EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:
Ms KE Richards MP—Chair
Mr MA Boothman MP
Mr N Dametto MP
Mr BL O'Rourke MP
Mr JA Sullivan MP

Visiting Member:
Mr JP Bleijie MP

Staff present:
Mr R Hansen—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 21 JULY 2022

Brisbane

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The committee met at 4.14 pm.

JAMES, Mr Tony, Acting Deputy Director-General, Office of Industrial Relations, Department of Education

McKARZEL, Mr David, Executive Director; Office of Regulatory Policy, Liquor Gaming and Fair Trading, Department of Justice and Attorney-General

MOXHAM, Mr Rhett, Director, IR Strategic Policy, Office of Industrial Relations, Department of Education

CHAIR: I now welcome representatives from the Department of Education and Department of Justice and Attorney-General. Before I turn to questions from the committee, would you like to respond to any of the points made in our hearing of witnesses today?

Mr James: Thank you very much, Chair, and I thank the committee for the further opportunity to provide assistance in the scrutiny of the bill. We have noted the public submissions that have been written to the committee and, whilst I have not been online today, my colleagues have been online so I think we should be in a position to answer any questions you may have arising from today. Chair, if I may make a very brief opening statement in response to some of the matters that were raised through those submissions?

CHAIR: Thank you.

Mr James: The first one is in terms of gendered language. The bill's use of gender-neutral language, particularly for parental leave arrangements, has attracted much comment from stakeholders expressing concerns that the language somehow poses a risk to women's rights. I will take the opportunity to clarify that this bill does not in any way abrogate the rights of women, nor does it restrict a person from referring to themselves as a mother. I want to be very clear that a woman's entitlements to take parental leave for the birth of her child are not diminished by this bill. The bill recognises that families can take many forms and that there is no place in modern legislative drafting for gendered assumptions that one parent, generally female, is to be the primary caregiver of the child and the other parent, generally male, is the breadwinner of the family.

With regard to independent couriers, the submission also canvasses the new jurisdiction to provide minimum conditions for independent courier drivers in chapter 10 of the bill. The bill's provisions are limited to independent courier drivers. The policy intent is not designed to have a specific application to gig or platform based businesses. However, if such a business is engaging independent couriers, as defined in the bill, and the business meets the definition of a principal contractor, as defined in the bill, and the work that is being undertaken is a courier service, as defined in the bill, chapter 10A may apply subject to a decision in relation to a contract determination by the Queensland Industrial Relations Commission. If a business engages in courier service contracts to which a contract determination is in place, the business can apply for an exemption from the contract determination, which is provided for at section 406R of the bill. In addition, a business can make an application for a contract determination that will provide to cover the scope of their business and to seek to provide provisions and conditions that meet the needs of that business and their independent couriers. Their application is subject to approval by the QIRC.

I also confirm for the committee that the provisions in the bill regarding independent couriers are not unconstitutional. They may be introduced and passed by the Queensland parliament, but they will not become operative until the Australian government amends the Commonwealth Independent Contractors Regulation 2016 to specify that the provisions are exempt and may operate.

With regard to the state wage case, the amendment to the matters that the Queensland Industrial Relations Commission must consider when making a general ruling is also featured in a lot of commentary in the submissions. The independent reviewers considered the commission's past state wage case decisions and recommended that the act allow the QIRC to have discretion in limiting the flow-on of a state wage increase into parent awards where the rates may exceed those payable under a certified agreement. The government accepted the recommendation and consequently the

amendment has been prepared to implement that recommendation. The amendment does not require the commission to limit the flow-on of wages. Whether or not the commission considers and makes a provision of a flow-on of a state wage case or general ruling increase into a parent award is entirely at the discretion of the commission.

Lastly, with regard to registered organisations, the IR Act encourages representation of employees and employers by organisations that are registered and operate within the framework of the Industrial Relations Act. In return for the right to represent their members, employee and employer registered organisations are subject to regulatory requirements under the IR Act to protect members' interests through transparency and accountability for the actions and decisions.

The bill does not change the well-established requirements around rights to represent in industrial matters. The bill does clarify what is an industrial organisation so that it is clear what entities can represent industrial interests before the commission, and the bill enables the commission to make orders to stop any misrepresentation. Submissions indicated that the amendments might offend the freedom-of-association principles. I suggest that they are ill-founded and I would refer the committee to the statement of capability that was supplied with the bill. Chair, I am conscious of time so I will close there. We welcome any questions from the committee.

Mr BOOTHMAN: My question relates to the conveniently belong rule. Isn't it the case that if an organisation is already registered—in this case, the Queensland Nurses and Midwives' Union—then another organisation such as the NPAQ would never be allowed to be registered? Is that the case?

Mr Moxham: The conveniently belong rule was designed to ensure that, where there is an existing organisation that can conveniently represent the interests of those workers, then that must be a consideration of the commission when determining an application for registration. To say that it would automatically result in an application being dismissed would depend on the facts and circumstances that are attached to each individual application. It would be up to the discretion of the commission when determining the application before it on the weight it would give to the conveniently belong rule.

Mr James: If I may also say, the conveniently belong rule prominently flows out of the notion that we wish to stop demarcation disputes between unions over membership.

Mr DAMETTO: I understand from our last briefing and information that was given to us today by some of the witnesses that there will still be an opportunity for those organisations that have kicked off as union organisations, as they refer to themselves. Is there going to be a process where they will be able to actually register? I know everyone gets an opportunity to put a registration in, but can we talk in a practical sense of the chances of them becoming registered?

Mr James: Yes, there is a process whereby an organisation can seek registration as a registered industrial organisation within the industrial relations framework, but there are conditions and provisions that attach to that. I will again refer to my colleague on my right who will be able to walk through those particular sections in the legislation.

Mr Moxham: There are existing provisions in the bill that guide applicant entities on how to make an application and matters that the commission must be satisfied of before granting an application for registration. The bill proposes to add a number of provisions to that to provide greater clarity to the parties on how they would meet the requirements for registration under the act. One of those is the requirement that an entity cannot simply exist for an indefinite period of time and claim to have the rights that are afforded to industrial organisations under the act and it requires that entity to make an application within certain periods of time, that being within 12 months of signing up the 20th member or within four weeks of signing up the 100th member. That is to ensure that the integrity of the framework of the industrial relations scheme is upheld so that we do not have parties that are attempting to benefit from the benefits of the industrial relations scheme when they really have no intention of actually progressing with their registration.

Mr SULLIVAN: I thank both departments for not only your detailed briefing but also your very detailed response to each of the submissions. We will take that as read rather than go through that. Mr James, I think you said you were not online today but that your colleagues were. In relation to the transport changes that we are making and the interface with the incoming Commonwealth government, would you agree with the notion that, should a federal government legislate sometime in the future, it is pretty settled constitutionally what happens to our legislation, but in the meantime, if or when that happens, our scheme can work in our jurisdiction?

Mr James: Yes. I am not a constitutional lawyer but I can tell you that the Commonwealth trumps the state if they were to legislate in the same field. Any argument whereby we may be somehow usurping the Commonwealth in entering into this space is erroneous. It would obviously

depend on what the Commonwealth legislation actually covers but, as a rule, the Commonwealth will trump the state. In fact, in the legislation that we are putting up, because the Commonwealth already covers the field, the Commonwealth needs to actually exempt our legislation from that to allow it to work.

Mr Moxham: It is worthwhile noting that, whilst the incoming Australian government has indicated that it intends to address these matters, it has not made it clear how it intends to actually address these matters.

Mr SULLIVAN: Or when, considering we have a bill in the House.

Mr Moxham: Even if they did, it still has to achieve passage through both houses of federal parliament. If they decided to make certain independent couriers fall within an employee-style relationship, they would not have to go over the top of our act because the bill already provides that it only applies to independent couriers that are not in employment contracts. If they decide to go down that field of putting people into employee relationships, they will no longer fall within the jurisdictions of the new provisions within the act. If they decide to build a system around independent contractors and leave them as non-employees, they could consider whether they cover them fully or whether they can work within the jurisdiction and framework that has been established within this bill.

Mr James: The Queensland Trucking Association Ltd certainly raised that as a concern. In our response to the issues raised, I think in the second dot point we make clear the position that Mr Moxham has just said.

Mr O'ROURKE: With regard to gig economy workers, does the department have any evidence that the New South Wales legislation has had a positive effect on the health and safety of those workers?

Mr James: We can certainly answer that in terms of the evidence that is prescribed as this bill working and making improvements—I would not say to the gig economy, but more to the contract courier industry generally. Is that where you were heading?

Mr O'ROURKE: Yes.

Mr James: You can go through a bit of a history as to how that legislation started with its genesis in August 2021 when the Senate Standing Committee on Rural and Regional Affairs published its report on the importance for a viable, safe, sustainable and efficient road transport industry. I am conscious of the time so I will not go through a full chapter-and-verse history, but the purpose of the independent courier provisions in 10A is ultimately to ensure the safe performance of work and reduce fatalities and injury on Queensland roads, reduce the economic cost of transport related crashes in the Queensland economy, and address unsafe economic and contracting practices. It seeks to do this by providing a mechanism for minimum entitlements and conditions for independent courier drivers.

The committee found that there were a number of practices happening in that industry that were driving really bad outcomes. I think Professor David Peetz has made a submission as well. David Peetz certainly did some work on this in regard to the gig economy. He found a strong correlation between safer outcomes and industrial relations regulation of the New South Wales chapter 6 provisions, which are the provisions upon which we are modelled. His key findings were presented at a conference, including that fatal accidents declined by two per cent a year across the country between 1989 and 2020, but in New South Wales deadly accidents decreased by five per cent a year over the same period. Peetz also highlighted the key issues that the New South Wales chapter 6 provisions address for transport workers, including long hours, below-average hourly rates of pay and higher debt levels for owner-drivers and business owners. The situation is linked to the propensity to take increasing risks, including speeding, skipping breaks, taking drugs and overloading trucks to make ends meet.

I am sure we could find the background, but I think Peetz mentions it in some of his submissions. I think Peetz' work indicates that there is a very direct correlation between industrial relations outcomes and the use of the New South Wales provisions, and we are modelling ours on theirs. In fact, we actually go a little further in some of our definitions.

Mr BOOTHMAN: In the previous hearing, Ms King from the Queensland Council of Unions commented that it is easier for a large business to deal with one union entity with negotiations. Ever since Premier Beattie's era, we have had a lot of discussion about competition in the marketplace when it comes to the deregulation of the retail energy networks for people to purchase energy, like Origin, et cetera. Back in the day, we used to have just SEQEB here in South-East Queensland. My point, though, is that having one entity dealing with large businesses is destroying potential competition when trying to get a better deal for the individual. What are your comments to that?

CHAIR: That is a statement. I do not think that is a question.

Mr BOOTHMAN: I am curious about their comments on that.

CHAIR: It is seeking an opinion rather than asking a question.

Mr BOOTHMAN: We are talking about opening up competition in an area where you never had competition before. Over the years we have deregulated areas to actually open up competition to get a better deal for the individual. My question to the individuals present here today is: are we saying that competition is not a good thing?

Mr James: First of all, I did not hear Ms King's commentary so I have no context of what she was saying. In terms of dealing with one organisation as opposed to dealing with multiple, it is easier dealing with one person than it is dealing with five, but it depends on the workforce and the diversity of the workforce. If there is a nursing workforce, you really want to deal with one entity that represents the nurses, not two entities that represent the nurses. In terms of the competitive nature of the market, with respect, member, I would say that the competitive nature of the electricity supply market and the retail consumer market is a markedly different economic social argument and position than the concept of competitive unionism. As I said—

Mr BOOTHMAN: It is easier for government to deal with one union; is that what you are saying?

Mr James: No, I am not saying that at all, sir. I am saying that it is—

CHAIR: The comparison of an electricity market versus—

Mr BOOTHMAN: Jumping back, it would be easier for a big business to deal with one entity when it comes to industrial relations?

Mr James: No, what I am saying is that in any negotiation it is clearly easier to deal with one, but a union represents the interests of a cohort and not the interests of everybody. Take Queensland Health, for example. They have blue collar unions and white collar unions. They have clerical people who would be represented by Together Queensland and others, and they have blue collar unionists who would be represented by the Electrical Trades Union and the plumbers' union. Those unions represent the interests of those particular members. The government deals with those—

Mr BOOTHMAN: We are talking about a cohort that is actually split now. In this case you have the Nurses and Midwives' Union versus that NPAQ. You have one group of individuals on that side and another group of individuals on this side. I am trying to make that point.

Mr James: Yes. I think your point is made in that, if you are dealing with one cohort with one set of industrial interests, then at the negotiating table—and I am often at the negotiating table—from the employer's or the government's point of view when trying to negotiate an outcome it is reasonable to negotiate one set of outcomes as opposed to two sets of outcomes, which could actually be competing. When you say that they compete for the best deal, the best deal in bargaining is in the eye of the beholder. A best deal for one may have negative impacts on another.

Mr SULLIVAN: Mr James, to give some context to Ms King's comments, she was giving a bit of history of Queensland in 1990s. She said there were a lot of demarcations, in the private sector in particular, in agriculture and resources that led to inefficiencies, which led to strikes, which led to lockouts—that sort of stuff. That was the context in which that discussion took place.

Mr James: I appreciate the member giving me that background. I think at the start of my discussion, in terms of unionism I said that it really is there to stop, in effect, demarcation disputes between unions because what you said in terms of not good outcomes is the history of competitive unionism.

Mr DAMETTO: I have had someone approach my office saying, 'I am part of a union right now and I know my union donates to the Labor Party, but I do not support the Labor Party anymore.' He has two options: either no longer be a union member and have no-one to represent him in industrial relations matters or he represents himself if a problem arises. Should that person have a choice as to where they go or do they have to stick with the union that they have representing them?

Mr James: It is a difficult question for me to answer based on an individual's needs and wants, but I would suggest that unions are democratic organisations—that is how the legislation is set up to make it—and if there were enough members who, in the union, did not want to make those contributions to any particular organisation or party or any action then that is how democratic organisations operate.

Mr DAMETTO: But unfortunately there are sites around Queensland where you have to be a union member in order to be on the site. Unfortunately, that is just the way it is. Like I said, for a cohort of people in the construction industry and the coal industry there are sites where you have to be a union member to be out there; it is not a really nice place to be if you are not. Unfortunately, that is just the way it is out there.

CHAIR: You can choose not to be, though.

Mr DAMETTO: Yes, but it is not a very nice place to be and you probably will not be going to the next job. I worked in the construction industry for a long time—for 10 years. My question is: how does a person in a cohort like that continue in their line of work if they are not a union member or are not happy paying fees to a union that pays to the Labor Party?

Mr James: It is an interesting question. It is probably not one that I am able to answer for you. I would suggest that if there were members of a union who were unhappy with those actions then there are democratic processes within the organisation to air those views.

CHAIR: Mr James, would that be in stark contrast to the current establishment of the likes of representation we have had here today that are under the associations act? Would there be purview to know financially where their money is being spent at the moment by their membership?

Mr DAMETTO: Oh, they know where their money is being spent, Chair.

CHAIR: Who?

Mr DAMETTO: The people who have joined these unions.

CHAIR: How?

Mr DAMETTO: Because they have asked their union delegates and representatives.

CHAIR: I do not think that that was what we heard today.

Mr DAMETTO: I beg your pardon?

CHAIR: When it was questioned in terms of where that financial information is available, it is not publicly available as it is under an industrial—

Mr DAMETTO: I must have heard differently, sorry.

Mr James: Chair, I am not able to answer that in terms of transparency in the other entities that we are talking about because I am not actually familiar in detail with the transparency, and that is because it has been quite difficult to get.

CHAIR: They are not within—

Mr James: If I may say also say, the bill that we are talking about today does not actually change representation rights; it simply makes clear what organisations are capable of doing and how they present themselves as being capable of doing.

CHAIR: On that, this morning we accepted late submissions from a number of entities. I draw you particularly to the Queensland Law Society's submission, hoping that we might be able to get some feedback on that submission.

Mr Moxham: The Queensland Law Society's submission is essentially addressing the matters that were raised by the President of the Industrial Relations Commission and the Queensland Industrial Relations Court with respect to agents and some of the behaviours that have been experienced within the court and commission when agents have been engaging within that jurisdiction. The QLS submissions generally support and corroborate the information that was provided by the president in his letter. We have had a review of the information that was provided by the president and also from the QLS. We agree that this is an area that warrants attention and that there should be a level of oversight of agents to ensure that when a worker is engaging an agent then that agent actually has the best interests of that person when they are engaging in the Industrial Relations Commission or the court. Without pre-empting the ways that that could be achieved, the model that is already used with respect to lawyers provides a reasonable expectation that, when lawyers appear, there are certain requirements on when they appear and when the commission provides leave for those persons to appear.

CHAIR: There is currently no requirement for agents to have any level of expertise or knowledge when it comes to the law?

Mr James: That is correct. Also, there are no expectations in terms of codes of conduct. I have not seen the submission of the Law Society, but part of that research that Mr Moxham referred to was looking at what guidelines were out for lawyers and others in respect of codes of conduct and compliance. If a lawyer steps out of line, they have certain requirements to meet in order to stay as registered and as members of the Law Society.

CHAIR: Currently when an agent attempts to represent, there is no—

Mr James: They are unregulated, and I think the president's concern was that this was an emerging business model more so than what agency was meant to be, which is to assist someone in the court. What we may be seeing here is an emerging business model. I do not have a lot of evidence that supports the rats-and-mice detail of that, but when the president and the members of the Commission and the QLS raise these issues then I think they are worthy of consideration. We do not have instructions from government on this, but we do certainly have the president raising these things. If he raises things then I can assure you that they have some gravitas.

Mr SULLIVAN: To that point, Chair, I bring to the attention of the committee that this was not like a side decision or a couple of comments that were made from the bench in relation to a matter that we have to interpret. The cover note makes it clear that his letter should be taken as a submission and as factual in that sense, so it is pretty clear what at least the president's view is.

CHAIR: And the experience of the judiciary.

Mr SULLIVAN: Yes; those who do see the rats and mice.

CHAIR: In some of the transport submissions, there was talk about chapter 10A and they used the term 'multi-apping'. Does the bill consider how drivers can be working for multiple organisations at the same time?

Mr Moxham: The bill requires the commission to consider certain matters when it is making a determination, but the genesis of any determination will be an application by a party. If a platform based entity believes that it falls within the jurisdiction of the new provisions, or was inclined to, it could make an application to the commission for a contract determination that suited the business needs of that business or generally of that cohort of businesses. They could actually make applications to ensure that how they conduct their business is essentially maintained within the framework of the new jurisdiction. There are requirements that the commission has to consider holistic elements within how that contract determination is established. Part of that is assessing what are the minimum current remuneration provisions that exist within that industry and what would be the provisions that would be applicable if they were in an employee-like relationship. However, that does not determine how the commission makes its final ruling on that matter. There is sufficient provision within the way that the provisions are being drafted to allow for the particular circumstances of a particular cohort of principal contractors, in platforms or other, and drivers to take into account their particular specific circumstances.

CHAIR: Thank you very much. There were no questions taken on notice and there are no further questions. Thank you very much for the information you have provided today, Mr James, Mr Moxham and Mr McKarzel. We are grateful for your time today. Thank you to our Hansard reporters, parliamentary broadcast staff and our secretariat. A transcript of these proceedings will be available in due course. I declare this hearing closed.

The committee adjourned at 4.44 pm.