

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW**

Organisation: Industrial Relations Society Newcastle Branch

Date received: 30/11/2011

Submission to NSW Parliamentary Committee on Law and Justice

Inquiry into Opportunities to Consolidate Tribunals in New South Wales

By Industrial Relations Society of New South Wales (Newcastle Branch)

Background

This submission is made by the Executive Committee of the Newcastle Branch of the Industrial Relations Society of New South Wales following a resolution of the Annual General Meeting on 29 November 2011.

Since 1978, the Newcastle Branch of the Industrial Relations Society of New South Wales has been a very inclusive, active and effective professional association bringing together experts and practitioners in industrial relations in the Hunter region. It has a membership of around 80 individuals, representing a wide range of organisations from private and public enterprises, employer associations, trade unions, law firms, academic institutions and consultancies. The Branch's current Executive Committee reflects this broader membership:

President:	Emma Morson (Australian Industry Group)
Secretary:	Mark Northam (NSW/ACT Independent Education Union)
Treasurer:	Greg Kerr (University of Newcastle)
Immediate Past President:	Kevin O'Malley (Hunter New England Health)
Members:	Catherine Wilkinson (Sparke Helmore)
	Kate Jackson (Port Waratah Coal Services)
	Dr John Lewer (University of Newcastle)
	Professor Mark Bray (University of Newcastle)
	Peter McPherson (Unions NSW & Newc. Trades Hall Council)
	Michelle Gilliver-Smith (Port Stephens Council)
	Wayne Dever (MRM Lawyers)
	Gary Kennedy (Newcastle Trades Hall Council)

Summary of Recommendations

1. Retain the existing tribunal arrangements for the Industrial Relations Commission of New South Wales.

If change and consolidation is considered necessary, then a specialist employment/industrial relations tribunal is essential; accordingly the Issues Paper's Option No. 1 is recommended.

Option No. 3 is not acceptable.

2. A regional presence is essential.

1. Introduction

The Newcastle Branch of the IR Society is deeply concerned by the issues raised by the Inquiry and the options canvassed by the Issues Paper. It believes there are two vital matters that must be addressed:

- the need for a state-wide **specialist tribunal** dealing with employment and industrial relations matters; and
- the need for **regional offices** of employment and industrial relations tribunals to provide specialist services which are accessible, quicker, cheaper and more effective.

2. The Need for a State-Wide Specialist Tribunal

The Issues Paper accurately identifies recent changes in the jurisdiction of the Industrial Relations Commission of New South Wales (henceforth IRC of NSW) and the consequent reduced workload for the tribunal as a whole.

The perceived problem that the Inquiry is expected to address is therefore costs and workload. This is misguided. The key issues driving any changes should be to maintain the quality of the service provided by the IRC of NSW to its users and to ensure the continued benefits of the tribunal's operations and decisions to the broader community, in terms of its contribution to good industrial relations, and the efficiency and growth of the state economy.

The IRC of NSW has a long history of effectiveness that is acknowledged by all major users.

More generally, the Society believes that a specialist (rather than a generalist) tribunal produces the best outcomes based on the following grounds:

- Employment and industrial relations comprises a complex and unique set of legal rights, institutional arrangements and relationships that requires specialist knowledge, skill and experience.
- Unlike other jurisdictions, employment and industrial relationships are ongoing and long term rather than one-off and transactional, meaning that any tribunal involved must understand of history and specifics rather than immediate claims and generalities.
- Practical and effective intervention by tribunals requires an understanding of the issues based on past experience, which is best provided by a specialist with personal experience of employment and industrial relations.
- The best employment and industrial tribunals must take the initiative and are proactive rather than solely focused on reactive solution of problems after they have arisen. To be proactive, the tribunal needs intimate knowledge and understanding of the parties and relationships involved.

Moreover, there continues to be a significant jurisdiction in the public sector, which continues to command a sustainable work load.

The nature of the specialist tribunal at state level must also dovetail with the federal jurisdiction if there is to be:

- effective dual membership of tribunals, and
- flexible dispute resolution mechanisms.

Recommendation 1:

Retain the existing tribunal arrangements for the Industrial Relations Commission.

If change and consolidation is considered necessary, then a specialist employment/industrial relations tribunal is essential, so the Issues Paper's Option No. 1 is recommended.

Option No. 3 is totally unacceptable.

Not only does it contradict the principle that a specialist tribunal is needed, but it is also at odds with the example in the Issues Paper of VCAT, which does not deal with industrial relations matters. In Victoria, all industrial issues are dealt with by Fair Work Australia, which has its administrative head resident in Melbourne.

3. The Need for Regional Offices of a Specialist Tribunal

The Hunter region provides a prime example of the benefits of a regionally-based specialist industrial relations tribunal, which must be retained in any future reorganisation of tribunals.

3.1 The Hunter Experience

Newcastle is the state's second largest city and the Hunter region's economy accounts for the employment of over 320,000 people and nearly 10% of the state's gross national product. Many regard the city and the region as the powerhouse of the NSW economy and it is vital to the future prosperity of the state.

Since 1980, there has been a Commissioner of the IRC of NSW permanently based in Newcastle and from 1987 a Deputy President and a Commissioner, along with an office of the Registrar.

Geographically, the responsibilities of the Newcastle-based members of the IRC of NSW stretch from the Hawkesbury River northward to the Queensland border and west to the South Australia border.

The local members of the IRC of NSW have been central to the transition of industrial relations from a conflict model during the 1970s and 1980s to a shining example of cooperation.

The Newcastle-based members of the IRC of NSW contributed to this transformation by not only providing a rapid-response and easy access to conciliation and arbitration service in the event of disputes, but they have proactively worked with a wide range of parties to prevent disputes and develop cooperative and productive industrial relationships.

These modes of operation have only been possible because of the physical proximity of the IRC of NSW in Newcastle to the parties; the flexibility and expertise of these members;

continuity in the IRC of NSW appointees in the Hunter region; and the working relationships between the IRC of NSW and both unions and employers in the region.

3.2 Resource Construction Projects

The IRC of NSW has made a major contribution towards the improvement of the Hunter Region's attraction to business investment including infrastructure development across the aluminium, electricity, coal mining development and port related coal loading. An example of the economic importance of the IRC of NSW's activities in the Hunter Region (and the NSW economy at large) has been a number of large construction projects, especially associated with the resources industry, which have been completed on time and under budget as a result of project agreements, supervised by members of the IRC. The experience of these projects goes back 30 years, but the most recent examples include:

- the expansion of Port Waratah Coal Services' Kooragang Coal Loader (\$1.52 billion),
- the Colongra Gas Turbine Construction Project (\$400 million),
- the Newcastle Coal Infrastructure Group Stage 1 Construction project (\$900million), and
- the Mangoola Coal Project (\$450 million).

A full list of project agreements approved and superintended by members of the IRC of NSW based in Newcastle since 2000 is set out in Attachment A.

Despite the referral by the NSW government of private sector industrial relations powers to the federal government in 2009, and the resulting federal registration of collective agreements, a number of major current construction projects in the Hunter region have continued to use the Newcastle-based members of the IRC of NSW for dispute resolution, through s.146A/B agreements.

The total value of on-going projects exceeds 4.3 billion dollars.

The significant expertise of the regional IRC of NSW in managing these project agreements, let alone the cooperative completion of the projects themselves, will be put at risk by any consolidation of tribunals which reduces the regional presence of the IRC of NSW.

3.3 The Regional Public Sector & State-Owned Corporations

Another major contribution by the IRC of NSW in the Hunter region has been to effective operation and resolution of disputes in the public sector, especially in large organisations such as:

- the health sector, including Hunter New England Health and the Ambulance Service of NSW.
- electricity generation and distribution, including Delta Electricity, Macquarie Generation, Eraring Energy, Ausgrid and Essential Energy.
- Hunter Water.
- local government, including the Newcastle, Port Stephens and Lake Macquarie Councils.

All of these organisations have drawn on the guidance and expertise of local members of the IRC over recent years. Prominent recent examples include the facilitation of collective agreements and work practice change to improve service delivery and productivity

This public sector jurisdiction is significant and in itself provides a work load that justifies the continuation well into the future of a Newcastle office of the IRC of NSW or any specialist industrial relations tribunal that might replace it.

3.4 Legislative Focus on Regions

The current NSW legislation (ie. Industrial Relations Act 1996) embeds a regional focus, with a number of specific provisions. Section 157 of the IR Act 1996, for example, gives the President of the Commission the power to designate some members of the Commission as 'regional members', to allocate them matters and establish regional offices of the Registry, as prescribed in the Regulations. Regulation 17 then prescribes the areas of operation for both the Hunter and Illawarra regions.

These important provisions must not be lost in the reform of the NSW legislation and a consolidation of tribunals.

These region-friendly provisions are even more important because the corresponding federal legislation (ie. the Fair Work Act) and its Regulations contain virtually no mention of, let alone support for, regional arrangements.

3.5 Dual Appointments with Fair Work Australia

Both of the current Newcastle-based members of the IRC of NSW hold dual appointments with Fair Work Australia, allowing them to not only promote federal-state cooperation in this field, but also to flexibly resolve disputes and develop cooperative relationships in Hunter workplaces.

These dual appointments, and the important cooperation they promote, are at risk should the IRC of NSW be disestablished, because s. 629(3) of the Fair Work Act requires dual appointments to Fair Work Australia to hold an appointment under the NSW IR Act.

3.6 Summary of regional issues

The Society draws the Committee's attention to the highly effective regional tribunal system that exists in the Hunter. It therefore follows that the NSW tribunal system must not be changed in any way that undermines the regional focus it has developed over recent years.

ATTACHMENT A

LIST OF PROJECT AGREEMENTS

	Project	\$ value
1	The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Alstom Power Ltd & anor [2000] NSWIRComm 259 (Redbank Project)	300 million
2	Tuggerah and Edgeworth Shopping Centre Projects Enterprise Agreement [2002] NSWIRComm 153	25 million
3	Protech Steel Construction Kooragang Island Consent (State) Award 2011 [2002] NSWIRComm 330	30 million
4	Tomago Aluminium Smelter AP22 Capacity Expansion Project Consent Award 2002 (IRC 2355 of 2002, 16/5/02)	220 million
5	Erina Fair Expansion Project Award [2002] NSWIRComm 174	120 million
6	<p>Mount Arthur North Construction Project Consent Award 2001 (IRC 2837 of 2002, 20/6/02)</p> <p>Mount Arthur North Consent Award 2001 - Application by Labor Council of NSW for variation re agreed point of hire clause [2003] NSIRComm 89</p> <p>John Holland Group v Construction, Forestry, Mining and Energy Union (NSW Branch) re living away from home allowance [2003] NSWIRComm 113</p>	400 million
7	<p>Condong and Broadwater Co-Generation Construction Projects Consent Award 2003 [2003] NSWIRComm 319</p> <p>Downer Energy Systems Pty Ltd and Clyde Babcock-</p>	220 million

	Hitachi (Australia) Pty Ltd Condong and Broadwater Co-Generation Construction Projects Consent Award 2005 [2005] NSWIRComm 466	
8	Incitec Kooragang Island Shutdown Maintenance Agreement (2003) [2003] NSWIRComm 156	Ongoing
9	Barclay Mowlem Engineering Construction Group Hunter Valley Minor Works Agreement 2003-2006 [2004] NSWIRComm 140	Ongoing
10	Hydro Aluminium Kurri Kurri Smelter Upgrade and Retro-Fit Enterprise Agreement 2004 [2004] NSWIRComm 132	130 million
11	John Holland Pty Ltd Woolworths Wyong Regional Distribution Centre Project Award (IRC2005/1606, 3/5/05)	50 million
12	Bechtel Australia Pty Ltd Port Waratah Coal Services Project 3D Enterprise Agreement 2005 [2005] NSWIRComm 434	160 million
13	Works Infrastructure Pty Ltd Civil Construction (NSW) Enterprise Agreement 2005 [2005] NSWIRComm 98	Ongoing
14	Notification under section 130 by Newcastle Trades Hall Council of a dispute with AbiGroup Contractors re Centro Project (Polyclinic) (IRC2006/1409, 10/8/06)	25 million
15	Notification under section 130 by Newcastle Trades Hall Council of a dispute with AbiGroup Contractors and others re Mater Hospital Redevelopment Project (IRC2006/1273, 10/8/06)	130 million
16	Newcastle Trades Hall Council v Westfield Design & Construction Pty Ltd re Kotara Shopping Centre Expansion Project [2006] NSWIRComm 259	400 million
17	Request by Unions NSW for the assistance of the Industrial Relations Commission of NSW on the NCIG Coal Export Terminal Construction Project by Connell Hatch for NCIG for inspection and conference (IRC2008/1760,	900 million

	31/10/08; 12/5/09)	
18	Notification under section 130 by Unions NSW of a dispute with Alstom Colongra Gas Turbine Project (IRC2008/394, 16/10/08; 11/03/09; 19/06/09)	400 million
19	Request by Unions NSW and Newcastle Trades Hall Council, White Mining Limited and the Civil Construction Unions for assistance of the Industrial Relations Commission of New South Wales re agreement for construction work at Moolarben Mine Construction Site Mudgee (IRC2009/141, 19/02/09)	300 million
20	NCIG Coal Loader Construction Project Stage 2 - Hatch & Associates Pty Ltd and Unions NSW and affiliates (IRC2010/572) Joined With Request by Unions NSW and the Newcastle Trades Hall Council for the assistance of the Industrial Relations Commission of New South Wales re NCIG 2AA and 2F Construction Project (IRC2010/1466, 11/2/11 and 15/11/11)	800 million 800 million
21	Request by Unions NSW and the Newcastle Trades Hall Council on behalf of Port Waratah Coal Services Limited, Bechtel Australia Pty Ltd, Australian Industry Group and the Civil Construction Unions for the assistance of the Industrial Relations Commission of NSW (IRC10/946,	910 million
22	Request By Unions NSW And The Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Taggart Wilpinjong Project (IRC2010/1476, 17/8/11)	75 million
23	Request By Unions NSW And The Newcastle Trades Hall Council For The Assistance Of The Industrial Relations Commission Of New South Wales Re Thiess Sedgman Joint Venture Bengalla Project (IRC2010/1469, 17/8/11)	90 million

24	Request by Unions NSW for the assistance of the Industrial Relations Commission of NSW in prevention of industrial disputes - Mangoola Coal Project (IRC2010/493)	450 million
25	Request by Unions NSW for the assistance of the Industrial Relations Commission of New South Wales re Ravensworth North Construction Project	400 million