Independent Education Union of Australia WA Branch

Mr Mark Ritter SC
Francis Burt Chambers
L23, 77 St Georges Terrace
Perth WA 6000

22nd January 2018

By email

Dear Mr Ritter SC,

Ministerial review of State Industrial Relations System

Thank you for inviting the Independent Education Union of Australia WA Branch to make submissions on the Ministerial Review of the State Industrial Relations System here in WA.

Further we acknowledge and thank the Head of the Head for allowing the IEU an extension of time until close of business Monday the 22nd of January 2018 to provide our submission.

1. **As per the Terms of Reference (TOR), we have a view that there are a number of areas of the current State Industrial Relations system that would benefit from being reviewed.**

Accordingly we offer a brief outline below in regard to these matters. Should you require a more detailed submission on any or all of the areas highlighted below, we would be happy to provide further submissions at your request.

2. **Notwithstanding the above the IEU has also noted in this submission other areas that fall within the State Industrial Relations System (the Minimum Conditions of Employment Act 1993 and the Long Service Leave Act 1958) that we feel would benefit from a prompt and timely review.**

3. **Finally we submit that there are a number of areas of the current State Industrial Relations system that require no amendment.**

1. **Areas for review:**

Anti-bullying: Terms of Reference 2,4 and 7(b)

We submit that there is currently a genuine lack of any access and therefore recourse for workers who find themselves in a position of being bullied in the workplace.
Currently there is a limited recourse for a worker to report a complaint of bullying in the workplace to a Worksafe inspector, however the remedies are limited, often time consuming and delayed.

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Lack of general protections in the State System: TOR 2 & 7(b)

Unlike the Federal IR system, there is no suitable recourse for a worker in the State System to be protected from any adverse action/s.
The **adverse action provisions** in the Federal industrial system generally work well and the IEU would support similar legislation being inserted into the WA State Industrial legislation.

Accordingly we suggest that a new jurisdiction can be set up within the Western Australian Industrial Relations Commission (WAIRC) to oversee and deal with these workplace rights.

An example of a comparative assessment would be the Queensland model that allows their QLD IR Act to grant powers to the QIRC to make orders in the prevention of workplace bullying.
The QLD IR Act adverse action provision greatly reflects what is contained in the *Fair Work Act 2009* (Cth) and includes a civil remedy provision.

Varying industrial agreements: TOR 2

We submit that notwithstanding the varying of an Agreement should only be by the consent of the relevant party or parties, an exemption could be made where an Agreement would need to be varied by the WAIRC to ensure that minimum conditions and/or the relevant Award conditions are maintained in the Agreement.

We understand the operation of the IR Act operates to automatically deal with the Minimum Conditions of Employment being a mandatory requirement of all Industrial Agreements, but often employees only reference the industrial Agreement at their workplace and not the Minimum Conditions of Employment Act.

We would also submit that where it is necessary to preserve the health and safety of workers under the industrial agreement, then the Commission should have the power to vary such Industrial Agreement.

Definition of employee: TOR 4

The definition of "employee" should be broadened to capture the changing nature of employee arrangements and therefore we would submit that the extended definition of an "employee" should be as defined in Section 5 of the *Workers Compensation Act 1981* (WA).

Update penalties: TOR 7

Increase the penalties applicable to breaches under Part 3 Section 83E of the IR Act.

Simplification of enforcement: TOR 7

We submit that a simplified system of enforcement be included in the IR Act to allow a worker or an organisation of employees to seek enforcement and an Order in relation to a breach of the Act.
For example, this could be done by removing the distinction between the Industrial Magistrates' Court's general jurisdiction and the prosecution jurisdiction in Section 81CA of the IR Act.

Retrospective pay orders: TOR 2

We submit that this Review needs to clarify the power of the WAIRC with respect to making an order for retrospective pay increases under Section 42I of the IR Act. There has been some uncertainty in this areas due to conflicting single Commissioner decision/s.
We say that Commissioners should have the power to grant retrospective pay increases.

Equal remuneration: TOR 3

As a union whose membership is comprised of 70% women, the IEU supports the insertion of an equal remuneration provision into the *Industrial Relations Act 1979.*
The Federal system has the inclusion of such provisions in the *Fair Work Act 2009, Division 2 Equal Remuneration Orders,* and similar provisions being inserted into the IR Act would be of great value to the employees of this State.

Minimum conditions of employment:

The IEUWA supports the notion that the minimum conditions should be updated immediately and on a periodic basis without the need for legislative change.

Gender Neutral: TOR 1:

As part of this review, there is a need to ensure that gender neutral language is used throughout all legislation that is covered by the *Industrial Relations Act 1979* including but not limited to the *Long Service Leave Act 1958.*

2. Other areas that fall within the State Industrial Relations System (the Minimum Conditions of Employment Act 1993 and the Long Service Leave Act 1958) that we feel would benefit from a prompt and timely review.

Minimum Conditions of Employment Act 1993

Section 3 terms used

A definition should be included in this section that defines a casual employee (including conversion from casual to permanent provision) and a part time employee.

Section 11 Minimum rate of pay for casual employees including loading

The casual loading specified in subclause (2) should be increased to 25% in line with various State Awards/Industrial Agreements as well as Federal Awards/Agreements.

Section 12 Minimum weekly rate of pay for employees aged 21 or more

We say that the adult age should be reduced from 21 years to 18 years. Given that for purposes of voting and enlisting in the armed services and fighting in wars, 18 is deemed to be of "adult age"
Further as the modern day workforce has predominately transitioned into competency based training and qualification, why should a competent 18 year old be paid any less than a competent 21 year old working in the same position?

Section 13 Minimum weekly rate of pay for employees aged under 21

To be consistent with our position in section 12 above, we submit that the "Age Table" be amended to finish at 18 years old not 21 years old.

Part 3A – Other requirements to pay

We say that this section of the Act needs to have inserted in it a reference to employee payslips and the employers' requirement to supply payslips in a legible, accessible and timely fashion. Further the cycle of payments should be in accordance of the cycle at the workplace but no longer than 14 days.

Section 17 D Authorised deductions from pay

We say that there should be a reasonable penalty in accordance with the Act placed on any employer who deducts monies from an employees' pay without the written authority to do so.

Section 18 Paid leave, how pay calculated

In subsection (3), given the modern and innovative ways of salary/wage packaging, any penalties/allowances that are paid for the ordinary rostered hours of work should be included in determining any rate of payment for the purposes of Part 4 – Minimum leave conditions.

Section 19 Entitlement to paid leave for illness, injury of family care

In subsection (1) we say that the annual entitlement for this type of leave should be increased from 10 days per annum to 15 days per annum. This is in line with the increasing numbers of industrial agreements providing for entitlements above 10 days.
Further the actual days should reflect the actual rostered hours of each day. For example a 12 hour shift worker should be allowed 10 days at 12 hours based on their rostered daily hours.

Division 2 – Leave for illness or injury or family care

We say that in line with the WA State Government decision to make 2 weeks of paid Domestic Violence Leave available to Public sector employees; this should be included in the MCE Act.

We note that many Industrial Agreements approved in the Federal system now contain Family and Domestic violence leave provisions.

Section 25 Annual leave, when may be taken

We suggest a change to the wording to sub section (1). The suggested wording to read "…….subject to subsection (2), the employer is not to refuse ***any reasonable request by the employee from taking***……."

Section 27 Paid bereavement leave, entitlement to

We say that with regard to subsections (1) & (2), the 2 days leave should be increased to 5 days. This is in line with many contemporary Awards and Industrial Agreements.

Division 6 – Parental leave

We submit that this section should be amended to include 14 weeks paid parental leave for the primary carer and 3 weeks for the non-primary carer.

There should be more flexibility in regard to the timing of the leave for the non-primary carer in the period of the birth or the adoption of the child.

We also further submit that the duration of Parental leave should be extended to up to 5 years to coincide with compulsory school starting age.

We also recommend that there be an amendment so that a primary carer giver has the right to return to work in a part time capacity for up to 5 years to coincide with compulsory school starting age.

The IEU submits that following a period of part time work, the primary care giver be given the right to return to their pre- parental leave position without the risk of detriment.

Part 5 – Minimum conditions for employment changes with significant effect, and redundancy

The IEU suggests that there needs to be a Table of minimum Severance Payments based on years of service included in the MCE Act. At the moment the MCE Act (at Section 43(1)); only contains 8 hours of paid leave "*for the purpose of being interviewed for further employment".*
There is no severance payment as such.

We submit that the MCE Act should contain no less than the same severance benefits for redundancy as those as contained in the Federal National Employment Standards.

Section 41 Employee to be informed

We submit that in subsection (1), *that where applicable, the employee representative will also be informed of the employers' decision to discuss change'* be amended by the addition of '*and to allow the employee representative to be part of the discussion with the affected employee'.*

Section 44 Employment records to be kept by employer

We say at subsection (1) that the requirements in subsection (2) should apply to all employees regardless of what industrial instrument they work under.

At subsection (2) (a), we say that the reference to age 21 should be reduced to age 18 in line with our previous submissions on the adult rate of pay.

At subsection (2) (ab), we say that the income cap of $45,000 should be removed as we consider this is no longer relevant.

In subsection (2) we submit that as part of record keeping; the actual days of the week the employee worked should be included, e.g. Monday, Tuesday and Wednesday.

Section 45 Access to records kept by employer

At subsection (1) we submit that a new subclause be included (c) *"provide copies of employee records when requested by the employee"*

In relation to subsection (2), we submit that at subclause (a), there be added *"employee representative"* to be included as a *"Relevant person"*

At Subsection (3) (d), we submit that at the end of the sentence, the words *"providing that the pay period does not exceed 14 days following the request to inspect records"*

Long Service Leave Act 1958 (LSL Act)

Section 4 Interpretation

In subsection (1), the IEU submits that the definition of employee needs to be expanded to take into account the changing nature of work and types of employee engagement.

In subsection (1), the definition of ordinary pay should *"include shift premiums, overtime, penalty rates, allowances, or the like", "where these rates and allowances are being paid for the employees ordinary rostered hours of work"*

Section 6 What constitutes continuous employment

In subsection (1) (b), the IEU suggests that the 15 working days in any year be removed and replaced with *"any period of absence from duty necessitated by sickness of or injury provided that the employee is in receipt of paid entitlements".*

In subsection (2), a subclause should be added to state that *"paid parental leave should also be counted as time worked for the calculation of long service leave entitlements".*

Section 8 Long service leave

In relation to subsections (2) & (3), and in addition to the current pro-rata arrangements: the pro-rata provisions as contained in the NSW Long Service Leave Legislation should be inserted that deal with termination due to sickness/injury and pressing domestic necessity.

Section 9 Commencement of long service leave

In subsection (1) (b), we say that the reference to "separate periods of not less than one week" should be removed.

Rationale: i) Workplaces are more flexible than they were in the past in regard to the taking of any form of leave. Provided agreement is reached there should be no stipulation on the minimum or maximum period of leave taken as long as the employee has that quantum of leave entitlement accrued.

ii)Under the Federal National Employment Standards there is no restriction on the quantum of annual leave (i.e.: no minimum or maximum) an employee takes provided the employee has the amount of leave accrued to cover the request.

Section 26A Access to records kept by employer

In subsection (1*), 'employee representative'* should also be included as a '*Relevant person'.*

Subsection 27 Prohibition of employment during long service leave

The IEU strongly recommends that subsection (1) the prohibition of employment during a period of long service leave should be deleted.

Reasons for this necessary change include:
i) employees often hold more than one job simultaneously, especially low paid workers who work multiple jobs in order to have some level of financial security.

ii) it is very valuable for teachers and other staff in schools to experience other work environments and situations while they are on Long Service Leave, either overseas to gain wider experience or closer to home.

iii) schools often need teachers on Long Service Leave to come in and do the occasional day of relief or emergency teaching

iv) It would be unfair to penalise an employee who say works casually on weekends when taking their Monday to Friday job long service leave.

General LSL Submissions

Portable Long Service Leave

As already stated in the submissions above, in this modern job market there are many more insecure and mobile jobs including casual, part time, 'contract', fixed term etc.

It is proving difficult for ordinary wage and salary earners to be in one job long enough with the same employer to be able to accrue a long service leave entitlement or at least a pro-rata entitlement.

The IEU view is that it is time to strongly consider placing all workers on a portable long service leave scheme so that as long as an employee (multiple companies and employment arrangements) can attain the time served, then they can access paid long service leave.

The notion of portable long service leave already exists in the construction industry as well as the ACT for employees not engaged by the Public Service.

Death of an employee

We say that the LSL Act should contain provisions that require the employer on an employees' death, to pay to the deceased employees' estate automatically any long service leave entitlement without the need for a request from the deceased employees' family.

3. Areas of the current State Industrial Relations system that require no amendment.

1. Section 44 of the *Industrial Relations Act 1979* (WA) (**IR Act**). As this provision enables the Commission to enquire into and deal with any industrial matter, to narrow or limit the operation of this provision would be at odds with the Term of Reference 2.

2. The right of entry provision under Part 2, Division 2G of the IR Act should not be altered.

3. The regulation of organisations under Part 2 Divisions 4 & 5 of the IR Act in our opinion work well and does not require amendment/s.

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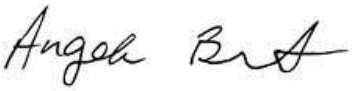
The IEUWA has no objections to this submission being publicly available.

Yours Faithfully



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