

United Firefighters' Union of Australia, Union of Employees, Queensland

Submission to the Legal Affairs and Community Safety Committee
regarding the Industrial Relations (Fair Work Act Harmonisation No.2)
and Other Legislation Amendment Bill 2013.

Contact:

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**1.
Stakeholder submission.**

This document is a stakeholder submission to the Queensland Parliament Legal Affairs and Community Safety Committee (the Committee) regarding the *Industrial Relations (Fair Work Act Harmonisation No.2) and Other Legislation Amendment Bill 2013* (the Bill) by the United Firefighters' Union of Australia, Union of Employees, Queensland (the UFUQ).

**2.
Request to publish this submission.**

UFUQ requests permission from the Committee to publish this submission.

In particular, we seek to publish the submission for the information of our members, other firefighter unions in Australia and elsewhere, and other unions affiliated with the Queensland Council of Unions (the QCU).

We also advise that we are happy for our submission to be made public as required.

**3.
United Firefighters' Union of Australia, Union of Employees, Queensland.**

The UFUQ is an industrial organisation of employees registered under the *Industrial Relations Act 1999*, providing representation and coverage to urban firefighters (both permanent and auxiliary employees of the Queensland Fire and Rescue Service (QFRS)) and scientific and communication officers.

Due to the services they provide during emergencies in Queensland, Australia and elsewhere, members of UFUQ are among the most highly regarded people in their communities.

UFUQ currently has over 2500 members, including over 95% of permanently employed urban firefighters, scientific and communication officers and a significant proportion of auxiliary firefighters.

UFUQ is bound by Awards of the Queensland Industrial Relations Commission (QIRC) and is also party to a number of Certified Agreements made and registered under the *Industrial Relations Act 1999*, (the Act). UFUQ has a proud history of representing our members and bargaining under the Act.

**4.
Public consultation regarding the Bill.**

On 17 October 2013 UFUQ received correspondence from the Committee to stakeholders regarding a Bill introduced to Queensland Parliament by the Attorney General and Minister for Justice, Hon Mr Jarrod Bleijie MP. The Bill was referred to the Committee on that date.

The Bill has only 20 working days as the period of review by the Committee, with only seven working days for stakeholders to provide a submission to the committee.

UFUQ is pleased to be able to provide this submission to the Committee, however we express our disappointment at the brief public review period and even briefer timetable for submissions. The short timeframes forced upon stakeholders has restricted UFUQ's ability to fully develop a submission that sets out our concerns and objections to aspects of the Bill.

We have had a matter of days to digest the content of the Bill, assess the proposed impacts of the Bill if enacted, and develop this submission regarding the potential effect on our members.

UFUQ consider the proposed changes identified in the Bill will, if enacted, have significant direct negative impacts on our members as well as all people of Queensland. Therefore we consider that a longer period of public consultation and a thorough review would have been more appropriate.

5. The Bill.

The Bill proposes, as a policy objective, to “*reform Queensland’s industrial relations framework to ensure it continues to meet the needs of employers and employees operating within the State’s industrial relations jurisdiction*”.

The Attorney General stated that the purpose of the Bill is “*to amend the Industrial Relations Act 1999 to create a reformed industrial relations framework for the Queensland jurisdiction*”.

The Explanatory notes for the Bill state that the Bill “*responds to recommendations for the Queensland Commission of Audit...*”. In particular, recommendations 130, 131 & 132.

The correspondence from the Committee set out the objectives of the Bill –

1. Reform of Queensland’s industrial relations framework to ensure it continues to meet the needs of employers and employees operating within the State’s industrial relations jurisdiction;
2. Changes to the Industrial Court of Queensland;
3. Fixed term appointments in the Queensland Industrial Relations Commission;
4. Applications for trading hours orders to be heard by a single commissioner;
5. Deduction of industrial organisation subscription fees from wages;
6. Clarifying the powers of an inspector under the *Industrial Relations Act 1999*;
7. Extinguishing obsolete Certified Agreements; and
8. Provisions governing the operation, composition, size and tenure of the Board of Trustees of the State Public Sector Superannuation Scheme

The Bill provides for amendments to four pieces of primary legislation –

- *Industrial Relations Act 1999*, and
- *Health and Hospital Boards Act 2011*, and
- *Trading (Allowable Hours) Act 1990*, and
- *Superannuation (State Public Sector) Act 1990*

If the Bill is enacted in its current form many of the objectives as listed above will have direct and/or indirect negative effects on members of UFUQ.

However this submission focuses on objective 1, being the proposed changes to the *Industrial Relations Act 1999* and their direct effects on the unions’ members.

This submission highlights our concerns and objections and provides UFUQ position on the matters raised and makes a recommendation that the public consultation period is extended to allow for a full review and debate of the Bill.

6.
UFUQ submissions regarding the Bill.

6.1 Removal of Objects of the Act.

The Bill proposes to amend Section 3 of the *Industrial Relations Act 1999* by removing objects (j) and (o).

This proposal is clear indication that the proposed changes to the Act in this Bill are intended to reduce collective bargaining and to reduce the opportunity for collective action.

UFUQ position is that these objects of the Act should be retained to provide for all employees under the Act having access to the opportunity to work collectively to improve their terms and conditions of employment, thus improving economic prosperity and maintaining social justice.

6.2 Restrictions on timetables for the making of Certified Agreements.

The Bill proposes the insertion of a new Chapter 6, Division 1 and subdivisions regarding the making of Certified Agreements.

In summary, the proposed changes to programming of the making of Certified Agreements places significant time restraints on the bargaining, conciliation and arbitration process.

The Bill proposes at Section 148(2)(b)(i) that the conciliation phase of negotiation is restricted to 14 days. Further, that the conciliation period commences on the day either party requests the assistance of the Commission. This is a restrictive and unreasonably short period of time for realistic conciliation to occur.

The Bill further proposes at Section 149(A)(1) that the arbitration phase of the making of a Certified Agreement is restricted to the unrealistic period of 90 days.

To put the unrealistic proposals for time periods into perspective, the UFUQ commenced a period of negotiation for the replacement of the *Queensland Fire and Rescue Service Certified Agreement 2009* in June 2012. Those negotiations continued until QFRS filed a Section 148 application for assistance from the Commission to conciliate the Certified Agreement. The Section 148 application was lodged in July 2012 after a very brief period of negotiation.

The QIRC commenced conciliation in July 2012. Conciliation progressed for some months, with the parties meeting regularly. The Commission referring the matter to arbitration in November 2012 terminated conciliation.

The period of July to November provided opportunity for the parties to negotiate through the conciliation process over the Certified Agreement. The proposed changes to the Act providing 14 days as the conciliation process would not, in the experience of UFUQ, give a reasonable time for the parties to work to reaching agreement.

The arbitration phase of the UFUQ / QFRS Certified Agreement has stretched from November 2012 to the present day, with submissions still planned to be heard by the full bench of QIRC in November 2013.

UFUQ position is that the time periods required for effective conciliation and arbitration should be left to the full bench (or members) of the QIRC hearing the matter to determine, based on the circumstances relevant to each matter before it.

Further, UFUQ position is that the current process of administration of QIRC matters being conducted independently of the members hearing the matters, which would be retained by the proposed Bill has been demonstrated as not effective to reasonable timeframes being provided. This would be worsened by restriction of the time frames allowed.

This position is based on the evidence that the time periods required by the UFUQ and the employer to fully ventilate issues in the conciliation and arbitration of the Certified Agreement far exceed those proposed by the Bill. Only a dozen days could be found for the current arbitration of the Certified Agreement.

6.3 Limitation on industrial action.

The Bill proposes at Section 150A to limit employees rights to take protected industrial action to the period prior to conciliation and arbitration.

This restriction is a further reduction in the rights of workers to strike, a principle tenet of the ILO conventions –

- The Freedom of Association and Protection of the Right to Organise Convention 1948, and
- The Right to Organise and Collective Bargaining Convention 1949

The Bill proposes to limit access by employees to protected action to the period prior to conciliation, which can be forced upon employees by Section 148(1)(b)&(c) of the proposed amended Act.

UFUQ position is that access by employees to protected industrial action must be preserved in its current form.

6.4 Restrictions on retrospective and interim wage rises.

The Bill proposes at Section 149 (c)(1) to prevent QIRC from providing an interim wage rise.

The Bill further proposes at Section 150 (2A) (a&b) to prevent the Commission from providing for a wage rise that takes effect on a date earlier than the decision (backdating a wage rise).

These changes would remove the long-standing ability by parties to negotiate about or request these wage decision during a matter before the Commission. This proposal is a deliberate removal of a benefit to employees with no justification provided by the Bill or the explanatory notes to the Bill.

Many decisions by QIRC have historically provided some relief to employees due to either the time required to have matters heard and/or the time waiting on a decision made about Certified Agreements.

In fact, it is likely that this change will encourage employers to hold out on negotiations, knowing that there will be an actual wage cost saving to them, through forcing the matter to drag on for as long as possible.

UFUQ position is that the power to make these sorts of determination regarding wages should be left in the hands of the Commission, who can assess the need for either an interim or backdated wage rise, or both, based upon the merits of the matter before it.

6.5 Stopping the making of new Awards upon commencement of the Act.

The Bill proposes at Section 822(1)(a) & (2)(a) to cease the process of the making of a new Award if that process has commenced prior to the introduction day of the Bill.

If the Bill is enacted in its current form, this may prevent the making of an Interim Award to cover a group of employees known as Auxiliary Firefighters, who have industrial coverage under UFUQ.

Auxiliary Firefighters are currently Award free and UFUQ has spent some years negotiating with QFRS regarding industrial coverage for this group of employees. UFUQ and QFRS agreed on a draft in a matter that has been before QIRC for 12 months. That draft is before the Commission to be made as an Interim Award with the operational date of 1 August 2013.

This clause of the Bill would unnecessarily set back the advancement of the terms and conditions of Auxiliary Firefighters some years. These Auxiliary Firefighters represent over 2000 of QFRS workforce, with the majority in regional and rural communities of Queensland.

UFUQ position is that Awards being made with operative dates prior to the introduction day of the Bill can be made as Awards and can then be subject to the modernisation process as is the case with all Awards.

7.

Request for extension of public consultation period.

Extremely short time frames have been provided to stakeholders within which the Bill must be evaluated as to impacts on those stakeholders. This is a clear and deliberate attempt to restrict examination and debate of the content of this Bill.

Therefore, UFUQ position is that the public consultation period is extended to allow for a thorough examination of the content of the Bill, for fully developed stakeholder submissions to be submitted and for all parties to have the opportunity to debate the issues that arise from a full ventilation of the matters that impact on stakeholders.

UFUQ will provide further content in relation to this submission at the public forum to be held by the Committee on 1 November 2013.