

18 May 2015

Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Sir/Madam

I write in relation to the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015* (the 2015 Bill) and provide the following comments to assist the Committee in its consideration of the 2015 Bill.

It is noted that the purpose of the 2015 Bill, inter alia, is to:

- reinstate employment conditions for Government workers that were lost as a result of legislative changes to the *Industrial Relations Act 1999* (the Act) made in 2012 and 2013;
- re-establish the independence of the Queensland Industrial Relations Commission (QIRC) when determining wage cases;
- return the QIRC to its position as a layperson's tribunal where employees and union advocates operate on a level playing field with employers.<sup>1</sup>

The following discussion highlights aspects of the 2012 and 2013 changes which justify the legislation in question being reconsidered.

In May 2012 the former Government introduced the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* (the 2012 Bill). This legislation was designed to achieve a range of objectives including:

- requiring 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;
- for local government, local government owned corporations and parents and citizens associations, requiring the QIRC to give consideration to the financial position of the employer;
- providing a process whereby the treasury chief executive may brief the QIRC about the State's financial position, fiscal strategy and related matters.<sup>2</sup>

The former Government's rationale for the 2012 Bill was that it was necessary in order to "...recognise the importance of prevailing economic conditions".<sup>3</sup> Yet paradoxically, when it

<sup>1</sup> Explanatory Notes to the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*, p. 1

<sup>2</sup> Explanatory Notes to the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*, p. 2

<sup>3</sup> Ibid, p. 1

introduced the *Queensland Independent Remuneration Tribunal Bill 2013* for determining State MP salaries and allowances the former Government rejected a proposed amendment by the then Opposition that would have introduced a requirement for the tribunal to similarly consider the State's financial position when deliberating on MPs' salaries and allowances.<sup>4</sup>

In introducing the 2015 Bill the Treasurer indicated that the 2012 Bill's requirement for the QIRC to consider the State's financial position and fiscal strategy was unnecessary since "... *the act already sufficiently contemplates such matters and gives the QIRC latitude to take account of such considerations.*"<sup>5</sup> On this point it is useful to note that in its consideration of the 2012 Bill the Parliamentary Finance and Administration Committee acknowledged that the QIRC:

*... has long had a broad capacity to inform itself of matters relevant to its deliberations. The existing section 149 of the IR Act already requires the QIRC to consider general economic issues when arbitrating on a matter. It is reasonable to presume that economic and financial considerations including the employer's capacity to pay higher wages would typically have been raised by parties (including the government as an employer) in respect of wage and employment matters brought before the QIRC and that the evidence presented by parties in support of their position would have been given due judicial consideration by the QIRC members.*<sup>6</sup>

It is also important to note that according to the 2012 Bill's explanatory notes, only consultation within Government was undertaken and that no consultation occurred with the community on the legislation.<sup>7</sup> In reporting on the 2012 Bill the Parliamentary Finance and Administration Committee reflected unfavourably on this lack of community consultation "... *particularly when legislation affects numerous stakeholders.*"<sup>8</sup>

In October 2013 the former Government introduced the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013* (the 2013 Bill). This legislation was designed to implement recommendations of the Government-appointed Queensland Commission of Audit, which was headed by Peter Costello, former Federal Treasurer in the Howard Government.<sup>9</sup>

According to the Minister who introduced the 2013 Bill, the former Attorney-General, the "... *framework set out in the bill is considered essential for providing for a modern, flexible and responsive industrial relations framework, particularly with respect to the negotiation of employment agreements terms and conditions.*"<sup>10</sup> The 2013 Bill's explanatory notes elaborated that:

*The framework will create an industrial relations system in Queensland that focuses on the employment relationship; provides a fair safety-net of enforceable employment conditions; and*

<sup>4</sup> Queensland Parliamentary Hansard, 8 August 2013, pp. 2557-2559

<sup>5</sup> Queensland Parliamentary Hansard, 7 May 2015, p. 506

<sup>6</sup> Queensland Legislative Assembly, Finance and Administration Committee, June 2012, Report on *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*, Report No. 14, p. 20

<sup>7</sup> Explanatory Notes to the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*, p. 5

<sup>8</sup> Queensland Legislative Assembly, Finance and Administration Committee, June 2012, Report on *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*, Report No. 14, pp. 6-7

<sup>9</sup> Explanatory Notes to the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013*, p. 1

<sup>10</sup> Queensland Parliamentary Hansard, 17 October 2013, p. 3422

*promotes efficiency, innovation and productivity improvement in the workplace. The framework is considered essential to address inefficiencies in the negotiation of employment agreements and to provide a modern, flexible and responsive industrial relations system.*<sup>11</sup>

Amongst other things the 2013 Bill reduced workers' entitlements to redundancy pay with the maximum payment being 16 weeks irrespective of the length of service over 12 years.<sup>12</sup> The 2013 Bill also included a provision that following an application by an employer, the QIRC may make an order reducing the amount of the redundancy pay to a stated amount the QIRC considers appropriate. Under the 2013 Bill this amount could be zero.<sup>13</sup> It is noted that the reductions to workers' redundancy entitlements under the 2013 Bill were introduced in the context of the extensive public sector job cuts which the former Government had instigated<sup>14</sup> and following the former Premier's characterisation of public sector redundancy payments as being "very generous".<sup>15</sup>

As with the 2012 Bill, the 2013 Bill's explanatory notes state that consultation on the legislation only occurred within Government and that no public consultation was undertaken.<sup>16</sup>

In conclusion, the changes introduced under the 2012 and 2013 Bills warrant being reconsidered for at least the following reasons:

- They were introduced without the benefit of public consultation. While a small number of stakeholders made submissions during the deliberations of the relevant Parliamentary Committees on the 2012 and 2013 Bills, as noted above the Bills' explanatory notes state that no community/public consultation was undertaken prior to them being introduced into Parliament. This was contrary to accepted best practice which holds that those affected by proposed changes to the law should be able to have input into any such changes. Even the former Government's own Queensland Cabinet Handbook states:

*Consultation is a fundamental and mandatory part of the development of all Cabinet submissions. It enables Ministers to receive sound, comprehensive and coordinated policy advice. Departments initiating a Cabinet submission must ensure that they consider the interests of other departments and relevant external stakeholders ... Consultation with persons or organisations external to government (including employers, unions, community groups, and special interest groups) should be a routine part of policy development.*<sup>17</sup>

<sup>11</sup> Explanatory Notes to the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013*, p. 2

<sup>12</sup> See 2013 Bill, clause 7, insertion of new section 71KF to *Industrial Relations Act 1999*

<sup>13</sup> See 2013 Bill, clause 7, insertion of new section 71KG to *Industrial Relations Act 1999*

<sup>14</sup> It is noted that prior to the 2012 State election the Liberal National Party (LNP) had been claiming that Queensland was facing a dire financial and debt situation (e.g. [http://lnp.org.au/wp-content/uploads/attachments/Economics\\_Strategy\\_web.pdf](http://lnp.org.au/wp-content/uploads/attachments/Economics_Strategy_web.pdf)). Yet even while making this claim, at no stage did the LNP publicly indicate that cutting thousands of public service jobs would be necessary to address the claimed problem. On the contrary, the LNP went to the election publicly stating that if it was successful there would be no widespread cuts to the public service (e.g. see

<http://www.brisbanetimes.com.au/queensland/you-have-nothing-to-fear-newman-tells-public-service-20110404-1cv6x.html>;

<http://www.brisbanetimes.com.au/queensland/doubts-over-public-service-job-security-20110404-1cyle.html>;

<http://www.brisbanetimes.com.au/queensland/public-servant-jobs-safe-newman-20110509-1ef05.html>;

<http://www.brisbanetimes.com.au/queensland/higher-pay-in-lean-public-service-newman-pledges-20111205-1of5a.html>).

<sup>15</sup> Queensland Parliamentary Hansard, Estimates-Premier and Cabinet, 16 July 2013, Statement by Premier Campbell Newman, p. 28. Also see

<http://www.brisbanetimes.com.au/queensland/few-public-servants-gamble-on-redeployment-20120914-25xwg.html#ixzz2qNEtDv9>;

Queensland Parliamentary Hansard, 27 November 2014, p. 4068;

Queensland Parliamentary Hansard, 30 October 2014, p. 3760

<sup>16</sup> Explanatory Notes to the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013*, p. 8

<sup>17</sup> Queensland Cabinet Handbook, 2013, section 6 (<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/assets/cabinet-handbook.pdf>)

Given that “... *the legitimacy of much public policy rests on an exchange between citizens and their government*”,<sup>18</sup> it was essential that such far reaching measures as were proposed under the 2012 and 2013 Bills should have been subjected to extensive community/stakeholder scrutiny and input prior to their introduction to Parliament. It is extremely unfortunate that this did not occur.

- Some of the changes were highly questionable, such as those under the 2012 Bill which unduly fettered the independence of the QIRC in its consideration of wage cases. It is notable that in its report on the 2012 Bill the Parliamentary Finance and Administration Committee accepted that, “*Requiring the QIRC to take account of the State’s financial position or fiscal strategy appears to have real potential to pre-empt the outcome of wage arbitration.*”<sup>19</sup>
- There is no substantive evidence that the reduction/removal of long standing workplace rights and entitlements under the 2012 and 2013 Bills achieved the objectives they were intended to fulfil let alone even being necessary in the first place. On the contrary, there is every likelihood that the reduction/removal of workplace rights and entitlements, combined with the widespread public service job cuts, contributed to the general lack of confidence and malaise which pervaded the Queensland economy during this period.<sup>20</sup>

I trust the above comments and observations will assist the Committee in its deliberations on the 2015 Bill.

Yours faithfully

Don Willis

<sup>18</sup> Althaus, C., Bridgman, P. & Davis, G., 2007, *The Australian Policy Handbook*, 4<sup>th</sup> Edition, Allen & Unwin, Sydney, p. 97

<sup>19</sup> Queensland Legislative Assembly, Finance and Administration Committee, June 2012, Report on *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*, Report No. 14, p. 20

<sup>20</sup> E.g. see

Sunday Mail, 16 September 2012, “Public service job cuts to damage confidence”, p. 51;

<http://www.brisbanetimes.com.au/opinion/the-unintended-consequences-of-job-cuts-20120815-248hn.html>;

<http://www.abc.net.au/local/stories/2012/10/24/3617461.htm>;

<http://www.abc.net.au/news/2013-04-23/qld-government-overdid-state-budget-cuts-report/4645388?source=rss>;

<http://news.smh.com.au/breaking-news-national/qld-govt-cuts-hurting-growth-report-20130423-2icbw.html> ;

<http://www.sunshinecoastdaily.com.au/news/economic-growth-to-slow/2151767/>;

<http://www.abc.net.au/news/2014-06-02/qld-budget-massive-22b-deficit-will-turnaround-in-12-months/5493258>;

[http://www.adelaidenow.com.au/news/national/qld-govt-cuts-hurting-growth-report/story-e6frea7l-1226627000231?from=public\\_rss](http://www.adelaidenow.com.au/news/national/qld-govt-cuts-hurting-growth-report/story-e6frea7l-1226627000231?from=public_rss);

<http://www.couriermail.com.au/business/queensland-economy-recovers-from-gfc-with-new-jobless-low-of-56pc/story-fnihsps3-1226781996239>;

<http://www.couriermail.com.au/news/queensland/public-service-job-cuts-mining-slowdown-start-to-bite-as-queensland-economy-goes-in-to-reverse/story-e6freof-1226530816026>;

<http://www.brisbanetimes.com.au/queensland/queensland-economy-ranks-fifth-20141020-118oy1.html>;

<http://www.couriermail.com.au/news/queensland/dole-queue-longer-and-welfare-costs-rocket-as-queensland-records-its-worst-unemployment-rate-since-2003/story-fnihsrf2-1227115277112>;

<http://www.brisbanetimes.com.au/queensland/queensland-state-election-2015/queensland-election-2015-state-ranks-fifth-in-commsec-report-20150119-12t5as.html>;

<http://www.brisbanetimes.com.au/business/retail/santa-may-come-early-if-david-jones-myer-bring-forward-boxing-day-sales-20141211-124xws.html>;

<http://www.brisbanetimes.com.au/queensland/queensland-election-expected-to-be-called-tuesday-20150105-12iduw.html>;

<http://www.brisbanetimes.com.au/national/wellbeing-index-shows-impact-of-jobless-on-society-20140606-39okt.html>;

<http://www.brisbanetimes.com.au/world/how-unemployment-warps-your-personality-20150225-13p1jo.html>