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Finance and Administration Committee
Parliament House
Brisbane QLD 4000

By Email: fac@parliament.qld.gov.au

Dear Ms Farmer MP

Re: United Voice Queensland Branch Submission to the Inquiry into the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015

United Voice, Industrial Union of Employees, Queensland (United Voice), makes this submission to the Finance and Administration Committee in response to your letter dated 8 May inviting submissions on the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 (the Bill).

United Voice represents almost 30,000 workers in Queensland including a large number of public sector and local government workers, who are engaged in a diverse range of industries and occupations, and who remain under the State industrial relations jurisdiction. We represent thousands of school cleaners, teacher aides, ambulance officers, health professionals and operational staff.

United Voice made submissions to the previous government regarding the worst aspects of their changes to the industrial relations framework within the state and our members in the public sector have been vocal advocates and activists for the restoration of their rights.

We welcome and support the Bill as a vital first step to remove some of the immediate barriers to fair bargaining between employees and employers covered by the Act. We applaud the policy objectives of the Bill but seek to draw your attention to a small number of important areas that appear to have been overlooked in the drafting that relate directly to the achievement of those objectives. These areas may be found from page 4 of our submission.

There is, of course, much more work to do to ensure that workers' rights are fully restored. Our Union looks forward to participating in the broader review of the Industrial Relations Act 1999 (the Act) to address the outstanding issues.

Restoring Fairness

The Government is to be congratulated for restoring the rights of employees and enabling employees to once again bargain with their employer about conditions and rights that will make a real difference to their sense of security, well-being and standard of living.

In particular, we support the removal of Chapter 15, part 2 of the Act which, in its current form, destroys numerous conditions and rights including:

- The right to employment security provisions which provide certainty of employment and allow our members to confidently provide for themselves and their families and contribute to the economy.

- Protection against contracting out and a right to redundancy payments above the minimum.

- The right to genuine consultation. The Act prohibits provisions allowing notification to and consultation with employee organisations about organisational change. This section of the Act, combined with the model clause in regulations relating to consultation, renders the requirement for genuine consultation ineffective and tokenistic at best.

- The right to incorporate policy provisions into Certified Agreements which removes legal protection for numerous entitlements including better than minimum redundancy standards. It makes conditions unenforceable in the QIRC and uncertain, as the employer can alter or remove policy provisions at any time.

Removing Chapter 15, part 2 also re-enlivens 'encouragement provisions' to help build effective employee organisations. It is a well-recognised feature of democratic nations that employees should have the right to associate for the purpose of improving and protecting their interests. It is reasonable for employees to receive encouragement and support to build an effective voice to protect their interests and to ameliorate the power imbalance that exists in the employment relationship. It is also reasonable for employees to be able to discuss workplace issues and issues relating to their organisations during work time, as well as to have reasonable access to their delegates and organisers for advice and support.

We further support the removal of Chapter 2A, part 3, Division 4 of the Act which in its current form has the effect of prohibiting rights and conditions from modern industrial instruments.

The limitations under Chapter 2A, part 3, Division 4 are unacceptable and ultimately deny important rights and conditions to our members. Of particular concern to our members are:

- The prohibition on job security provisions for the reasons stated above (see section 71OA).

- The prohibition on provisions about organisational change for the reasons stated above (see section 71OC).

- The prohibition on encouragement provisions and right of entry provisions for reasons stated above (see sections 71OB and 71OG).

- The prohibition on provisions that deal with training arrangements. Skills development and increased knowledge are critical to enable an employee to perform their role more effectively, to progress, and to contribute to improved outcomes in the workplace. Employees are often best placed to know what training needs are required and deserve meaningful input, as well as certainty, around the support that employers will provide by way of training and professional development (see section 71OK(a)).

- The prohibition on provisions which give workers a right to be able to negotiate about what constitutes a reasonable workload and to have reasonable workloads regulated through a legally enforceable document (see sections 71OK(b) and 71OL(1)(d)). These provisions are particularly vital in patient care settings such as health and the ambulance service where fatigue is already a serious issue.

- The prohibition on provisions which give workers the enforceable right to increase their hours of work in certain situations. This is vitally important for low paid part time workers such as teacher aides and schools cleaners who rely as much on the ability to increase hours as they do on wage increases to secure a liveable wage (see sections 71OJ(b) and 71OL(1)(d)).

- The prohibition on the ability to convert from casual or temporary employment to permanent employment. Where there is a reasonable expectation of ongoing employment, employees deserve the certainty of a steady income from month to month or week to week. Employees also need this certainty to be able to secure bank loans and to fully participate in the economy. Denying this certainty to people is harsh and unreasonable (see section 71OA(d)).

The prohibitions above demonstrate a callous disregard for workers' rights and expose a belief by members of the Liberal National Party (LNP) that workers should not be entitled to a genuine say on conditions that may have a profound effect on their lives, that they should not be entitled to a genuine voice in the workplace and that they should not have legally enforceable rights which provide certainty, security, and a chance to protect and improve their circumstances.

Restoring Independence of QIRC

We support the Bill's objective to restore the independence of the QIRC when determining wage outcomes for government workers. We argued at the time that the change was clearly designed to require the QIRC to consider not just the fiscal situation but also the preferred wage outcome sought by the government in the context of their wages policy.

It seemed inconceivable that one party's preferred outcome should be given special consideration with the unfairness of the change reinforced by the lack of capacity for the information about the State's fiscal strategy/position to be interrogated or cross examined by either the QIRC or employee/bargaining representatives.

Our Ambulance officers experienced this disadvantage first hand in 2014 when the QIRC itself said at Clause 74 of its arbitrated decision for a new Ambulance Officers' Certified Agreement:

> "... the Commission considers that it is unable to award any increase beyond the 2.2% per annum figure proposed by the QAS"

It goes on to say that even if the merits of the Ambulance Officers' Union, United Voice, were accepted it could not be ...

> "accommodated within the financial constraints that the State Government has presently imposed on itself and the QAS...".

Further Amendments Necessary to Restore Fairness and Meet Policy Objectives

1. Removing uncertainty about the right to bargain in the absence of a Modern Award

United Voice is concerned that the Bill does not address the prohibition on negotiating a new Certified Agreement unless a modern Award is in place. This requirement will have a significant impact on the ability of many thousands of United Voice members to bargain for wages and conditions.

The Department of Education and Training Teacher Aides' Certified Agreement 2011 has a nominal expiry date of 31 August 2014. *The Department of Education and Training (Education) Cleaners' Certified Agreement 2011* has a nominal expiry date of 18 January 2015. *The Queensland Public Health Sector Certified Agreement (No 8) 2011 (EB8)* has a nominal expiry date of 31 August 2014. These Agreements have now become 'continuing Agreements' under the current Act (see section 827).

A 'continuing Agreement' has its' nominal expiry date extended by 1 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).

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. However, section 140J of the Act states that Chapter 6, which is about the making of Certified Agreements, only applies to *"employees who are covered by a modern Award"* and to *"employers of employees covered by a modern Award"*

In the case of the school cleaners, teacher aides and our members covered by *The Queensland Public Health Sector Certified Agreement (No 8) 2011 (EB8)*, no relevant modern Award has been made or is likely to be made prior to the extended expiry dates of the 'continuing Agreements'.

United Voice members under the above Agreements have been denied the opportunity to renegotiate their Agreements at the time they were due. Without further amendments to the Act, teacher aides, school cleaners and health workers will continue to be denied the opportunity to negotiate important matters as part of their respective Agreements, long after these Agreements have expired. This ignores and negates the wishes of the parties when the last Certified Agreements were negotiated and unfairly disadvantages teacher aides and schools cleaners.

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.

Omit section 140J

This is consistent with policy objective 1a and 2 of the Bill.

Relevant Sections of the Act

140J Application of ch 6

This chapter applies to—

(a) employees who are covered by a modern award; and

(b) employers of employees covered by a modern award.

827 Continuing agreements and determinations

(1) A certified agreement is a ***continuing agreement*** *for this division if its nominal expiry date was a day before the introduction day.*

(2) Also, a certified agreement becomes a ***continuing agreement*** *for this division if—*

(a) the agreement reaches its nominal expiry date; and

(b) the relevant pre-modernisotion award for the agreement (or, if there is more than one, each of the relevant pre-modernisation awards for the agreement) has not been modernised under chapter 5 by that time.

(3) However, subsections (1) and (2) do not apply to a certified agreement to which section 831 or 832 applies.

(4) If, before the introduction day, a certified agreement reached its nominal expiry date but the parties to the agreement administratively agreed to extend the nominal expiry dote to a later day that is after the introduction day, then, for this section, the nominal expiry dote is token to be the later day.

(5) In this section—

certified agreement *includes a determination.*

pre-modernisation award *see section 140B.*

828 Extension of nominal expiry date by up to 1 year

(1) On the introduction day, the nominal expiry dote of a continuing agreement mentioned in section 827(1) becomes—

(a) the day that is 1 year after the introduction day; or

(b) if an earlier day is prescribed for the agreement under a regulation, the prescribed day.

(2) On the day that a certified agreement becomes a continuing agreement under section 827(2), its nominal expiry date becomes—

(a) the day that is 1 year after that day; or

(b) if an earlier day is prescribed for the agreement under a regulation, the prescribed day.

829 Continuing agreements can not be dealt with

(1) The parties to a continuing agreement can not—

(a) apply under section 168 to extend the agreement; or

(b) apply under section 169 or 170 to amend the agreement;

or

(c) terminate the agreement.

(2) Any of the following things done, or purportedly done, on or after the introduction day is, and always was, of no effect—

(a) a thing that, under subsection (1), can not be done;

(b) the making of an order by the commission on an application that, under subsection (1), can not be made.

2. 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 doesn't disturb this provision.

Recommendation

Omit section 143(3A).

This is consistent with policy objective 1a and 2 of the Bill.

Relevant Section of the Act

143 Proposed parties to be advised when agreement is proposed

(1) This section applies when a person (the proposer) proposes to make a certified agreement.

(2) The proposer must give each of the following persons a written notice (a notice of intention) of the proposer's intention to begin negotiations for the agreement—

(a) the other proposed parties to the agreement;

(b) for a project agreement—all relevant employee organisations and the commission.

(3) The proposer must give the notice of intention at least 7 days before the negotiations are proposed to begin.

(3A) If there is an existing certified agreement or a determination under subdivision 3 between the parties, the proposer must not, despite anything to the contrary in the agreement or determination, give the notice of intention more than 60 days before the nominal expiry date.

(4) If the agreement proposed is a project agreement, an organisation that receives a notice of intention and wants to be party to the agreement must give written notice of that fact to—

(a) the proposer; and

(b) the commission.

(5) If the agreement proposed is a multi-employer agreement, a person who receives a notice of intention and wants to be party to the agreement must give written notice of that fact to the proposer and the commission.

(6) A notice under subsection (4) or (5) must be given within 21 days of the person receiving the advice.

(7) An agreement may only be made within that 21 days if the other proposed parties to the agreement, and all relevant employee organisations, have given a notice under subsection (4) or (5).

3. 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 prohibit the inclusion of any entitlement to redundancy pay above the Queensland Employment Standard (QES) minimum.

The clause 5 amendment says that a modern industrial instrument must include provisions under part 2 of the Act. Part 2 includes the minimum Redundancy pay standard (see section 71KF).

Section 71NA (see below) 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 only amendment proposed by the Bill to section 71 NA is to remove the words *"other than a non-allowable provision"* in section 71NA(1). The proposed amendments do not disturb section 71NA(2)(b).

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)

This is consistent with policy objective 1a of the Bill.

Relevant Section of the Bill

Clause 5

Replacement of s 71LA (Required or permitted provisions)

Section 71LA—

omit, insert—

71LA Required or permitted provisions

(1) A modern industrial instrument must include the provisions required under—

(a) part 2; and

(b) for a modern award—division 2, subdivision 2; and

(c) for a certified agreement—division 2, subdivision 3.

(2) A modern industrial instrument may include the provisions permitted under division 3.

(3) This section is subject to section 71NCA.

Relevant Section of the Act

71NA Provisions related to Queensland Employment Standards

(1) A modern industrial instrument may include any other provision, other than a non-allowable provision, that—

(a) provides for all or part of a matter that is provided for under the Queensland Employment Standards; or

(b) is ancillary or incidental to the operation of the entitlement of an employee under the Queensland Employment Standards; or

(c) supplements the Queensland Employment Standards.

(2) However, subsection (1)—

(a) applies only to the extent the effect of the provision is no less favourable to an employee than the Queensland Employment Standards; and

(b) does not apply to a provision about a matter provided for under part 2, division 9, subdivision 2.

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 to determine 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).

This is consistent with policy objective 1a and b of the Bill.

Relevant Section of the Bill

Clause 20

Amendment of s 149C (Arbitration powers of full bench)

Section 149C(2)—

omit, insert—

(2) An arbitration determination by the full bench must include the provisions required to be

included in a certified agreement under chapter 2A, part 3, division 2, subdivision 3.

Relevant Section of the Act

149C Arbitration powers of full bench

(1) For determining a matter by arbitration under this subdivision, the full bench—

(a) has the arbitration powers it would have under section 230 if that section applied to certified agreement negotiations instead of industrial disputes; and

(b) may give directions or make orders of an interlocutory nature; and

(c) cannot order an increase in wages payable to employees before the full bench makes its arbitration determination for the matter.

(2) An arbitration determination by the full bench—

(a) must include the provisions required to be included in a certified agreement under chapter 2A, part 3, division 2; and

(b) cannot include o provision that cannot be included in a certified agreement under chapter 2A, part 3, division 4.

5. Limiting the Right to Protected Action.

Section 150A of the current Act was introduced by the LNP. It prohibits protected action during conciliation and arbitration periods.

Section 148 says that parties must enter conciliation if a party *"asks the commission for help negotiating the matter and the commission considers that o 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"* (see section 148(3)(iv)). It is difficult to contemplate industrial action that would not have this effect.

The effect of the current legislation 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. Such as situation occurred to United Voice Health Practitioner members in 2014. 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

While all provisions in relation to the right to take industrial action should be reviewed, for the purpose of the Bill, the sections of the Act that unreasonably prohibit the right to take industrial action should be removed. This can be achieved by amending section 148(3) and/or amending or omitting sections 148(c) and 150A.

This is consistent with policy objective 2 of the Bill.

Relevant Sections of the Act

148 Commission to help negotiating parties

(1) After the peace obligation period for negotiations for a proposed certified agreement has ended, the commission must help the parties to the negotiations (each, a negotiating party) to make a certified agreement if—

(a) all of the negotiating parties jointly ask the commission to help them negotiate the agreement; or

(b) 1 negotiating party declares a breakdown in the negotiations and the commission considers further negotiations are unlikely to result in making a certified agreement within o reasonable time; or

(c) 1 negotiating 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.

(2) The negotiating parties must, with the commission's help, try to make a certified agreement during the period (the conciliation period)—

(a) starting on the day—

(i) if subsection (1)(a) applies—the commission is asked to help; or

(ii) if subsection (1)(b) applies—the commission notifies the parties that it considers further negotiations are unlikely to result in making a certified agreement within a reasonable time; or

(iii) if subsection (1)(c) applies—the commission notifies the parties that it considers that 1 of them is engaging, or threatening to engage, in relevant industrial action; and

(b) ending on—

(i) the day that is 14 days after the day mentioned in paragraph (a) for the matter; or

(ii) if all the negotiating parties agree to end the conciliation period on a later day—the later day.

(3) In this section—

relevant industrial action—

(a) means industrial action—

(i) that has been protracted; or

(ii) that has caused, is causing or threatens to cause significant damage to any of the following—

(A) the economy or a part of it;

(B) the local community or a part of it;

(C) a single enterprise;

(D) the employees; or

(iii) that has endangered, is endangering or threatens to endanger the personal health, safety or welfare of the community or a part of it; or

(iv) that affects, or threatens to affect, directly or indirectly, access to, or delivery of, services to the community or a part of it; or

(v) the cumulative effect of which has affected, or threatens to affect, directly or indirectly, access to, or delivery of, services to the community or a part of it; but

(b) does not include the making, by a negotiating party, of an application for a protected action ballot order under schedule 4, part 2, section

150A No protected industrial action during conciliation and arbitration periods

Industrial action is not protected industrial action under section 174 if it is organised, or engaged in, by or on behalf of a negotiating party for a matter—

(a) during the conciliation period for the matter; and

(b) if the matter is determined by arbitration under subdivision 3—between the end of the conciliation period and the end of the arbitration period for the matter.

Conclusion

United Voice urges the Finance and Administration Committee to support the changes contained within the Bill and our recommendations for additional changes needed to give full effect to the policy objectives.

United Voice seeks the opportunity to advance our views on the amendments in relation to this matter at the hearing set down for 25 May 2015.

Please contact Gary Bullock on [redacted] should you want to discuss any aspect of this submission further. All correspondence should be addressed to PO Box 3948, South Brisbane BC, Qld, 4101.

Yours sincerely

[redacted]

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