United Voice, Industrial Union of Employees, Queensland

Submission to the Finance and Administration Committee

Industrial Relations Bill 2016

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1. Overview of United Voice, Queensland

United Voice represents almost 30,000 workers in Queensland across a wide range of public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

We represent thousands of members including, school cleaners, teacher aides, ambulance officers, health professionals and operational staff, childcare workers, those employed in the contracting industries including but not limited to cleaning, security and hospitality, private prisons , detention centres and aged care workers.

Our union is covered by a number of state awards, certified agreements and arbitrated orders of the state industrial commission.

2. Review of the Industrial Relations Framework

United Voice provided a submission to the review of the industrial framework in Queensland. Our view was that the current legislation required a total overhaul, albeit with some retention of existing elements.

We submitted to the review that since the Queensland industrial jurisdiction was significantly reduced by the expansion of the Commonwealth jurisdiction in 2006 and 2009, there had been little change to the state industrial framework to accommodate the shift.

Our submission to the review noted practical difficulties with public sector bargaining, the associated role of the industrial tribunal, and the deterioration of the system into a legalistic logjam.

We also observed the evolution of a litigious, lengthier, complex, costly and adversarial approach to settling industrial issues and an increasing use of legal representation.

It is our union's view that a flurry of rash amendments to the industrial relations legislation occurred with undue haste during the previous parliament. The legislation became even more complex and impracticable.

Despite the potential for contrasting, political objectives throughout different parliaments, there ought to be some common responsibilities, to tidy up the legislative framework, so it can operate in a practical, facilitative way.

United Voice is aware that a wide range of submissions and views were considered during the review and we have read and considered the report [1]provided by the legislative reform reference group.

[1] A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group. December 2015.

3. Background

United Voice hold the view that the industrial legislation had reached a stage where it had not been aligned to the contemporary public sector and state government limits of its coverage. Further, it had been subjected to a patchwork of amendments which resulted in a cumbersome, dysfunctional statute.

Significantly, the legislative framework did not facilitate a constructive industrial relations framework.

The objectives of the industrial framework should facilitate and encourage co-operation and agreement, whilst preserving the rights of those subject to it.

The direct consumers of the industrial relations framework, including the employees and their representatives, should have confidence in the system and its institutions.

The public interest and policy imperatives for state industrial laws are the effective regulation of employment relations and industrial matters within local government and public sector.

Within that context, the state government fulfils roles as legislator and employer.

The different roles require an objective balancing of responsibilities and a long term perspective.

A legislative review and legislative amendments are necessary to bring the statute up to date.

4. Overview

Overall, the Bill seems fairly conservative in that it has essentially retained the existing industrial system and institutions, and tidied up some of the complexity.

The tidying up of the statute is a welcome improvement, which we believe was warranted.

There are a few drafting matters, which we have highlighted in this submission.

Drafting issues with the Bill

5. Review of Awards

There is no practical requirement for a legislative provision providing for a '*review*' of awards. The Bill includes provisions at section 147 which allow for the making, varying or the revocation of awards. The additional provisions set out at s 156 are essentially unnecessary duplicate provisions which add little but potential confusion.

156 – review of modern awards

Part 5 Review of modern awards

156 Commission's power to review modern awards

(1) The commission may review a modern award—

(a) on its own initiative; or

(b) on the application of—

(i) a person to whom the award applies; or

(ii) an employee organisation that represents a person mentioned in subparagraph (i).

(2) An application mentioned in subsection (1) (b) may include a request to vary a provision of the modern award about wages or employment conditions.

Part 3 Making, varying and revoking modern awards

147 Commission's power to make or vary modern awards

(1) The commission may do either of the following to provide for fair and just employment conditions—

(a) make a modern award;

(b) make an order varying a modern award.

(2) The commission may exercise a power under this section—

(a) on its own initiative; or

(b) on the application of any of the following persons—

(i) the Minister;

(ii) an organisation;

(iii) an employer;

(iv) an employee; or

(c) on a review of a modern award under part 5.

The Bill ought to be amended to delete *section 156* and consequently *sub-section 147 (2) (c).*

6. Legal representation

The Bill drafting appears to conflict with the review report.

The Bill expands a broad discretion for QIRC to allow legal representation, in any matters other than a Full Bench 'bargaining' arbitration.

The drafting conflicts with the recommendations of the reference group report.

The report recommends that legally qualified persons, who are directly employed by a party, should be allowed to appear in the QIRC (as per the Fair Work Act).[2]

The reference group recommends amending the legislation to provide access to limited legal representation consistent with the representation by lawyers as found in the FW Act (e.g. employees or officers of the parties' business and an organisation such as a union or an employer association). This, in turn, could create a more cost efficient system with the skills of in-house advocates and lawyers being relied on at first instance. Stakeholders should be consulted on when such representation might be approved and the criteria to be considered.[3]

This appears to have been adequately addressed in the Bill [refer *section 530 (5*)].

(5) For this section, a party or person is taken not to be represented by a lawyer if the lawyer is—

(a) an employee or officer of the party or person; or

(b) an employee or officer of an entity representing the party or person, if the entity is—

(i) an organisation; or

(ii) an association of employers that is not registered under chapter 12; or

(iii) a State peak council.

The report also recommends that the existing provisions allowing for QIRC to exercise discretion to allow legal representation, be extended to matters before a QIRC Full Bench. [4]

Further, the current provisions which enable legal representation by leave of the Commission subject to the provisions which already exist in section 319(2)(b)(iii) should be extended to

[2] *Ibid* p 144
[3] *Ibid* p 144
[4] *Ibid* p 144 emphasis added

matters before a full bench of the QIRC other than before a full bench established for the arbitration arising out of the ability of parties to reach agreement during bargaining.[5]

See also recommendation 64:

Recommendation 64

That the legislation allow for the legal representation, by leave, of parties in a proceeding before a full bench (other than a full bench established to arbitrate when collective bargaining has failed to result in an agreement) where it would allow the matter to be dealt with more efficiently (having regard to the subject matter of the proceeding), or it would be unfair not to allow the party to be represented because the person is unable to represent themselves effectively. [6]

The drafting appears to go beyond the recommendations, by applying a broad brush approach to the matters, rather than crafting the drafting to ensure that the expanded discretion applies to matters heard by a Full Bench, and not during conciliations or matters heard by a single commissioner.

Section 530 (1):-

> *(c)* ***for any other proceedings***,[7] *including proceedings remitted under section 404(2) or 485(2)—*
>
> *(i) the industrial tribunal hearing the proceedings gives leave; or*
>
> *(ii) the party or person is permitted to be represented in the proceedings under the rules.*
>
> *(2) Also, a negotiating party to arbitration proceedings before the commission under chapter 4, part 3, division 2 must not be represented by a lawyer in proceedings.*
>
> *(3) Also, despite subsection (1), a party or person may be represented by a lawyer in making a written submission to the commission in relation to—*
>
> *(a) the making or variation of a modern award under chapter 3; and*
>
> *(b) the making of a general ruling about the Queensland minimum wage under section 458.*
>
> *(4) An industrial tribunal may give leave under subsection (1)(c)(i) only if—*
>
> *(a) it would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter; or*

[5] *Ibid* p 144
[6] *Ibid* p 145
[7] emphasis added

(b) it would be unfair not to allow the party or person to be represented because the party or person is unable to represent itself, himself or herself; or

(c) it would be unfair not to allow the party or person to be represented having regard to fairness between the party or person, and other parties or persons in the proceedings.

In order to conform to the report's recommendations, *section 530 (1) (c*) would appear to need redrafting to clarify a reference to proceedings being heard before a Full Bench.

This type of issue has a long history in Queensland legislation and the industrial tribunal. The review closely considered the issue, in the contemporary context. The recommendations are sound, and the Bill should be amended to conform more closely to the recommendations.

7. Protected industrial action

The Bill features limited rights for parties to take protected industrial action in narrowly prescribed circumstances. These types of legally protected rights are commonly a feature of Australian industrial systems. United Voice believes that the right take protected industrial action is a critical minimum feature of a collective bargaining system. This is especially evident in circumstances where the employer is a government body and the power imbalance is intensified.

For a system with bargaining primacy to function effectively, collective bargaining processes and institutional practices should prescribe and respect the right for negotiating parties to take protected industrial action.

The processes in place, at least since the enactment of the *Industrial Relations Act 1999*, included a requirement for unions to lodge with the Industrial Registrar, a notice confirming that their relevant members had been authorised under the union's rules to take protected industrial action.

In the previous parliament, additional layers, complexities and exceptions were weaved into the statute, including the involvement of the electoral commission. Many additional layers were complex and time consuming and did not responsibly support the objective principle of the simple right to take protected industrial action during bargaining. This is inconsistent with bargaining primacy.

The Bill has attempted to provide a contemporary process at Part 8 to provide protection for unions and their members who wish to take lawful industrial action during periodical bargaining.

United Voice believes that this section of the Bill is unclear in parts, particularly under section 235 dealing with the approval process. In our view, some redrafting would be required to simplify and clarify the intended process.

In our view, the Bill might clarify the long standing practice that unions can authorise their members to take protected industrial action and undertake whatever legitimate process is expected by their members under their union rules, to ensure members' rights and responsibilities are upheld.

The current drafting is unfortunately somewhat unclear and ambiguous and would benefit from clarification. On its face, it appears unnecessarily convoluted and impracticable.

8. Industrial action –generally

United Voice acknowledges the narrow and limited approach taken by Australia and its States to implementing ILO conventions on the rights to freedom of association, organise and collectively bargain.

In our view, the Bill in its current format falls short of compliance with ILO conventions 87[8] and 98[9], due to the extremely narrow and restricted circumstances under which union members' rights to organise collective industrial action are protected.

For example, the right to organise collective industrial action is limited to narrow purposes under infrequent rounds of collective bargaining.

We invite the parliament to consider whether the Bill meets ILO conventions 87 and 98. Ultimately, when the Bill is enacted it may be prudent for the parliament to monitor the effects of the legislation on providing affected employees with international labour rights and standards.

There is a particular vulnerability, of public sector employees, when their employer is in effect also, the legislator of their employees' rights under the employment relationship.

9. Appeals

Most appeals about industrial matters appear to be directed to the industrial court.[10]

United Voice is supportive of an effective supervision of the state industrial tribunal.

We do, however apprehend that, directing most appeals from single commissioners into the court may be unduly restrictive, and there is a place for certain appeals from single commissioners to be determined by a Full Bench of the Commission.

[8] ILO Convention 87 Freedom of Association and Protection of the Right to Organise Convention, 1948
[9] ILO Convention 98 Right to Organise and Collective Bargaining Convention, 1949
[10] Industrial Relations Bill section 557

10. Equal remuneration

United Voice champions the policy objectives of ensuring that work is appropriately valued, and in particular that there is no gender biased inequities between employee remuneration.

Our union has taken the initiative [11]within the state industrial system over the years, to prosecute arguments and applications designed to address gender biased remuneration.

Our federally registered union is currently prosecuting a major national test case[12] before the federal fair work commission on behalf of undervalued early education workers.

We welcome the inclusion of provisions dealing with equal remuneration in the Bill.

In particular, we welcome those provisions which allow for parties to make applications for equal remuneration orders.[13]

We note that some sections of the Bill appear to present particular challenges in the making of awards.[14] We are unclear as how those provisions are intended to, or would work, in practice.

11. Conclusion

United Voice commends the policy objectives of the Bill. The need to tidy up the industrial legislation is long overdue.

We recommend that the parliamentary committee review some of the drafting of the Bill.

[11] Application for order - Application to increase remuneration - Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees AND The Australian Dental Association (Queensland Branch) Union of Employers (B/2003/2082) - Dental Assistants (Private Practice) Award State - Clerical Employees Award - State 2002
Application for equal remuneration orders - Application for amendment - Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees AND Children ' s Services Employers Association Queensland Union of Employers and Others (B/2003/2133)

[12] **"Equal Remuneration Case 2013-14**" Application for an equal remuneration order pursuant to section 302(1) of the *Fair Work Act 2009* for employees who are employed in long day care centres or preschools of the children's services and early childhood education industry . (C2013/5139 and C2013/6333)

[13] For example Industrial Relations Bill section 252 and 253

[14] For example Industrial Relations Bill sections 247-249