

Australian Nursing Federation Industrial Union of Workers Perth

Submission to the Ministerial Review of the State Industrial Relations System

December 2017

Noting the Government's commitment to delivering a fair and accessible and contemporary Industrial Relations system the ANF IUWP provides the following recommendations for consideration during the review. The ANF IUWP sees that the review presents an opportunity for modernisation of the current arrangements in the following ways:

1. Removal of Employer Employee Agreements from the legislation

These kind of agreements should be removed – they are individual arrangements and effectively replicate the old Federal AWA's which have since been removed in the Federal jurisdiction.

2. Increase the maximum age of Commissioners

It is considered that 65 is quite young for the retirement age for Commissioners and the maximum age should be increased.

3. Freedom of Association

The following changes are recommended:

- Delete s72A and replace it with a provision that bars the Commission from determining that an organisation has a right to the exclusion of another organisation to represent the industrial interests of a particular group of employees or any of the other matters in s72A (2)
- Delete s55 (5)
- Delete s58 (3)

The reasons are as follows.

The ANF IUWP believes the scope of reforms should include the deregulation of union membership and the removal of artificial limits on union eligibility rules to allow individuals to join the union they prefer, rather than be restricted to the one allocated to their industry, as is currently the case.

Providing choice would create competition, which would breed innovation and improvement among unions, as it does in the commercial sector.

Members should therefore have choice, in the same way Australians can choose the education, health or energy provider they utilise. The alternative is to maintain the status quo of protectionism among unions.

These unions may not offer services that are relevant to many of their members, nor operate in ways that workers respect, but they continue to exist because of the life support that protectionism gives them.

This is because under the current system, workers who are members of a union they do not trust, have to either put up with that organisation, or resign and have no union protection at all. Invariably many will choose the former option.

The ANF IUWP perspective may appear to contradict that of many other unions, but we are unlike other state-based unions. The ANF IUWP is not affiliated to any political party, because we believe we can best represent our members if the union is not politically aligned and blindly following political ideology. Instead, our sole focus is assisting the hard working nurses and midwives of Western Australia.

The objective of our submission on this point is to ensure that workers are able to have genuine choice as to who represents them. We hope that the Government will extend a free market approach to union membership regulations to facilitate that choice.

4. Employee applications to the WAIRC to be allowed

An employee should be able to bring any application about an industrial matter in their own name and other than just in the circumstances provided for in s29(1)(b); and they should be able to be represented by a person of their choice, including by a lawyer. This would facilitate broader access to the WAIRC for individuals. (Note that the provisions for representation otherwise should remain the same).

5. Remove need for service of documents and statutory declarations of service

The current rules with respect to service and declarations of service are outdated and need modernisation.

6. Bargaining

- Significant changes to industrial agreements in the way they are made and approved are recommended – for example, agreements should be made between an employer and employees, and be subject to the approval of a majority of employees
- that employees can appoint a bargaining agent and unions with at least one member are automatically deemed to be a bargaining agent
- Removal of the need to serve proposed agreements on AMMA, CCI, Unions WA and the Minister for Commerce
- s42C – should require rather than allow the Commission to make a code of good faith.

7. A specific provision in the Act is recommended that requires the Registrar to annually publish the membership numbers of organisations

This would facilitate accountability and an emphasis on member services for union members – it would not be a reflection (as it currently could be) on the limited jurisdictional coverage of employees if access to the WAIRC was allowed by individual employees. Until the last few years this information was published.

8. The Commission's jurisdiction should be expanded in the following ways:

- to allow access for employees who have disputes or grievances with respect to return to work after an injury, including a requirement for an employer to prove that there is no suitable alternative position for a partially incapacitated employee before a frustration of contract is established; and injured employees with minor to moderate restrictions should be prioritised for positions in light duty areas. Employers should be prohibited from placing artificial duty requirements on positions for injured employees.
- As an efficiency measure and for the sake of centralising related functions the WAIRC should absorb the role of the Public Sector Commission.
- The WAIRC/legislation could expand services to include dealing with employment restraints of trade
- The WAIRC should be able to deal with bullying complaints
- The WAIRC should also deal with general protections.
- To include a new definition of industrial matter as follows “A dispute relating to the engagement, or employment howsoever called, of an agency nurse or midwife.”

9. It is recommended that all relevant industrial legislation and functions be consolidated into a single act and single entity. (IR Act; Minimum Conditions; Long Service Leave; Public Sector Commission)

This could simplify and codify relevant industrial legislation in one place for ease of reference.

ANF IUWP Specific Comments on the Terms of Reference

In relation to the specific points referred to in the Terms of Reference:

- 1) If there are to be changes the ANF IUWP would like further opportunity to comment after seeing any proposals.
- 2) The ANF IUWP has no comment, as our members are not being excluded, but has no objection in principle.
- 3) The ANF IUWP has no comment at this time, but if it is to be included we would like further opportunity to comment. The ANF IUWP is unaware of the other initiatives referred to.
- 4) It is unclear what is meant by "comprehensive coverage for all employees". The ANF IUWP would need more detail regarding what is being proposed but refers to our point 4 above.
- 5) The ANF IUWP does not see that there is any scope for the reduction or removal of any of the minimum conditions, long service leave or the TCR General Order. There should be a provision to allow for the cashing out of leave entitlements, including sick leave, included in the minimum conditions. Other than ensuring the minimum conditions remain contemporary, there does not seem to be a need to change them. The statutory minimum conditions should be of long standing character and should not need to be updated by the WAIRC, rather any changes should be made by the legislature.
- 6) The percentage of employees reliant on awards needs to be considered for an assessment to be made as to whether there is an actual need or benefit to be derived from the investment of time and resources that an award review process would involve. Any review should not be looking at the removal of award terms (i.e. non-pertaining matters).

- 7) The ANF IUWP does not support the introduction of a local ROC. There are many powers existing already in the Act so no need for any changes. In fact the powers for the industrial inspectors should be reined in, for example they have the power to require written answers to questions. It should be a reasonable excuse not to provide a response on the basis of self-incrimination. At the very least there should be no additional powers given.

- 8) This is not an issue that concerns the ANF IUWP, but is supported in principle.