

## **Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland**

### **Submission to the Finance and Administration Committee of the Queensland Parliament**

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

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**18 May 2015**

Sent via email: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Monday, 18 May 2015

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## A. Introduction

1. The Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland ("CFMEU") welcomes the opportunity to make this submission to the Finance and Administration Committee of the Queensland Parliament in relation to the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015* ("the Bill").
2. The CFMEU is the major union amongst public sector and local government employees in blue collar trades and non-trades classifications, and has been at the forefront in campaigning for its members' workplace rights, particularly through the successful "Local Government Rights At Work Campaign" – a community-based campaign aimed at raising awareness about the changes to industrial laws made by the former Newman Government since 2012.
3. The CFMEU commends the Palaszczuk Government on acting swiftly to restore fairness to public sector and local government employees by suspending the award modernisation process initiated by the former Newman Government on 17 March 2015 and by moving to roll-back the changes made by the former Newman Government to the *Industrial Relations Act 1999* ("IR Act") as a first step in reviewing Queensland's workplace laws under the present Bill.
4. The former Newman Government made extensive changes to the IR Act, including:
  - a. Rendering certain provisions of industrial instruments applying to public sector and local government employees to be of no effect, including as to:
    - i. Contracting-out;
    - ii. Employment security; and
    - iii. Union encouragement;
  - b. Rendering termination, change and redundancy ("TCR") provisions of those instruments to be of only partial effect;
  - c. Tainting the independence of the Queensland Industrial Relations Commission ("QIRC") by mandating that the financial position and fiscal strategy of the State, public sector entity or relevant employer be part of the public interest considerations when determining wages and employment conditions by arbitration;

- d. Broadening the circumstances in which any party may have costly legal representation without requiring the consent of all parties, thereby eroding the status of the QIRC as a "layperson's tribunal";
  - e. Introducing requirements notice before an authorised union official could enter a workplace and exercise right of entry powers, including to inspect time and wages records or holding discussions on industrial matters with members and others, thereby impeding the ability of unions to freely organise
- 5. In particular, the CFMEU notes the disproportionate effect the former Newman Government's amendments have made on workers in regional and remote Queensland where there is a higher concentration of public sector and local government employment. Indeed, the former Newman Government's amendments, whilst apparently grounded in ideology, have had a ruinous effect on communities and economic development in regional Queensland.
- 6. For the present purposes, the CFMEU notes the worthy objectives of the Bill:
  - a. Restoring fairness to Government workers by:
    - i. Reinstating employment conditions for Government workers that were lost under the former Newman Government, as outlined in brief at 3 above;
    - ii. Restoring the independence of the Queensland Industrial Relations Commission in determining wage cases;
    - iii. Returning the Commission to its position as a layperson's tribunal where employees and union advocates operate on a level playing field with employers; and
  - b. Restoring the ability of industrial organisations and their representatives to freely organise and access members so as to enhance and protect their industrial interest.
- 7. The CFMEU has had the benefit of reading the submissions of the Queensland Council of Unions ("QCU"), and endorses those submissions. For its part, the CFMEU makes further submissions in relation to specific aspects of the Bill, which it endorses.
- 8. It should be noted, however, that these submissions are made in the context of repairing the IR Act to the position it was in before amendments were made by the former Newman Government.

## **B. Provisions of the Bill**

### **Principal objects of the IR Act**

9. A key tenet of the industrial relations laws in Queensland is contained in section 3 of the IR Act, which provides that "[t]he principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice." For reasons set out above, the amendments made to the IR Act by the former Newman Government did not respond to that principal object but, rather, undermined it.
10. In particular, section 3(p) specifically provided that the QIRC, when determining 'wages and employment conditions' by arbitration was required to take into account, amongst other things, the financial position of the State and the State's fiscal strategy or, in the alternative, the employer's financial positions, depending on the type of employer that was subject to the proceedings.
11. It is difficult to imagine how these kinds of imposition on the QIRC could ever be appropriate in the context of it being an independent body that ought to operate at an arm's length from executive government and indeed from any other employer. Indeed, a consistent characteristic of the former Newman Government was the zest with which it so recklessly politicised otherwise independent institutions, such as the QIRC.
12. Accordingly, the CFMEU submits that in order to restore balance to the QIRC, section 3(p) of the IR Act should be repealed, as provided for under the Bill.
13. Further, the CFMEU notes that proposed new aspects of the IR Act to be inserted into the object provision at (j) and (o) reflect those removed by the former Newman Government by the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013*, namely:
  - a. "Promoting and facilitating the regulation of employment by awards and agreements"; and
  - b. "Promoting collective bargaining and establishing the primacy of collective agreements over individual agreements."

14. As regards proposed paragraph (j), this responds wholly to the principal object in that it sets out the precise framework within which Industrial Relations are to operate, namely through regulation under awards and agreements.
15. As regards proposed paragraph (o), this not only responds to the principal object insofar as it establishes the primacy of collective agreements as part of the industrial relations framework, but it is also responsive to fundamental norms which are recognised internationally, including *the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*.
16. The CFMEU supports the re-inclusion of paragraphs (o) and (j) into section 3 of the IR Act.
17. Further, the CFMEU reiterates its submissions above in relation to the repeal of section 140D(2)(h), which requires the QIRC to have regard to the "financial position considerations", as part and parcel of the Modern Award objectives, as proposed under the Bill. In a similar vein, the CFMEU endorses the repeal of section 140D(2)(h), and other associated sections.

**Non-allowable content**

18. The CFMEU notes that clause 16 of the Bill repeals Chapter 2A, Part 3, Division 4 of the IR Act, which sets out at sections 71O and 71OL "non-allowable content" in the context of certified agreements and modern awards.
19. The CFMEU endorses the removal of restrictions on the content of industrial instruments that only serve to drastically undermine the wages and conditions of Queenslanders who work within the State jurisdiction.
20. Industrial instruments which provide for the wages and conditions of Queenslanders working in the State jurisdiction should be capable of containing (amongst other things):
  - a. Contracting out provisions, which prohibit or restrict the contracting out of public services;
  - b. Security of employment provisions that ensure job security and/or maximise permanent employment;

- c. Union encouragement provisions, that reinforce freedom of association, encourage collective bargaining, and democratic representation in the workplace;
- d. Provisions, which provide for proper consultation to occur where there are proposed workplace changes;
- e. Policy incorporation provisions that ensure no policy document, which can unilaterally affect the employment relationship at the employer's behest, can be incorporated into industrial instruments;
- f. Provisions that allow for proper union representation at the workplace by enabling union representatives to enter workplaces as of right;
- g. Provisions that restrict the types of engagement that are available under the instrument, in particular against casualisation and sham contracting;
- h. Provisions that create security for roster arrangements, and for consultation to occur where changes to rosters are proposed; and
- i. Accident and injury pay.

#### **Variation of Award Modernisation Request**

- 21. The CFMEU endorses the objective of better ensuring the QIRC has appropriate time to undertake the Award Modernisation exercise, which is to have regard to the amended legislative framework as proffered by the Bill – including as to the removal of restrictions on the content of modern awards.
- 22. It should be noted that the Award Modernisation process as implemented by the former Newman Government has been hastily conducted to-date, to the substantial detriment of some of Queensland's lowest paid workers.
- 23. The haste in which it was conducted is readily illustrated by the example of the *Queensland Local Government Industry Award – State 2014* ("the Local Government Modern Award"), which was the subject of a suspension on appeal and remitted back to the Full Bench to deal with "according to law". However, no further decision was ultimately issued to remake the Local Government Modern Award, which has led to uncertainty about its validity.
- 24. It should also be noted that the decision of the Full Bench to create one award for local government, except for Brisbane, was incapable of being appealed because of the sheer pace of the Award Modernisation process and the impact that had on QIRC personnel.

25. The processes of the QIRC, including as to the Award Modernisation, should be both efficient and effective. The repeal of subclause 140CA(3) of the IR Act would ensure that a variation to an award modernisation request can extend the time for completion more than once and by more than 2 years, if the Minister chooses. This is appropriate.

### **Right of Entry**

26. For reasons foreshadowed above, the CFMEU supports returning the right of entry regime to that which existed before the former Newman Government's amendments were made.

### **Transitional Provisions**

27. The CFMEU supports the reinitiating of the award modernisation process (i.e. by way of review and variation) under the Bill, including as to those Modern Awards, such as the Local Government Modern Award, that have already been "made" since 2013. The CFMEU further endorses the proposed clause 844 under the Bill, which gives the Commission the power under the award modernisation process to increase the number of modern awards covering an industry or occupation.
28. The CFMEU notes that a number of certified agreements have been made under the Local Government Modern Award in particular, and which were therefore subject to the kinds of content restrictions outlined in paragraph 20 above. The CFMEU supports those aspects of the Bill which provide a new nominal expiry date for those certified agreement by reference to the date the QIRC varies the relevant modern Award under the transitional provisions.

CFMEU

18.05.2015