UNIONS NSW SUBMISSION TO SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

INQUIRY INTO THE FAIR WORK AMENDMENT (STATE REFERRALS AND OTHER MEASURES) BILL 2009

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INTRODUCTION

1. Unions NSW is a State Peak Body as defined by the Industrial Relations Act 1996 (NSW). Unions NSW has over 67 affiliated unions, with each union representing members from many diverse backgrounds and industries. NSW unions represent 600,000 members employed in a wide range of industries including public sector, teaching, local government, retail, distribution, childcare, manufacturing, electrical, health, emergency services, engineering, construction and administration.
2. We note the brief period allowed for commentary in relation to the Bill.
3. The Fair Work Amendment (State Referrals and Other Measures) Bill 2009 was introduced into Federal Parliament In October 2009. The position of Unions NSW is outlined below with regards to the divide of State and Federal Industrial Relations arrangements in NSW.

THE PROPOSED LEGISLATIVE CHANGES

4. Unions NSW is opposed to *Section 2 (6)* of *Schedule 3 – Other Amendments of the Fair Work Amendment (State Referrals and Other measures) Bill* 2009, which states the following employers cannot be declared to be state system employers:

   2(6) (a) generates, supplies or distributes electricity; or

   (b) supplies or generates gas; or

   (c) provides services for the supply, distribution or release of water; or

   (d) operates a rail service or a port;

   Unless the employer is a body established for a local government purpose or under a law of a State or Territory, or is wholly-owned subsidiary (within the meaning of the Corporations Act 2001) of, or is wholly controlled by, such a body.

5. This subsection therefore means that essentially all State Owned Corporations (SOCs) in NSW will be referred to the federal industrial relations system and removed from the state system.
6. However, Unions NSW would argue the entities considered by s.2(6) should not be exempted from the provisions allowing a state to declare entities not to be national system employers for three reasons :

   - Given the employers named in s.2(6) are publicly owned in NSW and the statement of the Minister in her second reading speech on the Bill where she said, "*Declarations would be able to be made by the state in relation to certain kinds of entities that are integral to state public administration or local government activities and which are therefore regarded as appropriately regulated in state systems"* there seems no logic to exempt to one particular group of public sector employers. The

states should have all options available to them in order to determine what is integral to good public administration.

- The employers named in section 2(6) have had in NSW a long and productive history in the NSW jurisdiction which has seen a co-operative model of industrial relations develop in these industries.
- There is an argument that as the employers named in section2(6) are not corporations regulated by federal corporation's law but by the NSW State Owned Corporations Act that they are not captured by the Fair Work legislation.

7. Unions NSW also believes that the ACTU policy adopted in 2006 which stated any new federal legislation *"recognises State Governments will continue to have a role in the regulation of the workplace, in particular in areas of State Government employment and organisations which are unincorporated" and further "the inclusion of provisions in the national industrial relations laws enabling parties to opt to be bound by State industrial relations laws rather than the national legislation in particular where the community interest of the employees is best served by regulation in a single jurisdiction"*supports an argument that given the history of these entities the community of interest is best served by providing the option of allowing these employers to remain in the state system.
8. In conclusion, our key point is that Unions NSW believes s.2(6) of Schedule 3 of the bill is inconsistent with the rest of s.2 in that it limits the ability of the states to determine what areas of public sector employment they need to regulate to ensure effective public administration.