



**UNITED FIREFIGHTERS UNION
OF AUSTRALIA
WEST AUSTRALIAN BRANCH**

ABN: 31 367 577 278

PRESIDENT: Kevin Jolly *AFSM*

SECRETARY: Lea Anderson

4th of May 2018

Ref: 14/18

Mr Mark Ritter SC
IR Review Secretariat
Department of Mines, Industry Regulation and Safety
Level 4, 140 William Street
PERTH
WA 6000

Via email: irreviewsecretariat@dmirs.wa.gov.au

Dear Mr Ritter,

Re: Submissions on Interim IR Review Report

The United Firefighters Union of Australia, West Australia Branch ("The Union") welcomes the opportunity to make submissions on the Interim Ministerial review into the State Industrial Relations System released 20 March 2018.

The Union supports some recommendations, though has concerns about other proposed recommendations. The Union supports and adopts the submissions made by Unions WA in relation to the interim report, and would like to emphasis the Unions position and submissions in relation to the following recommendations:

Term of Reference 1

- Recommendation 3:

The suggestion to re-draft the *Industrial Relations Act* be expressed in plain English is not opposed in principle, however should be should be approached with extreme caution. The current IR Act words and terms are well understood and changes to words, even with careful intent not to change any meanings, often results in disputes between parties. As a result any re-drafting will inevitably change the current meaning and intent of the Act.

- Recommendation 4 & 6:

The Union does not agree with the proposed changes contained in the interim report that make the Industrial Relations system more legalistic, and complex structurally. The Industrial Relations jurisdiction has historically been structured to be a "lay person's jurisdiction" to allow all workers the chance to access the jurisdiction and enforce their rights. Ensuring that the Industrial Commission remains a "lay person's jurisdiction" keeps it an effective and accessible jurisdiction for workers. An increased legalistic approach would on the whole favour employers and ensure that more lawyers are needed and will have to be hired or employed at some considerable expense to engage with the jurisdiction, possibly denying access for those parties that may face economic disadvantage.

- Recommendation 5:

The Union similarly submits that the recommendation that a Supreme Court Justice be appointed to the new role of the Presiding Member should be reconsidered. The Union supports the Presiding Member being a person with grounding in industrial relations, as is current practise. Given that the proposed recommendation for the Presiding Member role appears to be on a rotating, or case by case, appointment the lack of experience in industrial relations would be exacerbated as experience would not reliably accumulate.

The appointment of Commissioners from a range of backgrounds in the "tripartite" convention (rotating between employee, employer, and neutral appointments) has been a strength of the Commission, with many of the highly respected members of the Commission coming from lay backgrounds who have been able to fully apply the jurisdiction of the Commission.

- Recommendation 12:

The Union does not agree on restricting the application of the current s26(1)(a) of the Act, with an exclusion to matters of law, as the Union believes that the Commission can decide matters of law in a way that is consistent with "equity, good conscious and substantive merit".

- Recommendation 14(d):

In relation to the ability of the Commission to conduct telephone conciliations, with the Union's experience in the FWC with conducting matters by telephone is not positive, often producing less productive outcomes, and would suggest that it only be used as a course of last resort or not included at all.

Additional submissions

- Recommendation 17:

The Union does not agree that only certain Commissioners, in this instance those who have been legal practitioners for 5 years or more, should be certain hearing matters. Similarly to our position in relation to Recommendation 5 above, the Commission has been greatly served by non-admitted Commissioners, and further the Commission has been enriched by the range of experience and practice that Commissioners have delivered to the practical, and accessible cost effective existing jurisdiction .

- Recommendation 18:

The Union argues that no change is necessary to the current sections 31(1) and 31(4). It is preferable to ensure the Commission avoids unnecessary legalisation, with the current system working well and with an emphasis on practical solutions within the framework of the existing law.

- Recommendation 19:

The Union opposes any change that would create the WARIC jurisdiction into a costs jurisdiction in the strongest terms. The Commission can already deal with frivolous and vexatious claims through s 27(1)(a) and to the Union's knowledge there not been an issue to date which would warrant such proposed changes. The change would restrict access to the Commission and would likely become a routine 'counter-claim' that would need to be defended and decided by the Union with potential additional expense.

The Commission remaining a cost free jurisdiction is integral for access to the Commission, and access to justice for all those facing economic hardship, noting that workers would most likely be the most disadvantaged by any potential costs order inclusion.

Term of Reference 6:

The Union opposes the proposed award updating process which appears to be similar to the federal jurisdiction's model that has narrowed the content of awards, with the re-drafting creating a race to the bottom on conditions, and which has created an almost continual process of review which drains the resources of all parties. Ultimately such a recommendation would most likely create a burdensome, costly, time consuming process where conditions would be reduced.

Term of Reference 7:

The proposed changes to the Right of Entry provisions are not needed, with mechanisms already existing to address undesirable behaviour by officials under current s 49J(5). Further the onus would shift to the proposed Right of Entry card holder to prove they are a 'fit and proper' person in the absence of any contradictory evidence or behaviour, as in the Federal jurisdiction that has proved administratively burdensome. Such a recommendation is also a limit of freedom of association and the ability of unions to organise and access workplaces.

Please do not hesitate to contact me if you have any comments or questions about the Union's submissions on 9228 8122 or at lea@ufuofwa.net.au.

Yours faithfully,

A handwritten signature in black ink that reads "Lea Anderson". The signature is written in a cursive, slightly slanted style.

Lea Anderson
Secretary