

18 May 2015

The Research Director  
Ms Deborah Jeffrey  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane QLD 4000

Email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Ms Jeffrey


**Re: Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015**

Please find attached the written submissions of Together Queensland with respect to the abovementioned Bill.

We request permission to publish these submissions for the benefit of our members and would appreciate return correspondence advising whether such permission is granted.

Should you have any queries please contact Mr Michael Thomas on 0407 321 655 or by email at [michael.thomas@together.org.au](mailto:michael.thomas@together.org.au).

Yours sincerely



**Alex Scott**  
Secretary

## **Submission to the Finance and Administration Committee regarding:**

### **Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015.**

#### **Overview**

Together Queensland supports the intent of *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015* (the Bill) and urges the Committee to recommend passage of the Bill.

On 31 January 2015 the will of the Queensland electorate was clearly expressed. On 31 January 2015 the incoming Palaszczuk government's commitment to restore fairness in industrial relations was endorsed across the state. This endorsement was particularly strong from Together members. Together represents tens of thousands of public sector workers who led the call for a return of fairness in the public sector. These Queenslanders have suffered as much as anyone from the Newman government's ideological attacks on them and the valuable work they do.

The Newman LNP government was elected in 2012 having made clear promises to respect rights at work and the collective bargaining framework. The government broke these commitments and removed protections for job security as well as many other basic rights, amending legislation often late at night with no warning. Thousands of workers and their families in Queensland suffered as a result of the removal of these protections, which directly caused the loss of over 20,000 jobs in the last three years.

The Bill seeks to undo some of these extreme legislative changes - changes which attacked the rights of Public Sector workers to bargain collectively and which stripped away existing rights and conditions from Awards and Collective Agreements.

The Bill seeks to rectify this and addresses some of the immediate barriers to fair bargaining between employees and employers covered by the Act.

The passage of this Bill is widely supported by the members of Together, many of whom have made submissions to this Committee, some echoing the submission below.

To: Members of the Finance and Administration Committee

I write to make a submission on the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015.

I urge the committee to recommend passage of this bill without delay to ensure that the rights of public servants and local government workers are restored to them.

The Newman LNP government was elected in 2012 having made clear promises to respect rights at work and the collective bargaining framework. The government broke these commitments and removed protections for job security as well as many other basic rights, amending legislation often late at night with no warning. Thousands of workers and their families in Queensland suffered as a result of the removal of these protections, which directly caused the loss of over 20,000 jobs in the last three years.

The right to organise collectively to achieve better working rights and conditions is a basic human right. The Newman government undemocratically curtailed this right and as a result lost the 2015 Queensland election. At the election a majority of Queenslanders supported parties and candidates who advocated a restoration of these basic rights for workers and for a restoration of certainty in our state and local government services.

Please respect the voice of Queenslanders and the rights of workers and vote to restore fairness by supporting this bill.

These Queenslanders deserve to have their voice heard and it is for them that this Bill should be passed.

Further, we note that there is much more work to do to ensure that workers' rights are fully restored. Together looks forward to participating in the broader review of the *Industrial Relations Act 1999* (the Act) to address these outstanding issues.

## Supported Provisions

This Bill enacts many of the government's election commitments to restoring the rights of employees and supporting them in bargaining with their employer about conditions and rights that will make a real difference to their working lives. Together supports the following aspects of the Bill:

1. **Removal of Chapter 15, Part 2 of the Act.** This part was introduced by the previous Government with the sole purpose of stripping away existing conditions contained in Collective Agreements and Award made by the Queensland Industrial Relations Commission (QIRC) including :

- i. Employment security
- ii. Consultation about organisational change
- iii. No contracting out of services
- iv. Incorporation of policy into awards and agreements
- v. Union encouragement
- vi. Provisions about private practice (for a medical practitioner)
- vii. Resource allocation (including workload management provisions)

This part of the Act also had the effect of eliminating the right to genuine consultation under Queensland law in a way that meant workers had fewer consultation rights than any other workers in Australia. The QIRC's General Ruling on Termination, Change and Redundancy (TCR) mirrored the long standing Federal Commission's TCR provisions. These TCR provisions encapsulated the legal requirements of employers to consult with employees around organisational change and provide them with a "bona fide opportunity to influence the decision maker".

The Newman Government legislatively overruled the decision of the independent umpire, the QIRC. This, combined with the model clause in regulations relating to consultation, rendered the requirement for genuine consultation ineffective. This Bill restores that right to workers under the state Act.

Removing Chapter 15, part 2 also once again enlivens 'encouragement provisions' to help build effective employee organisations. These provisions support the [1998 ILO Declaration of Fundamental Principles and Rights at Work](#). Freedom of association and the exercise of collective bargaining provide opportunities for constructive rather than confrontational dialogue, and this harnesses energy to focus on solutions that result in benefits to the enterprise, its stakeholders, and society at large.

2. **Removal of Chapter 2A, Division 4 of the Act.** This part was again introduced by the previous government to prohibit the employers and employees from agreeing to include certain provisions in so called "modern" industrial instruments. These included the following:

- i. A prohibition on provisions relating to terms or conditions on which services may be contracted in or out of an organisation (s71O)
- ii. A prohibition on employment security including provisions about converting employees from casual or temporary employment to permanent employment (s 71OA).
- iii. A prohibition on organisational change provisions for the reasons stated above (see section 71OC).
- iv. A prohibition on encouragement provisions that, in our view, indirectly attacked freedom of association (s71OC).
- v. A prohibition on provisions seeking to incorporate organisations policies into industrial instruments so as to provide greater certainty. (s71OD)
- vi. A prohibition on any provision that related to a private practice arrangement for a medical practitioner. (s71OE)
- vii. Prohibitions on provisions that deal with training arrangements, workload management or the delivery of services. (s71OK).

The prohibitions listed above clearly illustrate an ideological attack on the rights of Queenslanders in their workplace and a desire by the previous Government to remove any capacity for employees to have a genuine say on conditions that may have a profound effect on their lives. These prohibitions removed legally enforceable rights that provide Queenslanders with certainty, security, and a chance to protect and improve their working lives.

## Further Amendments Required

While the Bill goes a long way to meeting the Government's election commitments, in the interests of undoing the previous government's ideological attack on Queensland workers and restoring fairness to Queensland's Industrial Relations Laws Together submits the following further amendments are desirable:

1. **Removal of Chapter 6A of the Act and associated provisions.** One of the key turning points in public opinion during the life of the previous Government was the high profile industrial dispute with Queensland's doctors. This group of professionals were galvanised into action in way that had never occurred before in Queensland's history because of the attacks by the current Leader of the Opposition, Lawrence Springborg, on their working conditions.

There was a clear commitment by the new Government to remove the unfair doctor contracts and restore to our state's medical professionals their rights to collective bargaining and to recourse to the independent umpire, the QIRC. This Bill as currently presented does not achieve that aim.

### Recommendation

Remove Chapter 6A of the Act and associated provisions in the Industrial Relations Act 1999 and other relevant legislation.

2. **Remove the nexus between the right to bargain and the existence of a Modern Award**

The Bill maintains the prohibition on negotiating a new Certified Agreement until a modern Award is in place. This requirement will impact on the ability of Together members in the Department of Health and the Department of Transport and Main Roads to commence bargaining when their

current agreements expire in coming months. Both of these Departments have 'continuing' agreements in place (see s 827).

A 'continuing Agreement' has its nominal expiry date extended by one year unless an earlier day is prescribed by regulation (see section 828). 'Continuing Agreements' cannot be extended, amended or terminated by the parties to the Agreement (see section 829).

There appears to be no ability to extend an expiry date beyond one year and the Act is silent as to what can occur when a 'continuing Agreement' passes its extended expiry date if a relevant modern Award has still not been made.

In the case of the *Queensland Public Health Sector Certified Agreement (No. 8) 2011 (EB8)* and the *TMR Enterprise Determination 2011*, there are employees under these agreements that are not covered by a modern award and are therefore constrained from bargaining.

These workers have been denied the opportunity to renegotiate their Agreements at the time they were due and without further amendments to the Act will continue to be denied that ability. This ignores and negates the wishes of the parties when the last Certified Agreements were negotiated and unfairly disadvantages these workers.

#### **Recommendation**

Amend section 828 to provide that negotiations for a new Certified Agreement can proceed and be made once a continuing Agreement reaches its 'extended' expiry date or an expiry date prescribed by regulation. Should such a recommendation not be made, there should instead be included a transitional provision to allow for the awarding of a pay increase through regulation in the circumstances where an instrument expires but there is no capacity to bargain for a replacement agreement.

**3. Restricting the Timing of Negotiations.** The current Act prohibits a party from giving notice of intention to bargain earlier than 60 days prior to the expiry of an existing Certified Agreement (see section 143(3A)). This is despite anything to the contrary in a Certified Agreement.

This provision removes the right of parties to determine their own timeframes for bargaining according to what they believe is reasonable and pressures parties to cut short deliberations on sometimes complex issues.

The Bill does not disturb this provision.

#### **Recommendation**

Remove section 143(3A).

#### **4. Redundancy Pay**

Clause 5 of the Bill sets out the required or permitted provisions in a modern industrial instrument. While it removes any reference to non-allowable matters, it appears to continue a Newman Government prohibition against the inclusion of any entitlement to redundancy pay above the Queensland Employment Standard (QES) minimum.

Section 71NA of the Act says that modern industrial instruments can supplement entitlements under the Queensland Employment Standards (such as redundancy pay); however, section 71NA(2)(b) says you cannot supplement matters under part 2, division 9, subdivision 2. This is the redundancy pay provision.

The proposed amendments do not disturb this provision.

The effect appears to be that only minimum QES redundancy payments can be included in a modern industrial instrument which is inconsistent with the pre LNP Act.

#### **Recommendation**

Omit section 71NA(2)(b)

#### **4. Independence of the QIRC to Arbitrate Pay Outcomes**

Clause 20 of the IR Bill amends section 149C(2) of the current Act but leaves section 149C(1) undisturbed. Section 149C(1)(c) prohibits the QIRC from backdating any arbitrated wage outcome. This limits the independence of the QIRC from determining fair and reasonable pay outcomes for employees, particularly where arbitration of matters may take a considerable amount of time.

#### **Recommendation**

Omit Section 149C(1)(c).

#### **5. Limiting the Right to Protected Action.**

Section 150A of the current Act prohibits protected action during conciliation and arbitration periods. This was a provision introduced by the previous government and effectively removes any meaningful right to take protected action.

Section 148 says that parties must enter conciliation if a party *“asks the commission for help negotiating the matter and the commission considers that a negotiating party is organising or engaging in, or threatening to organise or engage in, relevant industrial action”*.

Relevant industrial action means, among other things, industrial action that *“affects or threatens to affect, directly or indirectly, access to, or delivery of, services to the community or a part of it”* Given the work involved it is hard to imagine any industrial action by Together members in the Public Sector that would not meet this definition.

The effect of the LNP’s changes to the Act is that an employee’s legal right to take protected industrial action can be denied simply by demonstrating to the QIRC that industrial action is being organised. It is an unreasonable impingement on fundamental rights.

The Bill does not disturb these sections of the Act. The Bill also does not disturb sections of the LNPs laws that impose ballots on industrial action.

#### **Recommendation**

Amend or remove the sections of the Act that unreasonably prohibit the right to take industrial action, this can be achieved by amending or removing sections 148(1)(c), 148(3) and 150A.

6. **Remove the capacity for Certified Agreements to be amended by regulation.** The Bill proposes the inclusion of s849 that has the effect of allowing Certified Agreements to be amended by regulation in very broad circumstances. Together's view is that this proposed section 849 is untenable. Government should not be given the capacity to unilaterally vary a Certified Agreement by way of regulation.

This precedent would allow future governments to override otherwise binding and Certified agreements between parties by way of Regulation.

### **Recommendation**

Do not include s849 in its current form.