such that key areas of jurisdiction would be dealt with expertly and expeditiously by dedicated tribunal members within different "streams".

5. The successor tribunal would retain the broad powers of the current QIRC in relation to the resolution of industrial disputes within a dedicated stream.

6. Likewise, the successor tribunal would retain the broad powers of the current QIRC in relation to appeals of decisions of the Worker's Compensation Regulator, and could accommodate jurisdiction for common law workplace injury claims, within a dedicated "stream".

A diagram explaining the proposed successor tribunal is contained in an Appendix 1 of this submission.

**A Work Health and Safety Tribunal "Stream"**

It is a fundamental right of every worker to go to work in the morning and be able to return home safely at the end of the day. For its part, the building and construction industry, is a particularly dangerous and arduous industry in which to work. Safety incidents such as falls, trips or slips (including from often extensive heights), vehicle collisions, impacting or falling objects, extreme body stress, electrocution, fire, exposure to hazardous substances and indeed the elements are risks that invariably present themselves to workers' health and safety on building and construction sites.

According to data published by Safe Work Australia, over the five year period from 2007-08 to 2011-12, some 211 construction workers were killed as a result of work-related injuries. That figure equates to 4.34 fatalities per 100,000 workers in the building and construction industry, which is approximately twice the all-industry rate of 2.29 per 100,000 workers over the same period. The latest data from Safe Work Australia shows that last year, 28 workers in the building and construction industry died at work, compared to 17 in 2013 – a rise of some 64 per cent in 2014. Further, the building and construction industry alone accounted for 11 per cent of all serious workers' compensation claims from the years 2007-08 to 201112 – an average of 39 claims made per day.

Vast improvements in workplace health and safety have been achieved over the years – however, this has not occurred through any sense of 'corporate citizenship' on the part of employers, but rather through the collective efforts of trade unions and their members. The building and construction industry is characterised by a complex system of sub-contracting with many small employers, widespread use of 'labour hire' workforces and sham contracting, and intense competitive pressures amongst employers. These characteristics contribute to cutting corners on safety issues and breakdowns in the chain of responsibility.

Over many decades, trade unions and their members have been critical in achieving work health and safety improvements such as the first wide-ranging safety laws in 1902, through

to specific hazard preventions like scaffolding, materials and personnel hoists, workplace amenities and crib rooms, personal protective equipment, to bans on deadly substances such as asbestos and adequate workers' compensation payments for workplace injury.

Numerous studies have pointed to the positive correlation between trade union involvement at workplaces and improved workplace health and safety outcomes. In particular, empirical studies both in Australia and abroad support the notion that cooperative workplace health and safety regulation, buttressed by trade union representation, are crucial elements of improved workplace health and safety.

With particular regard to the building and construction industry, one US study compared workplace health and safety enforcement in union and non-union construction sites. The data collated for that study disclosed that unionised sites achieved better and improved workplace health and safety outcomes as a result of a higher probability of inspection and greater scrutiny during inspections, as compared to non-union sites.

The study attributes the success of trade unions in monitoring workplace health and safety to trade union training programmes, workshops, and trade union knowledge materials such as manuals and practitioner reports, and to the fact that the involvement of trade unions protects employee workplace health and safety representatives from managerial reprisals. This is consistent with the experience of the BEMS Unions, which, through our network of representatives on the job, the provision of support for workers, and the development and provision of information and knowledge, are playing a vital role in upholding workplace health and safety at construction sites across Australia.

It is indisputable that the legal regulation of how work is organised and performed can have a significant impact on workplace health and safety outcomes – especially in sizeable, highrisk and indeed high-incidence industries such as the building and construction industry. This has been the almost unanimously held view since at least the 1960s, when there was a growing recognition that the traditional 'red light' model of workplace health and safety regulation, which relied on public inspectorates to enter and inspect workplaces and to initiate prosecutions, failed to prevent occupational disease, injury and deaths.

**Case Study**

Jason Garrels (RIP), 20, was killed at work on a construction site in Clermont, Queensland in 2012. He died as a consequence of electrocution after coming into contact with temporary construction wiring, which contravened the Wiring Rules involved in temporary electricity supply in a number of ways – including the absence of a residual current device ("RCD") or "safety switch".

Whilst the Work Health and Safety Queensland ("WHSQ") Inspector had previously inspected the temporary wiring, he had only issued improvement notices. Tellingly, the notice disclosed that the temporary wiring contravened Australian Standards and that "circumstances causing an immediate electrical risk to persons or property have arisen". The notices were only issued subsequent to the inspection via email rather than at the time of the inspection, despite forming the view that the non-compliant wiring posed an immediate danger.

The WHSQ Inspector had the authority to have the power to the site disconnected. He failed to do that. The State Coroner found that "[i]f that action had been taken then Mr Garrels would never have been electrocuted." (Inquest into the death of Jason Jon GARRELS, at paragraph [67]).

Jason's former employer, Daytona Trading, and the electrical contractor, were ultimately prosecuted and received paltry $80,000 and $90,000 fines respectively, with no convictions recorded. Michael Garrels, Jason's father, has described the impact of Jason's loss on their family and community as utter devastation.

Yet under current laws in Queensland, there is no forum or formal mechanism through which employees and trade unions can escalate work health and safety disputes to achieve better work health and safety outcomes. Rather, current laws rely on the initiative of WHSQ Inspectors to both properly investigate and address work health and safety hazards, as well as to deter contraventions of safety standards through active prosecutions. Sadly, the death of Jason Garrels, amongst many other examples, exposes the flaws in reliance on WHSQ Inspectors to do the right thing.

**Recommendations**

The BEMS Unions recommend that:

1. A successor tribunal to the QIRC would assume the necessary jurisdiction to properly deal with work health and safety disputes within a designated "stream";

2. Prosecutions for contraventions of work health and safety standards be included in the new jurisdiction;

3. Trade unions have standing to bring work health and safety disputes and prosecutions for work health and safety contraventions within the new jurisdiction.

**An Apprenticeship and Traineeship Disputes "Stream"**

In relation to all apprentices and trainees, regardless of whether they are employed under the Queensland jurisdiction or are national system employees, the BEMS Unions seek that the jurisdiction of the tribunal includes the ability to deal with all matters relating to apprentices and trainees, including but not limited the following:

- Any disputes concerning the training contract, including cancellation of the training contract and coercion to cancel a training contract;

- Discipline related matters;

- Stand-down of apprentices and trainees;

- Disputes concerning placement; and

- Disputes concerning access to training.

Under the auspices of the *Further Education and Training Act 2014* (and consequential amendments made to the *Industrial Relations Act 1999)*, the LNP Government introduced significant changes to the industrial arrangements applying to Queensland apprentices and

trainees. In particular, the BEMS Unions hold the following concerns in relation to the erosion of rights of apprentices and trainees and the reduced employment security arising from the legislative changes made by the former Queensland Government:

As it currently stands, Queensland apprentices and trainees can be dismissed or stood down at any time by their employer *without* the employer first obtaining the permission from the Department of Education, Training and Employment ("DETE") to cancel the training contract. In practice, we understand that following these changes, DETE automatically cancelled the training contract once the employer advised them in writing of the termination of the employment contract. That is, therefore no longer played a role in determining whether or not the cancellation of the training contract was appropriate. Further, the right of an apprentice or trainee to appeal the cancellation of a training contract to the QIRC was removed. This was a significant reduction to the protections apprentices and trainees previously enjoyed under the *Vocational, Education, Training and Employment Act* 2000 ("the VETE Act").

As a result of these changes apprentices and trainees are now required apply for reinstatement/unfair dismissal under the relevant jurisdiction.

The BEMS Unions believe that, given the interrelatedness of the training contract, the employment contract and other industrial issues facing apprentices and trainees, it is necessary to include all matters relating to apprentices and trainees within the jurisdiction of the Tribunal.

**Recommendation**

The BEMS Unions recommend that:

1. The successor tribunal should have jurisdiction to deal with all matters relating to apprentices and trainees, including the reinstatement of the jurisdiction to deal with stand downs and the cancellation of training contracts, within a dedicated "stream".

**Modernisation of Registry Functions**

The BEMS Unions believe that the Registry and its functions need to be modernised. To this end, we suggest a review, including consultation with relevant industrial parties. Such matters for consideration, include:

- A dedicated Registrar for the successor Tribunal, with delegation powers;
- User friendly forms for use of laypersons;
- E-filing and case portals;
- Listings to be sent via email;
- Listings to be made in consideration of Advocate availability, including accommodating family responsibilities; and
- Processes to be consistent with similar tribunals, such as the Fair Work Commission.

**ELEMENTS OF SUBSTANTIVE INDUSTRIAL LAW**

**Right of Entry**

Union officials should retain the right to enter the employer's premises. When visiting a workplace, the Union official is able to exercise the following rights:

- Hold discussions with members and/or employees who are eligible to become members of the Union; and
- To inspect time and wages records of both past and present employees.

In relation to holding discussions with members, and employees who are eligible to become members of the Union, union officials should be free to hold discussions during working hours and without restriction as to location. In relation to the inspection of time and wages records, the legislation should be amended to make it clear that such inspections include past and present employees.

Furthermore, in relation to time and wages records, changes are sought to how such an inspection may occur and how copies of such records may be requested. Given in the modern day most records are kept electronically, it should be sufficient that, rather than the union official actually exercising their right of entry, they request such records via email and the records would then be provided to the Union via email within seven days. Such a process would cause less disruption to the workplace and allow the employer to provide the records at a time most convenient to them during an identified period of time.

Union officials should also be able to inspect and copy time and wages record whilst exercising their right of entry in the workplace as currently exists in the legislation. The legislation needs to be amended to allow union officials to request reasonable assistance to facilitate the copying of time and wages records.

Parties to Awards and Agreements should be permitted to negotiate right of entry provisions that are superior to those in the Act and have such provisions included in the Awards and Agreements.

**Wages Recovery**

The jurisdiction of the Tribunal should continue to allow access to recover unpaid wages. This jurisdiction applies to both federal[10] and state system employees, using different legislative provisions to make a claim for unpaid wages. Given the nature of the Tribunal, being a layperson's tribunal, it is much more accessible to non-legal practitioners than, for example, the Magistrates' Court and generally matters can be dealt with more promptly and effectively, as its focus is on settling matters by agreement rather than by arbitration.

However, there should be no limit to the amount of unpaid entitlements an employee can recover. The employee should be entitled to recover all unpaid entitlements owed to them through the course of employment. Further, penalties for underpayments should be reviewed to ensure they are adequate, particularly for recidivists. The BEMS Unions seek for the Review

[10] Under the *Magistrates Court Act 1921* national system employees are able to make Employment Claims.

to investigate broadening the jurisdiction of the Tribunal to include arbitration of Employment Claims and penalties made under the *Magistrates Court Act 1921*.

**Unfair Dismissal**

Sections 78 and 79 of the IR Act provide for unfair dismissal remedies. Section 78 provides that an employee may be reinstated, with the ability for the Commission to order payment for the "remuneration lost … by the employee because of the dismissal…" There is no limit to the amount that can be ordered to be paid, other than the obligation to take into account any monies received by the employee since the dismissal.

Section 79, on the other hand, provides that Commission may order compensation be paid to an employee, but with a maximum of 6 months' wages. This in no way reflects the seriousness of an employee having their employment terminated.

Further, it creates an anomaly and a potential conflict for a member when determining whether or not to accept an offer to settle an application for unfair dismissal.

For example, where an employee, with a lengthy and unblemished employment record is terminated the employer may choose to offer an amount that is close to the maximum payment of 6 months' pay in the knowledge that, for many employees, the risk of proceeding to hearing, and the potential delays that creates, is too great when the likelihood of reinstatement is low.

**General Protections/Freedom of Association**

Section 73 of the IR Act provides that a "dismissal is unfair if it is for an … invalid reason". Subsection 2 defines an invalid reason and this definition is broadly the same as the provisions in relation to general protections provisions in the Fair Work Act (the FW Act). However, unlike the Federal system, in the State system, these invalid reasons only apply to terminations, whereas the FW Act contemplates and provides for disputes in relation to what they term an "adverse action" that do not result in the termination of the employee's employment.

The Freedom of Association provisions in the Act allow for some disputes to be raised in relation to "prohibited conduct" taken by employers for "prohibited reasons" and Section

104 provides examples of “prohibited conduct”. However, the provisions in the Queensland Industrial Relations Act are not as broad or wide ranging as the provisions set out in the FW Act. The Act needs to be amended to allow unions/employees to take action against employers where the employer has taken action, other than termination, against an employee for a “prohibited” or “invalid” reason.

**Industrial Organisations**

In circumstances in which a State registered union has a Counterpart Federal Body (CFB), that is compliant with the requirements of the *Fair Work Act 2009*, it shall be exempted from State legislation.

The current scheme under the Act in relation to applications for exemptions from holding elections and exemptions from keeping an Officers’ Register should continue to apply for State Unions that have a CFB.

10/22/2015
AMWU, CFMEU, ETU, PGEU

**APPENDIX 1**

**WHAT A PROPOSED SUCCESSOR TRIBUNAL "QUEENSLAND WORKPLACE TRIBUNAL" ("QWT") WOULD LOOK LIKE**