

*Submission to the Senate Inquiry --
The conditions of employment of state public sector employees and the adequacy of protection of their
rights at work as compared with other employees.*

Parliament of Australia

Senate Education, Employment and Workplace Relations Committee

Inquiry – *The conditions of employment of state public sector employees and the
adequacy of protection of their rights at work as compared with other
employees.*

**Inquiry – *Submission by the United Firefighters' Union of Australia, Union of
Employees, Queensland:***

The United Firefighters' Union of Australia, Union of Employees Queensland (UFUQ) provides industrial representation and coverage to Urban Firefighters (both career (full-time) and Auxiliary (part-time)) and also covers Scientific Officers and Communication Officers.

UFUQ currently has a membership of over 2500, which represents over 95% of career firefighters and as well as a significant proportion of auxiliary firefighters, with the entire UFUQ membership currently covered by the state industrial relations jurisdiction.

The Queensland Department of Community Safety, (specifically, the Queensland Fire and Rescue Service), directly employs all UFUQ members.

The employment conditions for UFUQ members are established through the following framework –

- The Industrial Relations Act 1999 (Queensland),
- The Public Service Act 2008 (Queensland),
- The Queensland Fire And Rescue Service Act 1990 (Queensland),
- Two Awards
Queensland Fire and Rescue Service Award – State 2012 &
Queensland Fire and Rescue Service Communications Centres Award – State 2012,
- The Queensland Fire and Rescue Service - Certified Agreement 2009
- Auxiliary Employment Conditions Standing Order (SO-Q-BM-3.7)
- Queensland Government Directives

UFUQ members' employment terms and conditions are covered by the above framework; however, three levels of that framework (the Awards, the Agreement and Directives) are now subject to unilateral change by the Queensland LNP state government. Further, the legislation is subject to change as has been recently demonstrated.

These changes have created a landscape where UFUQ members employment conditions are below the standard prescribed by the Fair Work Act 2009 and importantly, are below the standard expected by relevant ILO Conventions, to which Australia are signatory.

This submission summarises the lesser standard now afforded to UFUQ members and recommends that the federal government exercise powers available to it to restore the rights of UFUQ members to the standards set by ILO Conventions.

Inquiry – *Terms of reference:*

The conditions of employment of state public sector employees and the adequacy of protection of their rights at work as compared with other employees, including:

(i) whether:

(A) the current state government industrial relations legislation provides state public sector workers with less protection and entitlements than workers to whom the Fair Work Act 2009 (the Act) applies,

(B) the removal of components of the long-held principles relating to termination, change and redundancy from state legislation is a breach of obligations under the ILO conventions ratified by Australia,

(C) the rendering unenforceable of elements of existing collective agreements relating to employment security is a breach of the obligations under the ILO conventions ratified by Australia relating to collective bargaining,

(D) the current state government industrial relations frameworks provide protection to workers as required under the ILO conventions ratified by Australia,

(E) state public sector workers face particular difficulties in bargaining under state or federal legislation, and

(F) the Act provides the same protections to state public sector workers as it does to other workers to the extent possible, within the scope of the Commonwealth's legislative powers; and

(ii) noting the scope of states' referrals of power to support the Act, what legislative or regulatory options are available to the Commonwealth to ensure that all Australian workers, including those in state public sectors, have adequate and equal protection of their rights at work.

Inquiry – *UFUQ response to the terms of reference:*

(i)

(A) the current state government industrial relations legislation provides state public sector workers with less protection and entitlements than workers to whom the Fair Work Act 2009 (the Act) applies

The current state government has altered the long-standing employment arrangements of UFUQ members. These changes have, for example, lessened UFUQ members' rights to consultation over changes in their workplace and to collective bargaining standards.

Consultation over changes (in particular consulting employees about redundancy) and access to collective bargaining for employees in the federal sphere are entitlements preserved in the Fair Work Act 2009.

Queensland public sector employees, covered by the state industrial relations system recently modified by the current LNP government, are therefore provided with less protection and entitlements than workers to whom the Fair Work Act 2009 apply.

The current Queensland LNP government introduced changes to specifically reduce the rights of public sector employees in Queensland.

The IR Amendment Act modified the provisions relating to contracting out, employment security and organisational change contained in industrial instruments covering UFUQ members.

(i)

(B) the removal of components of the long-held principles relating to termination, change and redundancy from state legislation is a breach of obligations under the ILO conventions ratified by Australia

The IR Amendment Act introduced by the Queensland LNP government removed elements of the employer's obligation to consult during termination of employment situations. This has a direct effect of reducing the rights of UFUQ members to less than that provided by the ILO convention (C158).

The FW Act directly provides for coverage of employees of the principles of Article 13 of C158. The changes to the Queensland industrial legislation now provide a lower standard than the FW Act. Prior to the changes in the IR Amendment Act, the IR Act offered a similar level of protection as the FW Act, with reference to Article 13 of C158.

The Queensland LNP government has removed the application to UFUQ members of the relevant parts of the Qld IR Act dealing with TCR provisions about notification and consultation.

(i)

(C) the rendering unenforceable of elements of existing collective agreements relating to employment security is a breach of the obligations under the ILO conventions ratified by Australia relating to collective bargaining

The ILO conventions regarding collective bargaining expect an environment that allows free bargaining and parties sticking to their bargains (eg: ILO Convention C98).

It would contradict the convention if one party could unilaterally withdraw from selective elements of a settled package. This contradiction is deeper when the power relationship favours a party's ability to effectively renege on a bargain.

The state government's actions in legislating unenforceability into elements of a settled bargain are a breach of ILO conventions.

This action may be contrasted, for example with the more extreme aspects of the infamous "Workchoices" legislation where certain bargaining issues were prohibited. Such extreme restrictions on bargaining did not extend to undoing existing bargains.

Rendering as unenforceable elements of existing collective agreements is a breach of ILO obligations. The breach is especially odious when the targeted elements go to ILO conventions regarding employment security.

(i)

(D) the current state government industrial relations frameworks provide protection to workers as required under the ILO conventions ratified by Australia

The recent changes made by the Queensland LNP government have limited the protections of employees during termination, change and redundancy situations.

In addition to legislating to dilute the Industrial Relations Act 1999 in relation to TCR provisions the State government has altered the basis for issuing public service directives that also affect employment security.

Directives are now issued by the chief executive of the Public Service Commission (PSC) and not (as they were previously to the changes) by a relevant Minister of the Queensland government.

The IR Act allows for the QIRC to protect employment arrangements when there is inconsistency between the industrial instruments and Directives, if issued by a Minister administering the IR Act. The IR Act does not appear to allow for the QIRC to intervene when the Chief Executive of the PSC issues a Directive.

The Directives issued since this change have diminished the protection of UFUQ members via, notification and consultation about termination of employment, which is a standard set by ILO Convention C158.

(i)

(E) state public sector workers face particular difficulties in bargaining under state or federal legislation

Collective bargaining has been a part of UFUQ members' employment conditions since 1994. Bargaining has occurred every three years. Historically, the bargaining process has been constructive between UFUQ and QFRS.

There has always been a genuine commitment by both parties to reaching agreement.

There have been no occasions in Queensland when the QFRS and UFUQ bargaining process has irrevocably broken down and the QIRC has arbitrated a resolution. There have been a few occasions where the parties had agreed to have discrete issues arbitrated and in 2013, for the very first time the QIRC will arbitrate a determination of a failed bargaining negotiation.

The current Queensland LNP government has made changes to state industrial relations legislation which has created new and particular difficulties for UFUQ members employed by the state government.

Industrial action is subject to fetters beyond that applicable to federal system employees. Under the new Queensland laws industrial action ballots are forbidden until after "negotiations have begun". This means the government can delay, or even refuse to commence negotiations and UFUQ members would not be able to take protected industrial action to motivate them to bargain.

The Government can order that industrial action cease without any referral to an industrial tribunal. In circumstances where such a ministerial declaration is made, an unrealistic time frame of 21 days is imposed for the reaching of a conciliated outcome, or the matters are rushed into an imposed arbitration.

The government can ignore authorised representatives and put a proposed agreement directly to ballot. The state legislation also dispenses with the legislative bargaining preliminaries such as notifying employees about negotiations in circumstances where bargaining commences with a union but concludes with an employee 'non union' ballot.

(i)

(F) the Act provides the same protections to state public sector workers as it does to other workers to the extent possible, within the scope of the Commonwealth's legislative powers

The Fair Work Act 2009 does not have to be restricted to the current scope of "national system employees" as defined. Part 6-4 of this Act gives the definition of employer and employee their ordinary meaning. Therefore there is potential for the Act to give coverage and protection to all employees, regardless of the jurisdiction within which they are employed.

(ii)

noting the scope of states' referrals of power to support the Act, what legislative or regulatory options are available to the Commonwealth to ensure that all Australian workers, including those in state public sectors, have adequate and equal protection of their rights at work.

As discussed above, the current Queensland LNP government has unilaterally removed protections previously afforded to UFUQ members through changes to industrial relations legislation and by issuing Directives relating to UFUQ members employment terms and conditions (specifically employment security, contracting out and organisational change).

These changes have resulted in UFUQ members having fewer protections under the Queensland industrial relations legislative framework than they would have under the current federal Fair Work Act. Further, UFUQ members have fewer protections than those offered by relevant ILO Conventions, to which Australia are signatory.

UFUQ therefore submit that the federal government utilise the constitutional external affairs powers available to them (or other powers available to them) to ensure that UFUQ members (Queensland public sector employees) are not disadvantaged, and that minimum standards within the relevant ILO Conventions (to which Australia are a signatory) are re-established and maintained.