Queensland Council of Unions

Submission to the Finance and Administration Committee Queensland Parliament

Inquiry into the
Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015.

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The Queensland Council of Unions (QCU) is the peak union body in Queensland and makes this brief submission in relation to the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015* (the Bill). Firstly the QCU congratulates the Palaszczuk Government on acting so quickly to implement election promises and thanks the committee for this opportunity to make a submission.

The union movement consistently opposed the amendments made to the Industrial Relations Act 1999 by the Newman Government. In almost all cases, these amendments sought to remove or reduce conditions of employment and workplace rights. A précis of the major amending acts introduced by the Newman Government is set out hereunder.

Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012 (Assent Date: 12/06/2012)

The title of this Orwellian-named Bill caused considerable amusement to those who read it and had the misfortune of having to work with it. The Newman Government sought to cherry pick those aspects of the Fair Work Act that might somehow be an advantage to Government as an employer. It deliberately ignored those aspects of the Fair Work Act that might be of benefit to employees and selectively applied its specific terms to its own perceived advantage.

Perhaps one of the more superfluous and grand-standing amendments was to include a requirement that "the QIRC to give consideration to the State's financial position and fiscal strategy, including the financial position of the relevant public sector entity, when determining wage negotiations by arbitration". One wonders what those responsible for the Bill thought the QIRC took into consideration in previous arbitrations. Tribunals such as the QIRC have always taken such matters into consideration.

A spectacular failure in the legislation was the amendment to "provide a process whereby the Treasury Chief Executive may brief the QIRC about the State's financial position, fiscal strategy and related matters". The President of the Industrial Court agreed with union submissions that such evidence was of no assistance to the Commission in general terms and specific evidence pertaining to the matter at hand was required. In other proceedings, the government called one of the members of the Costello Commission of Audit to provide specific evidence. In cross examination this witness contradicted the Treasurer's false claims that previous governments had borrowed money to pay wages.

The Act was amended to "introduce a power for the Minister to make a declaration terminating industrial action if the Minister is satisfied that the action is threatening the safety and welfare of the community or is threatening to damage the economy". The Fair Work Act is worded in such a way to allow for a ministerial declaration when industrial action is likely "to cause significant damage to the

Australian economy or an important part of it." The Queensland amendment included the curious wording "is threatening or would threaten to cause" thereby setting an extremely low threshold for ministerial intervention. In addition, the difference between the federal minister holding such a power as a disinterested observer is quite different from the state minister holding the power to be used strategically to bring a halt to action with which the Queensland Government is directly involved.

Several clauses of the Bill seek to re-establish the independence of the QIRC. In particular clauses 3, 18, 19, 21 and 26 are directed at returning to the circumstances prior to the various amendments of the Act wherein the Newman Government sought to apply undue influence over the deliberations of a previously independent tribunal.

In order to further complicate matters for the union movement, the Act was amended to introduce Protected Action Ballot Orders (PABOs). In another stunning own goal, rather than stymie union activity it provided a means by which unions could garner support for industrial action and strategically use protected action. A significant administrative burden was placed on Queensland Government departments, and the Electoral Commission, that were in the process of redundancies and had other priorities at that time.

A further amendment that proved a spectacular failure was the employer-sponsored ballot of an agreement that had been rejected by the relevant unions. This selective snippet from the Fair Work Act may have been of some use to the Queensland Government had it not been so badly on the nose with its own employees. The Newman Government decided to put the Core Agreement (the agreement that applies to most administrative personnel in the public service) to a vote and managed to get a no vote of 70.9%.

Public Service and Other Legislation Amendment Bill 2012 (Assent Date: 29/08/2012)

The misleading nature of this Bill is noteworthy. The Bill that had been introduced contained provisions in relation to some relatively uncontroversial administrative changes such as transferring public service appeals from the Public Service Commission to the QIRC. The Bill was amended in the committee stage to include a number of significant amendments to the Industrial Relations Act.

The further amendments provided a legislative base for ministerial directives that had outlawed existing provisions in certified agreements covering employees of the Queensland Government. Previous governments had enshrined undertakings in relation to employment security and contracting out. The Newman Government, rather than negotiate on these topics, merely made them illegal. If you really want to make your employees hate you, unilaterally take away provisions which they had previously accepted lower wage offers to obtain. The need to amend the Industrial Relations Act in committees arose out of a challenge to the ministerial directives that was likely to succeed. Despite

the Newman Government promising not to misuse parliamentary processes, this amendment was clearly a cover up for the Government exceeding its legislative powers.

The outlawing of employment security and contracting out also brought with it the removal of the need for the Queensland Government to consult with its workforce about workplace change. This is the absolute antithesis of good management practice and is contrary to what would be expected of employers in the private sector. The removal of the obligation to consult about workplace change characterised an arrogant employer that had no ability or desire to obtain the consent of its workforce.

In what might be perhaps the most disgraceful aspect of all the amending legislation, this removal of the duty of Government (and other employers) to consult with its (their) own workforce, is in obvious need for immediate rectification. Clauses 8 and 32 of the Bill will reintroduce obligations that have existed within the Queensland, national and international employment law for 30 years.

Clause 25 of the Bill amends section 319 (representation of parties) that was also included in the *Public Service and Other Legislation Amendment Bill 2012*. The QIRC has operated as a lay tribunal with legal representation being restricted to the exception rather than the rule. When all employers covered by the Industrial Relations Act are government instrumentalities, it defies belief that they could not be represented by departmental officials in ordinary proceedings. It would appear that the primary objective of the Newman Government had been to increase the costs to the parties in proceedings in order to obtain some perceived self-serving advantage. It is also noteworthy that a Government that claimed such an interest in financial constraint would deliberately increase its own costs by the unnecessary use of lawyers in proceedings.

Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013 (Assent Date: 20/06/2013)

This Bill was close enough to amendments to the Fair Work Act that placed certain obligations on registered organisations to meet standards for accountability. But to demonstrate the Queensland Government's need to be vindictive towards unions, it was made sufficiently different to create maximum inconvenience. For example, the federal act amendments required newly elected officials to be trained in financial management within 12 months of assuming office whereas the state required it within 6 months.

The aspect of the Bill that was truly jaw dropping was the requirement placed retrospectively on unions of employees (not employers) to provide details of credit card statements. Not only does it demonstrate the vindictive and partisan nature of the Newman Government, this one-sided obligation smacked of cover up. Despite the LNP's dirt digging, the only evidence of corruption in registered organisations in Queensland came from their own former MP for Redcliffe, previously the CEO of a registered employer organisation who misused funds. Had the obligations been placed on registered

unions of employers, the credit card statements pertaining to this member's time in office with the employer organisation would have had to be disclosed.

An amusing footnote to the ridiculous requirement that unions only be required to provide copies of credit card statements was the unsuccessful prosecution of the ETU for a supposed breach of the legislation. The ETU had in fact displayed their credit card statements but had done so on a web site named opposethesefacistlaws.com. The Newman Government failed to see the humour in the name of the web site and spectacularly failed in its prosecution of the ETU.

Yet another disgraceful aspect of this Bill was placing a requirement on registered organisations to undertake a ballot of members for approval to spend $10,000 or more on political purposes. This would have required larger unions to spend several times that amount in order to comply with the law. It was also an absurd obligation requiring a union to ask its members if they were in favour of the union acting in the members' interests. This aspect of the Bill was withdrawn when the Queensland Government was faced with a High Court challenge that it was always going to lose. The only possible objective of this insidious piece of legislation was to silence critics of the Government prior to the state election. Yet again the Newman Government failed spectacularly.

Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 (Assent Date: 27/11/2013)

The second use of the Orwellian title "harmonisation" was used with yet another cherry picking of provisions from the Fair Work Act. The circumstances of the Queensland jurisdiction were almost the complete opposite of the Fair Work system. It was disingenuous for the Newman Government to rely on the need for harmonisation to justify what can only be described as a ham-fisted attempt to remove existing conditions of employment.

The Queensland Act has always contained minimum conditions of employment such as annual leave, overtime and public holidays. It was therefore completely unnecessary to introduce minimum conditions based on the National Employment Standards contained in the Fair Work Act. Moreover the high proportion of collective agreement coverage in the Queensland jurisdiction meant that this process was viewed with suspicion by unions. In particular the inclusion of the standard redundancy package capped at 16 weeks within the Queensland Employment Standards (QES) does not augur well for State Government employees who escaped the axe in the first round of redundancies. The President of the QCU was described as irresponsible by a Newman Government back bencher for suggesting that redundancy packages would be reduced to 16 weeks, yet this is precisely what occurred at Queensland Urban Utilities.

It was completely superfluous to introduce an award modernisation process into the Queensland jurisdiction. Following the hostile takeover of state jurisdictions by the Howard Government by the

WorkChoices legislation it became necessary to fold thousands of state awards into a couple of hundred modern awards. By contrast, the Queensland jurisdiction had a system of award review that had taken place on three-yearly intervals since the enactment of new legislation in 1999. Furthermore making award modernisation a prerequisite for bargaining had the effect of denying employees of the basic human right to collectively bargain.

The Fair Work award modernisation was undertaken with precision by the Fair Work Commission assisted by the good will of the industrial parties. By contrast the award modernisation process in Queensland has been an abject failure. The QIRC was set unrealistic goals by an arrogant and naive Government. The Newman Government and previous parliamentary committees were told that the timeframes provided for the QIRC were unrealistic and chose, as usual, to ignore the advice of industrial parties who understood the impact and obvious failure of the legislation. Clause 17 of the Bill removes the unachievable deadlines that were introduced by the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013*.

Reminiscent of the WorkChoices legislation rather than the Fair Work Act, legislation also severely restricted that which could be agreed upon between employer and employees in certified agreements. The Government's rhetoric was that it was paring back the content of certified agreements to "only contain wages and matters linked directly to the employment relationship and improvements in productivity and performance". The reality is however that a range of provisions that have been developed between the industrial parties are now no longer able to be discussed.

A significant number of the clauses in the Bill address the overly prescriptive nature of the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013*. The Newman Government demonstrated a perverse inclination to interfere in the employment relationship and unilaterally removed various conditions that offended its "master and servant" ideology. By clauses 4 through to 12, 15, 20 and 22 through to 24, this Bill reverses those restrictions on what can and can't be agreed between the industrial parties. Clause 13 and 14 of the Bill appear to compliment these provisions and ensure that a proper safety net is maintained. Additionally clause 16 of the Bill will reintroduce job security for employees of the Queensland Government in line with the Palaszczuk Government's election promises.

The Newman Government also said that it had "streamlined" arrangements for bargaining and taking protected industrial action. This should be read as the virtual abolition of protected industrial action as any industrial action that is likely to be effective will be overtaken by an arbitration of the matters in dispute. Like the award modernisation mess, unrealistic timeframes were again scheduled by the Government.

The most counter-productive of all amendments was the introduction of individual employment contracts for high income senior employees, again in the style of WorkChoices rather than the Fair Work Act. Through this the Newman Government succeeded in radicalising the medical profession in Queensland. The image of meetings of doctors at the Pineapple Hotel at Woolloongabba will go down

in history along with such images as the pickets on the waterfront during the Patrick dispute. The Newman Government did get the doctors on to contracts, but they suffered an humiliating defeat on the contents of those contracts.

Clause 33 includes transitional arrangements that are intended to right the old wrongs introduced by the various amending acts overseen by the Newman Government. The existing situation is in a state of disorder and there is clearly need to rectify the existing circumstances. Some concerns have been raised with respect to the application of the proposed section 849 in which regulation could override existing certified agreements. The QCU would not ordinarily agree with such an intrusion into an agreement, however agreements that removed the duty for employers to consult with their employees over major workplace change should not be allowed stand. Moreover a number of agreements certified under the previous regime include provisions that apply lower standard for new starters. The QCU also finds such a provision that would treat new starters as second class citizens as abhorrent and in justification of being reversed.

The Way Forward

The sum total of the Newman Government's legislative amendments has been, as was intended, a diminution of workplace rights. In addition to the diminution of workplace rights has been the disorder that has been created in the scheme of the legislation. The continual amendment of the act has made it unworkable and is in need of urgent review. In addition unrealistic timeframes for the award modernisation process have brought about further confusion.

The Palaszczuk Government is correct to seek amendment of the legislation, not only to restore workplace rights but also to attempt to return some semblance of workability to the Queensland industrial relations system. In this regard the union movement favours a two-phase response with:

- An immediate removal of the most offensive provision introduced by the Newman Government; and
- A more comprehensive review of the system and legislation in a contemporary context.

The union movement is broadly in favour of the amendments being included in the Bill. There is perhaps a different view with respect to matters pertaining to bargaining and any correlation between bargaining and the award modernisation process. As a matter of principle, it is difficult to see why bargaining with an employer is contingent upon the award modernisation process being completed. Moreover, this correlation was introduced by the Newman Government as a strategy to remove employment conditions prior to bargaining commencing. We are unaware as to whether this nexus between bargaining and award modernisation is intended to be broken by the Bill and there appears, in our submission, no justification for this nexus to be continued into the future.

The concerns raised about the application of the proposed section 849 might be to place specific limitations on its application. It is envisaged that there will be a future review of the Act and the application section 849 might well be revised if Government decides to undertake any further review of the Act.

Conclusion

The QCU urges the committee to adopt the major thrust of the Bill subject to some possible minor amendments. Other unions will be making more specific submissions concerning amendments that might be considered by the Parliament.

The tight timeframes associated with this process are understood, given the urgent necessity to restore workplace rights. Accordingly this submission has been brief and the QCU would be more than pleased to provide further explanation or information at public hearings.