



Submission from

**New South Wales Local Government, Clerical,
Administrative, Energy, Airlines & Utilities Union**

To

Senate Education, Employment and Workplace Relations
Committee

**Inquiry into the provisions of the Fair Work
Amendment (State Referrals and other Measures) Bill
2009**

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INTRODUCTION

The United Services Union is a State registered Union based in New South Wales with some 33,000 members working in local government, the energy sector, utilities, and private sector, white collar employment including the airlines industry.

The *Fair Work Act 2009* constitutes a significant improvement on the regressive WorkChoices legislation of the former federal government, however in some respects the Federal industrial jurisdiction under the *Fair Work Act 2009* will continue to disadvantage those workers who would otherwise be employed under the New South Wales industrial relations jurisdiction.

By introducing the *Fair Work Amendment (State Referrals and Other Measures) Bill 2009* into the Commonwealth parliament, the Rudd government has honoured a commitment to keep local government in the state industrial relations system. This move marks an important step in securing industrial rights for council workers in NSW.

The proposed amendments will enable state government to declare councils “not to be national system employers.” Once a declaration is made by or under a state law, the declaration is referred to the federal minister for endorsement.

The changes will also protect rights to the conciliation and arbitration of industrial disputes and unfair dismissals before the NSW Industrial Relations Commission. In addition, NSW council workers will also avoid the uncertainties associated with the “modernised” federal award system.

This submission therefore seeks to register USU support for the *Fair Work Amendment (State Referrals and other Measures) Bill 2009* as it facilitates local government remaining in the NSW industrial relations jurisdiction (Schedule 3 – Other Amendments – Part 1 – main amendments of the Bill).

LOCAL GOVERNMENT AND THE PROBLEM WITH CONSTITUTIONAL CORPORATIONS

Under WorkChoices, the former federal government sought to rely on the constitutional corporations power to establish a national industrial relations system. From the outset difficulties were identified in roping local councils into the proposed national system on the basis of this head of power. Councils, from time to time, may or may not be constitutional corporations. The uncertainties associated with the use of the constitutional corporations power was accepted by the Commonwealth Solicitor General

during the High Court Constitutional challenge and was highlighted in the *Etheridge Case*¹ heard by the Federal Court in Queensland.

While the United Services Union has always held the view that Councils were not captured by WorkChoices, significant disputes arose about this issue within the industry. Throughout 2006, 2007 and much of 2008 local government was placed in a 'no man's land' of jurisdictional uncertainty causing difficulties for employers and employees alike. This led to major disputes about the application of State Award and AFPC increases, together with a threatened wage freeze in late 2007.

The *Fair Work Act 2009* is also based on the corporations power in the Constitution. Without a referral of state powers, the *Fair Work Act 2009* cannot establish a unitary system of industrial relations except within the corporate private sector. The USU has resisted the referral of NSW industrial relations powers to the Commonwealth. In our view, the *Fair Work Act* does not constitute a best practice system of industrial relations in comparison with the NSW system of industrial relations where industry award bargaining is supported by means of conciliation and arbitration.

DECORPORATISATION

In November 2008 the New South Wales government passed the *Local Government Amendment (Legal Status) Bill* establishing councils in New South Wales as bodies politic of the State, decorporatising these authorities and removing them from Federal industrial relations coverage.

Further, in September 2008 the New South Wales Premier, Nathan Rees, wrote to Prime Minister Kevin Rudd requesting the excising of New South Wales Local Government from the Federal industrial relations system.

Decorporatisation provided an interim, or band aid solution for NSW local government. However, the federal government's *Fair Work Amendment (State Referrals and other Measures) Bill 2009* assists in reducing uncertainty and enables workers to maintain entitlements and benefits available through the NSW industrial relations system.

DECLARATIONS TO COVER STATE ENERGY CORPORATIONS

The USU is concerned that the proposed legislation does not facilitate the exclusion of state-owned energy corporations from the Fair Work legislation. Clause 2 (6) (a) of Schedule 3 of the Bill specifically prohibits exclusion of declarations concerning state

¹ AWU (Qld) v Etheridge Shire Council [2008] FCA 1268 (20 August 2008).

owned energy generation, supply or distribution. Energy corporations in NSW have a long history of state award and state agreement based bargaining. The USU is of the view that it is important that the long standing awards, agreements and dispute resolution procedures associated with energy state-owned corporations should continue. The USU would support an amendment allowing declarations in respect of state owned energy corporations.

CONCLUSION

The issues outlined in this submission are of significant concern to our membership. The Union seeks leave to appear before the Senate Inquiry should public hearings be held.

RECOMMENDATION

The USU commends the Bill, especially Schedule 3. It allows the NSW Government to declare local government employers to not be national employers.

However, while not wishing to delay the passage of the Bill, the Union would support amendments that would enable the NSW State Government to declare state owned energy corporations as being non national system employers.

The Union also seeks clarification that the Bill allows new councils and council corporations to be declared as they are created.

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