



**Senate Education, Employment and Workplace Relations
Committees inquiry into the conditions of employment of state
public sector employees and the adequacy of protection of their
rights at work as compared with other employees**

Submission of Unions NSW

19 February 2013

Submission by: Unions NSW
Trades Hall
Level 3, 4 Goulburn Street
Sydney NSW 2000
T: 02 9881 5999
F: 02 9261 3505
E: mail@unionsnsw.org.au

Introduction

1. Unions NSW welcomes the opportunity to make a submission to the *Inquiry into the conditions of employment of state public sector employees and the adequacy of protection of their rights at work as compared with other employees.*
2. Unions NSW is the peak body of unions in NSW. It has 64 affiliated unions, 10 affiliated regional trades and labour council and represents approximately 600 000 union members.
3. Of Unions NSW's affiliated unions, 17 unions represent workers in the public sector. There are approximately 315 000 public sector employees who are union members in NSW.
4. Since the election of the O'Farrell Government in March 2011 the public sector workforce have had their conditions and job security reduced as a result of government amendments to legislation, policies and work practices. This submission seeks to identify the key actions by the O'Farrell Government which have sought to remove or reduce the rights and / or entitlements of public sector employees.

Legislation, regulations and policies that have affected NSW Public Sector Employees

Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011 (NSW) and the NSW Public Sector Wages Policy 2011

5. In May 2011 the NSW Government introduced the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011. The resulting act amended the *Industrial Relations Act 1996 (NSW)* to introduce a new section, s 146c, which compels the Industrial Relations Commission of NSW when making or varying any award or order to

Unions NSW

give effect to any NSW Government policy regarding the conditions of employment of public sector employees.

6. The Government's rationale for introducing the amending legislation was their need to restrain employee wage claims which represent the largest component of government expenditure in NSW.
7. The amendment enshrined the NSW Public Sector Wages Policy into law which requires employee related cost savings to be identified to fully offset any wage related increases above 2.5% per annum.
8. The Minister stated the Industrial Relations Commission of New South Wales had, on several occasions, independently made rulings which saw a series of wage increases above 2.5% and this was undesirable.
9. This amendment leaves public sector employees in New South Wales with less rights than any other worker in the state as it enables executive government, which serves dual roles as both employer and regulator, to dictate the wages and conditions of public sector employees.
10. It achieves this by constraining the arbitral powers of the Industrial Relations Commission of New South Wales and removes the ability of public sector employees to seek independent arbitration. No other employer in New South Wales is able to unilaterally determine the wages and conditions of their workforce.
11. Under the Fair Work Act employees have the unrestrained right to collectively bargain for their wages and conditions. Previously, under the *Industrial Relations Act 1996* (NSW), employees were entitled to collectively bargain with their employer and, where agreement couldn't be reached, the Industrial Relations Commission of NSW had the power to independently arbitrate wage disputes.

12. The limiting of wage increases to 2.5% per annum (the mid-point of the Reserve Bank of Australia's target band for inflation) does not allow wage increases to match increases in the cost of living. In many years where inflation is running high this provides employees with a pay cut in real terms.
13. The NSW Public Sector Wages Policy 2007 states that to maintain wages in real terms, the NSW Government will fund a 2.5 per cent annual increase in employee related expenses (wages). In addition, it stipulates that agencies must fund any increases above 2.5 per cent per annum to wages, or other employee related expenses such as allowances, superannuation etc through employee related cost saving measures¹.
14. The approach adopted by the NSW Government "is to rely on the RBA to achieve its agreement with the Commonwealth Government to maintain national CPI inflation within a range of 2-3 per cent over the cycle", I.E. an average of 2.5 per cent. But this target objective is in practice a medium-term objective which allows for the CPI to go outside the target range as long as the RBA pursues a monetary policy to bring the CPI back within its target range over the medium-term.
15. BIS Shrapnel and most other economists understand that 'over the cycle' implies a time period of 3 to 5 years. By clinging to the 2.5 per cent CPI forecast, the NSW Government is ignoring the current reality that CPI inflation, in through-the-year terms, is currently well above the 2.5 per cent mid-point, and is only expected to be on a slow downward drift over the next 12-18 months.
16. In a report prepared for Unions NSW, BIS Shrapnel stated they expect headline CPI inflation for Australia to average 3 per cent per year over the two years to 2011–12, and this is broadly consistent with forecasts

¹ BIS Shrapnel Pty Limited, Economic Report For State Wage Case 2010, October 2010, Report Prepared For Unions New South Wales pg 12

provided by the Reserve Bank of Australia. This means that a 2.5 per cent increase in base wages will not maintain real wages — it would lead to an erosion of real wages for NSW public sector employees of 0.5 per cent per annum — and is therefore inconsistent with its own wages policy.

17. In 2011 the Workplace Research Centre conducted research that demonstrated the impacts that this policy would have had on public sector wages had it of been introduced 10 years ago. The following table outlines the results of this research.

Unions NSW

DR JOHN BUCHANAN, 'ARE NSW PUBLIC SECTOR WORKERS OVERPAID?' RESEARCH NOTE NO 1: INTERSTATE WAGE COMPARISONS FOR PUBLIC SECTOR TEACHERS, SENIOR CONSTABLES AND REGISTERED NURSES AT THE TOP OF THEIR PAY SCALES, 27 MAY 2011

Table 2: NSW Government rates if 2.5% wage policy had been implemented 2001 – 2011² and Current³ rates of pay for iconic job categories⁴ of Australian State based Public Sector Occupations (rates at top of the scale⁵): annual earnings for full time worker (38 hour week basis)

Teachers		Senior Constables		Registered Nurse	
State	Rate	State	Rate	State	Rate ⁶
Victoria	\$81,806	WA	\$76,226 ⁷	ACT	\$70,001.56
Queensland	\$81,372	NT	\$74,193 ⁵	Queensland	\$69,985.93
		SA	\$71,906	NT	\$69,755.65
		Queensland	\$69,421	Victoria	\$68,042.23 ⁸
		Victoria	\$69,219	SA	\$67,685.72
				Tas	\$67,025.09
				WA	\$64,624.84
NSW	\$76,283.1	NSW	\$67,675	NSW	\$62,265.23
Average all States + Territories	[\$82,646]		[\$72,693.33]		[\$68,250]

Sources: material on comparative rates kept by AEU, ANF (Federal Office: nurses' paycheck: a comprehensive analysis of nurses' wages, March-May 2011 Vol 10 No 2) and NSW PA.

² This table is based on a very elementary estimate of wage cut. The basis was looking at the Wage Price Index March 09 to March 11 and Treasury budget forecasts for WPI movements of 4 and 4.35% in this and the next financial year. If we wage increases had been held to 2.5 this would have resulted in an aggregate cut of 6.85%. To tighten this up we need (a) to get WPI annual data back 10 years, (b) adjust it for the 2.5% cap and (c) estimate the fall income on a cumulative not additive basis. These figures are, however, useful to get a sense of the likely order of magnitude of loss we'll find.

³ As provided by Unions NSW Affiliated union

⁴ Selected on basis of where many public sector currently work

⁵ Note the nature of pay scales varies dramatically by State. It is assumed that access to the top is essential straightforward subject to satisfactory performance over years served

⁶ These annual figures have been calculated using weekly data multiplied by 52.1 to get annual full time equivalent

⁷ This is based on a 38 hour working week equivalent.

⁸ Victorian nursing rates need to be adjusted for a weekly qualifications loading. These vary by level of qualification. This number includes an allowance of \$3,417 paid to a nurse for an additional Graduate Diploma Qualification.

18. At this stage the NSW Government has used this legislation primarily to limit wage increases however the NSW Government could, by executive order, change the NSW Public Sector Wages Policy and enact an actual pay cut. Additionally, the NSW Government could remove or alter any condition of employment for public sector employees with the stroke of a pen.
19. Unions NSW finds such executive power deeply concerning. Unions NSW is of the view that this legislation confers sweeping unregulated powers upon a government without any independent review mechanism.
20. Unions NSW believes public sector employees in New South Wales should have access to an independent body that can arbitrate disputes and certify enterprise agreements and awards on the merits of the claims and not simply be confined to adjudicating whether they comply with government policy.
21. Further, Unions NSW believes that public sector employees should be able to negotiate, or have the Industrial Relations Commission of NSW conciliate and/or arbitrate, wage increases above the 2.5% per annum limit imposed by s 146C of the *Industrial Relations Act 1996* (NSW).

Industrial relations Amendment (Dispute Orders) Bill 2012

22. The *Industrial Relations Amendment (Dispute Orders) Bill 2012* is currently before the NSW Parliament and seeks to dramatically increase the maximum monetary penalties that may be imposed as a result of a contravention of a dispute order. The Bill provides for an increase in the maximum penalty for the first breach of a dispute order from \$10,000 to \$110,000 for the first day and an increase from \$5,000 to \$55,000 for each subsequent day.

Unions NSW

23. Subsequent breaches have been increased from \$20,000 to \$220,000 for the first day and from \$10,000 to \$220,000 for each subsequent day.

24. The Bill would see a 1000% increase in fines charged to union members taking industrial action in contravention of a dispute order.

25. The penalties prescribed by this bill are disproportionately high when compared to those prescribed in other jurisdictions.

26. Below is a comparison of fines in other jurisdictions

Jurisdiction	Maximum penalty for unions	Legislation
NSW (proposed)	\$110,000 for the first day of a first offence and \$55,000 for each subsequent day. \$210,000 for the first day of subsequent offences and \$110,000 for each subsequent day.	s139 <i>Industrial Relations Amendment (Dispute Orders) Bill 2012</i> (NSW)
Queensland	\$100,000	s234 <i>Industrial Relations Act 1999</i> (QLD)
South Australia	\$2,500	s177 <i>Fair Work Act 1994</i> (SA)
Western Australia	\$2,000	s83 <i>Industrial Relations Act 1979</i> (WA)
Tasmania	\$6,500 (50 penalty units)	s31 <i>Industrial Relations Act 1984</i> (Tas)
Australian Capital	\$33,000 (300 penalty	ss539 & 546 <i>Fair Work</i>

Unions NSW

Territory	units)	<i>Act 2009 (ACT)</i>
Northern Territory	\$33,000 (300 penalty units)	ss539 & 546 <i>Fair Work Act 2009 (ACT)</i>
Victoria	\$33,000 (300 penalty units)	ss539 & 546 <i>Fair Work Act 2009 (ACT)</i>
Federal	\$33,000 (300 penalty units)	ss539 & 546 <i>Fair Work Act 2009 (ACT)</i>

27. Should this Bill become law public sector workers in NSW would be disproportionately penalised compared to other workers in Australia.

28. The disproportionate response provided by this Bill is exacerbated by the significant reduction in wages and conditions for public sector employees who also have had any independent judicial oversight removed from the NSW industrial system.

29. The *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* (NSW) impedes public sector workers' access to independent arbitration through the Industrial Relations Commission of New South Wales and in turn diminishes the effectiveness of collective bargaining. The imposition of the *Dispute Orders Bill*, further constrains public sector workers' ability to collectively bargain.

30. Both pieces of legislation can be seen as a concerted attack on the collective strength of public sector workers.

Workers Compensation Legislation Amendment Act 2012

31. On 22 June 2012 the New South Wales Government passed the *Workers Compensation Legislation Amendment Act 2012*. The Amendments made to the workers compensation scheme drastically reduced the rights and entitlements of injured workers.

32. Prior to the passing of the *Workers Compensation Legislation Amendment Act 2012*, the Government established a Joint Select Committee to inquire into proposed changes to the scheme. The Committee was established on 1 May and issued a report on 13 June 2012. There was significant opposition and concern raised in the inquiry process by health professionals and unions. These concerns were not addressed in the Government's amendment.
33. The majority of the new workers compensation scheme was introduced on 1 January 2013. Some of the main changes of the scheme include:
34. **Medical expenses** – Medical and other treatment expenses are capped and will only be paid for a period of up to 12 months after a worker is injured or 12 months after their weekly payments cease.
35. Prior to the 2012 amendments, medical and treatment expenses were provided for as long as they were required.
36. **Weekly payments** – The majority of injured workers receiving weekly workers compensation payments will cease to receive these payments after 130 weeks. Workers who have no work capacity indefinitely and those who are able to work more than 15 hours a week may continue to receive payments for up to 5 years. After 5 years only injured workers with a Whole Person Impairment of 20% or over will receive weekly payments.
37. Prior to the 2012 amendments, payments to injured workers continued until they were able to return to work or until they retired.
38. **Journey claims** – Employees are no longer covered by workers compensation for injuries that occur when travelling to or from work. These injuries may be covered if there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose. There is currently no clear legal

understanding of what constitutes a connection between the employment and the accident.

39. Prior to the 2012 amendments, all workers were covered by workers compensation when they were travelling to and from their place of employment.
40. In 2012 Unions NSW wrote to Transport for New South Wales, the body overseeing the transport portfolio within NSW, to seek clarification regarding how the new legislation will affect their employees. Unions NSW was particularly to find out which individual tasks public sector transport workers undertake would have a “real and substantial connection between the employment and the accident” and therefore would be eligible for workers compensation under the new legislation.
41. TfNSW is still unable to address the concerns raised by Unions NSW nor is it able to explain the circumstances under which an employee is able to make a claim.
42. **Lump sum claims** – Lump sum claims are only available for very serious permanent injuries, defined by the NSW Government as 10% whole person impairment.
43. **Nervous shock** – Partners and direct relatives of someone who has died in a workplace accident cannot access any workers compensation cover if they are diagnosed with nervous shock as a result of the workers death.
44. Prior to the 2012 amendments, partners and direct relatives had some access to workers compensation for nervous shock. This cover included paid time from work and access to medical treatment.

45. Amendments concerning medical and weekly payment caps are retrospective and affect workers who have been receiving workers compensation both before and after the legislation was passed.
46. Currently, injured workers who have already been receiving workers compensation are feeling the greatest effect of the workers compensation amendments. Since 1 January these workers have begun to be informed of the way in which the changes will impact them. In particular workers have been informed of caps being placed on their weekly payments and medical costs. One example of this is below:
47. Case study - medical costs and weekly payments:

In 2010 a 58 year old public sector employee working as a storeman, sustained a back injury when moving an unmarked crate that weighed 80kg. This injury was covered by the NSW workers compensation scheme which covered medical expenses and weekly payments when the employee was unable to work.

As a result of the injury the employee required a spinal fusion that was performed in 2011. Since receiving this spinal fusion, the employee has not returned to work. The employee is capable of some work duties; however the employer has only offered work 90 minutes from where the employee lives. Because the employee has a spinal fusion long commuting times aggravate the employee's medical condition.

Under the new legislation, this employee has been informed that he has expired the 130 week period of workers compensation payments and that these payments will stop in one month.

When the weekly payments cease the employee will only be entitled to another 12 months of medical costs. In 13 months' time the employee will need to pay for pain medication and future surgeries outside of the workers compensation system.

For the employee these costs will be quite significant. It is highly likely that he will require additional spinal fusions into the future and continued pain medication.

48. The effects of the workers compensation changes will only worsen as workplace accidents and injuries continue and injured workers continue to need the support offered by a workers compensation scheme.
 49. The amendments see less protection and support provided to injured workers. The new NSW workers compensation scheme will see thousands of injured workers sink into poverty as they are pushed into lower paid jobs and onto Government welfare payments whilst being forced to pay for their related medical expenses.
 50. These amendments affect workers in the private and public sector in NSW. Employees within the federal public sector and certain large national organisations are, however, covered by the Federal Government's Comcare scheme.
 51. There are a number of differences between the Comcare scheme and the NSW workers compensation scheme. A comparison of the two schemes can be found below.
1. Comparison between Comcare and NSW Workers Compensation System:

Unions NSW

Comcare	New NSW Workers Compensation system
Weekly Payments	
<p><u>Week 1-45</u></p> <p>100% of your normal weekly wage (including overtime).</p> <p><u>Week 46 +</u></p> <p>75% of your normal weekly wage until you return to work or reach 65 years of age.</p>	<p><u>Week 1-14</u></p> <p>Weekly payments drop to at best 95% of the injured worker's pre-injury wage (including overtime).</p> <p><u>Week 14-52</u></p> <p>Weekly payments drop to at best 80% of the injured worker's pre-injury wage (unless working at least 15 hours a week).</p> <p><u>Week 53-130</u></p> <p>Weekly payments drop to at best 80% of the injured worker's base wage (unless working at least 15 hours a week).</p> <p><u>Week 130 – 5 years</u></p> <p>After 2 ½ years, weekly payments are cut off, unless the injured worker is completely incapacitated for work (or is working at least 15 hours a week and is permanently unable to earn more).</p> <p><u>5 years +</u></p> <p>After five years, all weekly</p>

Unions NSW

	<p>payments cease unless the injured worker has a 20% Whole Person Impairment. Weekly payments cease for those with 20% Whole Person Impairment at retirement age.</p>
Journey Claims	
<p>Workers are entitled to receive workers compensation when they are injured or made ill whilst:</p> <ul style="list-style-type: none"> • working, including during normal breaks taken at their place of work; or <p>attending or travelling to and from official training, seminars, etc or the place where they are receiving treatment for a work-related and compensable injury or illness.</p>	<p>A worker will only be able to make a workers compensation claim if there is a “<i>real and substantial connection</i>” between the employment and the accident or incident that led to the injury/illness.</p>
Medical Expenses	
<p>All reasonably necessary medical costs arising from the injury will be paid by the workers compensation scheme for as long as required.</p>	<p>Medical costs will stop being paid one year after a claim is made or one year after weekly payments cease, whichever is longer.</p> <p>Workers who have 30% Whole Person Impairment will received ongoing medical expenses to one year after retirement age.</p>
Common law	
<p>Where the injury/illness has been caused by employer negligence and the worker has at least 10% Whole Person Impairment, the worker can make a common law damages claim.</p>	<p>Where the injury/illness has been caused by employer negligence and the worker has at least 15% Whole Person Impairment, the worker can make a work injury damages claim (formerly called a</p>

Unions NSW

<p>The claim is capped at \$110,000 and only compensates for pain and suffering. The worker continues to receive weekly benefits if eligible.</p> <p>The worker cannot make both a common law claim and a lump sum claim.</p>	<p>common law damages claim).</p> <p>The worker receives a payment calculated to reflect lost future wages, not pain and suffering. In return, the worker must give up any future payments under the scheme, including medical costs.</p>
<p>Lump sum payments</p>	
<p>Lump sum payments can be made when impairment is permanent and stable. For impairment that stabilises after 12 December 1988, there must be 10% Whole Person Impairment.</p>	<p>Injured workers cannot make a claim for pain and suffering. Injured workers can only make a lump sum payment claim if they have a serious and permanent injury, defined as 11% Whole Person Impairment.</p>
<p>Exclusions</p>	
<p>Claims for stress are not covered if they arise from reasonable administrative action taken in a reasonable manner. This would exclude stress claims arising from performance appraisal, disciplinary action, transfer etc.</p> <p>Claims can also be rejected for an injury that pre-dates employment and was not disclosed to the employer at commencement of employment or where the injury was caused by serious and wilful misconduct.</p>	<p>The employment must be “<i>the main contributing factor</i>” to a disease (including some back conditions) in order for it to be covered by workers compensation.</p> <p>There is no coverage for heart attacks or strokes unless the nature of the employment gave rise to “significantly greater risk”.</p>
<p>Partner Nervous Shock Claim</p>	
<p>There is no ability for the spouse, partner or direct family of a worker</p>	<p>Spouses, partners and direct family members of fatally injured workers</p>

Unions NSW

<p>fatally injured at work to make a claim for nervous shock.</p>	<p>can no longer claim for nervous shock.</p>
<p>Appeal rights</p>	
<p>If Comcare rejects a claim, the worker can ask for reconsideration. This must be done within 30 days in writing. If the claim is still rejected, the worker has 60 days to appeal to the Administrative Appeals Tribunal (AAT). If the worker wins before the AAT, legal costs will probably be paid by Comcare. If the worker loses before the AAT, the worker has to pay their own legal costs, but not Comcare's.</p>	<p>Only disputes about whether a workers compensation claim should be accepted or declined can be dealt with by the Workers Compensation Commission. Each party has to pay their own legal costs, win or lose.</p> <p>Disputes about most problems like wages, suitable duties, cutting off weekly payments will be handled by a different mechanism with limited appeal rights and no ability for the injured worker to use a lawyer to protect their rights.</p>
<p>Work capacity testing</p>	
<p>Work functional capacity testing can take place at reasonable intervals.</p> <p>A worker has to mitigate their loss. This means if they are terminated they must look for work within their capacity, training and experience.</p>	<p>Injured workers (except those with 30% Whole Person Impairment) can be asked to undergo work capacity testing at any time. If they are assessed as capable of working, their weekly payments are reduced, even if they don't have work through no fault of their own.</p>

52. The two most significant disadvantages that workers covered by the NSW scheme face when compared to their federal counterparts are: weekly payment caps and medical expenses caps.

53. Despite this advantage under the Comcare scheme, Unions NSW does not suggest or support the expansion of the Comcare system into the NSW workers compensation coverage.

54. Unions NSW would like to see the entitlements that injured workers had access to prior to the O'Farrell amendments reinstated.

55. Unions NSW would also be interested in taking part in a serious discussion about how the NSW workers compensation system could be amended to truly address the needs of injured workers and support them in an appropriate way.

Crown Employees (Public Service Conditions of Employment) Award

56. In June 2012 the NSW Government filed an application in the Industrial Relations Commission of NSW to seek a number of changes to the *Crown Employees (Public Service Conditions of Employment) Award*.

57. This application sought to reduce or completely eliminate a number of key conditions of employment for the employees covered by this Award.

58. Changes that were put forward by the Government included:

- Cutting penalty rates for shift workers
- Removing annual leave loading
- Removing the ability of employees to use sick leave to 'top up' workers compensation payments
- Removing Family and Community Services leave

59. The *Crown Employees (Public Service Conditions of Employment) Award* does not cover all public sector employees however Unions NSW raised concerns that this Award application would set a

precedent for how the present NSW Government will alter other public sector awards.

60. The NSW Government removed their Award application on 12th Feb 2013.

61. Whilst these award conditions are no longer directly facing public sector employees the power conferred to the Government through the *Industrial Relations Amendment (Public Sector Conditions of Employment) 2011* means that cuts similar to those listed above remain a constant threat for public sector employees.

Managing excess employees policy, June 2011

62. In June 2011 the NSW Government circulated a public sector wide *Managing Excess Employees Policy*, which introduced a new approach to public sector redundancies.

63. The policy provides public sector employees who are identified as “excess employees” with 2 weeks to choose between a voluntary redundancy or to seek redeployment.

64. If a public sector employee chooses to accept the voluntary redundancy they are entitled to severance pay of three weeks for each year of continuous service to a maximum of 39 weeks payable plus additional payments of up to eight weeks pay based on years of service.

65. An employee who elects to seek redeployment will have a three month retention period in which to seek employment elsewhere in the public sector. If he/she is unable to find alternate work during the retention period they will be made forcibly redundant.

66. At this stage the maximum severance payment they are entitled to is 20 weeks (6 or more years of service) or 25 weeks if they are over the age of 45.
67. The key concern of Unions NSW is the inability for unions to bargain for improved redundancy conditions as provided for in the Federal industrial relations system.
68. The *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* restricts the ability for policies concerning excess employees to be incorporated into industrial instruments whereas under the Fair Work Act, redundancy provisions are not a restricted term within an award or agreement.

Effects on public sector employees and the state of NSW

69. The policies and legislation of the NSW Government, which have been summarised above, demonstrate a systematic campaign to reduce the pay, conditions and workplace rights of public sector workers.
70. Unions NSW submits that the impacts of this legislation and policy will worsen as the pay of public sector workers contracts in real terms when compared to private sector workers under the current policies of the NSW Government.
71. This will have significant flow on affects for the quality of life for public sector workers and their families.
72. Further, it is expected that a number of public sector workers will move into the private sector, out of the profession or interstate as a result of diminishing wages, entitlements and rights in the public sector.
73. With wages restricted, other entitlements under threat into the future, limited workers compensation cover and the abandoning of nurse to

patient ratios, many nurses will leave the profession or move into the private sector. NSW is currently facing a shortage of nurses in the state, which will only worsen under the current industrial environment. This same problem will be faced by the government industry wide within the public sector.

Ratified International Labour Organisation Convention being violated

74. The ILO *Right to Organise and Collective Bargaining Convention* is inconsistent with the NSW Government's *Industrial Relations Amendment (Public Sector Conditions of Employment) Regulation* and wages policy.

75. Article 4 of the convention states:

- a. 'Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreement.'

76. As outlined above the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act* limits the access that public sector employees have to an independent umpire in the process of collective bargaining. The Legislation also allows for the employer to override the process of collective bargaining by placing an arbitrary wage rate on all negotiations.

77. The Convention is further violated by the *Industrial Relations Amendment (Dispute Orders) Bill*, which seeks to further limit the collective voice of public sector workers.

78. The ILO *Right to Organise and Collectively Bargain Convention* was ratified by Australia on 28.02.1973.

79. Article 1 of the International Labour Organization *Termination of Employment Convention, 1982 (no 158)* states:

- a. 'the provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations'

80. This is inconsistent with the current *NSW Excess Employees Policy* as the Government policy restricts the inclusion of termination and redundancy policies within agreements and awards. The detail of the *Excess Employees Policy* has been outlined above.

81. The ILO *Termination of Employment Convention* was ratified by Australia in 26.02.1993.

Fair Work Amendment to protect outsourced state public servants

76. In 2012 the Federal Government amended the Fair Work Act which sought to change the Act's transfer of business provisions. The amendment regulates employment conditions when transfer of business of business occurs from a state public sector employer to a new employer who is covered by the national industrial relations system. The amendment specifically targets outsourcing and privatisation.

77. The change will ensure that former public sector employees will see their existing terms, conditions and accrued entitlements protected and have their prior service recognised.

78. Unions NSW warmly welcomed this amendment to the Fair Work Act.
79. In addition to cutbacks to the conditions and rights of public sector workers since 2011, the NSW Government has also made a number of plans to privatise public assets, outsource jobs and significantly reduce the size of the public sector workforce.
80. The approach that is being taken by the O'Farrell Government places the pay and conditions of public sector employees at risk.
81. Current outsourcing arrangements at the State Government level see public sector workers performing the same tasks under 'new management' with their conditions undercut. Unions NSW believes in equal pay for work of equal value, which is not what the NSW Government has been demonstrating.
82. In spite of this, the Fair Work Amendment has reinforced the concept of equal pay and ensured that the conditions of public sector workers are protected when State Governments choose to undercut the workplace conditions of public sector employees.

Conclusion

76. Unions NSW acknowledges the limitations of the Federal Government to interfere with public sector industrial legislation.
77. However, Unions NSW believes that the Federal Government can play a role in ensuring fairness and justice for public sector workers in NSW and in other states.
78. Unions NSW has summarised the legislation and policies that threaten collective bargaining, workplace rights and entitlements. As outlined above, these threats also contravene two key International Labour Organisation conventions to which Australia is a signatory.

79. The standards that have been set within these ILO conventions show a basic respect and procedural fairness that workers are entitled to and that the NSW Government has violated.
80. Unions NSW encourages the Federal Government to engage in serious discussion with NSW and other State Governments at the next Council of Australian Governments meeting around Industrial Relations policy.
81. Unions NSW urges the Federal Government to discuss the reinstatement of rights and entitlements to public sector employees to ensure that they are consistent with international standards and continue to present Australia as a world-class employer.
82. Unions NSW encourages the Federal Government to consider a range of options that may assist in these discussions including the ability to enforce compliance with ILO conventions. Further the Federal Government may wish to withdraw joint state funding for state projects, particularly those that engage a workforce working under the current NSW industrial relations system.
83. Unions NSW believes that the Federal Government should play a role in terms of ensuring that state governments comply with the relevant ILO Conventions.