Industrial Relations (Fair Work Act Harmonisation No.2)
Submission 031

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The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Committee Chair,

Please find attached the RTBU Submission for the Industrial Relations (Fair Work Act Harmonisation No.2) and Other Legislation Amendment Bill 2013.

Yours sincerely,

Owen Doogan
Secretary

Introduction

The Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 brings with it ramifications too far reaching for such a short period of consultation. The RTBU firmly believes that there should be a great deal more scrutiny applied to this legislation. We do not believe that the public will get a reasonable opportunity to fully consider the contents of this radical proposal.

The RTBU is concerned that the Bill skews the power far too much towards the employer in a range of its provisions. It does not provide a balanced setting for reasonable consenting parties to reach agreement of regular industrial fare. It is too doctrinaire in the matters that are imposed on the parties and indeed the tribunal without adequate consideration of the needs and wants of either side.

The fact that the bill is named the Fair Work Harmonisation Bill but does not adopt the more favourable provisions from the Fair Work Act makes the proposal could be perceived to be disingenuous.

The Bill offends what the Qld Legislation Handbook describes as 'Fundamental legislative principles' at cl 7.2.7, 7.2.11, 7.2.12, and the spirit of 7.2.9 which is drawn from a well know Constitutional principle. The Committee should be alarmed that the executive proposes to remove fundamental rights of workers, impose some measures retrospectively and in all cases do so with absolutely no compensation, reasonable or otherwise. This is a breach of the principles above, a breach of clear pre-election commitments and critically it is a breach of faith with a workforce in the main employed by the Qld Government.

Protected Action Ballots

The changes to protected action ballots make them completely ineffective and give workers no voice whatsoever. If an employer so much as sniffs that there is industrial action in the air, they only need amend their log of claims or ask the Commission for assistance with making an agreement and employees are put back to square one. This brings an unreasonable tactical advantage to the employer and creates an incentive for game playing rather than getting down to the business of reaching agreements.

This provision in no way resembles that which exists in the Fair Work Act and on that basis it is not an example of harmonisation by any measure.

Redundancy payments

Capping redundancy payments at 16 weeks in Enterprise Agreements is a blight on the bargaining process. It hinders the ability of the employer to provide more favourable conditions even if they are inclined to do so. This is an unnecessary and heavy handed measure which will anger employees and employers alike and and appears to indicate Government's disregard for the freedom of contract.

The ability for an employer to apply for a reduction in redundancy pay to zero is appalling. There are no guidelines as to what an employer may be required to show as evidence of their inability to pay.

Maternity leave provisions of the QES

Despite that the Bill purports to be a harmonisation bill, the bill falls short of the Fair Work Act in a number of areas, notably, the failure to import the more favourable provisions of the parental leave scheme provided in the Fair Work Act. The two most glaring differences being that a woman who is in job that is unsafe for her unborn child does has the right to be moved to a safe job, however, she does not have the right she does under the Fair Work Act to have her wages maintained at her usual rate. She is disadvantaged by this and the RTBU foresees that this will lead to some women not being transferred from jobs that are unsafe so that they are not economically disadvantaged.

Additionally, the absence of "paid no safe job leave" is a glaring omission. Rather than being able to leave work without loss of wages or any of her maternity leave, she is required to take maternity or sick leave. This is an outrage and serves only to discriminate against a woman merely by virtue of the fact that she is pregnant.

This is not harmonisation.

Individual Flexibility Agreements

There is no longer any requirement that these be recorded in writing. This can only have one outcome; that an employer and employee will be reduced to lengthy and expensive litigation over what the details of the IFA were that they agreed to. The RTBU opposes the use of IFAs.

Non Allowable Provisions

General

The creation of 'Allowable' and 'Non Allowable' matters finds its genesis in the Howard Governments Workchoices legislation. It was a matter previously dealt with by common law developed around the notion of what was and therefore was not, a matter that concerned the relationship between the employer and the employee.

The Workchoices model sought to weigh in to the relationship between the various industrial parties and determine what ought, and ought not be the subject of discussion between consenting adults. The undercurrent of the legislation being that parties can't be trusted to determine these matters for themselves, nor can the tribunal be trusted to ensure a level playing field was fostered.

History shows that the premise of this flawed approach is deeply unpopular with the community and does little to foster genuine bargaining, holding back otherwise willing parties from agreeing on arrangements that suit them in their particular circumstances.

Particulars

Permitted Matters

The matters listed as 'permitted' in Part 2, Division 3 are mostly those which are required to be included variously in Industrial Instruments at present with the exception of Individual Flexibility Arrangements ('IFA's). The RTBU opposes the inclusion of IFA's.

Non-Allowable Matters

Contracting Provisions

Industrial Instruments can only be made where there is genuine agreement between the parties. Why then would the State step in between consenting parties who can reach genuine agreement to restrict the use of contractors?

The RTBU notes that the Bill proposes that it would be unlawful to have a provision that required the employer to so much as discuss their decision to contract out services. This throws into question the established meaning of 'significant change' that triggers consultation in other clauses. There is no need for this prohibition.

Employment Security

Legislation which expressly requires the removal of employment security provisions is harsh at best. Job security is a tangible and important part of an employment relationship which is often provided in return for concessions elsewhere. Working for organisations which can offer proper job security usually comes at the expense of comparable wages in more turbulent industries and is tacitly accepted by those who are engaged in the various sectors. The arbitrary removal of these provisions robs two types of people of a value proposition:

1. The person considering the lower wages offered by public sector entities leveraged on the job security previously enshrined in the positions; and

2. The managers of public sector agencies who at least had tangible job security to use as a means of attracting able staff in the absence of the higher wages paid in more turbulent industries.

The Bill proposes a lose-lose situation where no tangible job security is able to be agreed between consenting parties. It is noted that this particular provision is in direct opposition to promises made prior to the election of the current State Government where it was stated in press releases and the official costing of the government the following:

"Mr Nicholls said the LNP was determined to deliver a public service that was affordable and grew in line with community need.

"The LNP is offering public servants long term job security and the removal of the wage cap in return for managing overall growth," he said."[i]

Removing employment security sits therefore in diametric opposition to a key pre-election commitment and should be deeply embarrassing by that measure alone. Queenslanders should be able to expect that job security measures are something they can bargain for.

Encouragement Provisions

The prohibition of the measures outlined in 710B removes the capacity of consenting parties to recognise the efficiency of harmonious relationships. It also prohibits genuine

commercial relationships occurring between parties who otherwise enjoy a reasonable relationship.

The RTBU considers that this is unnecessarily intrusive. Where parties are capable and agreeable to entering into consenting arrangements it is not clear how they are benefited by the interference of the State? If such arrangements weren't agreeable, they wouldn't be proposed in the first place.

Organisational Change Provisions

This provision much like many of the others seems to be hinged upon the premise that discussion and in some cases collaboration between industrial parties is something that is inherently unhealthy.

The RTBU rejects the view that it is undesirable for an organisation and its managers to gain insight from all available sources of information, including industrial parties.

Where consenting parties are able to reach agreement on how organisational change can be best managed it is unclear why the State Government should step in to prohibit it.

Policy Incorporation Provisions

The inclusion of this section in the Bill is clearly and obviously flawed. If parties were able to reach agreement on such measures, they would simply avoid this provision by uplifting the contents of the documents into their bargain.

There is no hard and fast rule on what can and cannot be in a policy. Clearly it is intended that there be arbitrary and capricious restrictions on what can be in legally enforceable agreements. The types of policies that are normally covered by provisions such as those named in the Bill amount to those which are not proposed to be prohibited by the Bill as they relate to Industrial Instruments.

The net effect of this provision is likely to be an unhelpful delay to bargaining for a number of our members. It is to no-ones advantage that we are unable to negotiate new agreements for our members for an arbitrary period. They are unable to negotiate arrangements that suit them and the organisation in a period of enormous change. They are also deprived of a wage increase during that period as well.

Right of Entry Provision

Where unions are able to reach agreement with relevant employers regarding entry processes and practices which suit their individual circumstances it is of no assistance to have the State Government step in and veto the arrangement.

There are innumerable variables that go into determining what could be considered appropriate entry procedures at a given workplace. Such variables bear on the nature of the industry, types of workers at the place, hours of operations, safety procedures, etc. These are matters which are at times well able to be discussed and agreed between the parties. The proposal places an arbitrary restriction where none is required.

710J General Matters

This section of the Bill is clearly ambiguous and ill considered. The matters covered in (a)-(c) are some of the most common cornerstones of Agreements between industrial parties. Trading wage increases for increased flexibility in rostering are all many workers have to bargain with. In some other cases, roster flexibility is something that needs to be protected in negotiations to ensure a reasonable work life balance.

The inability to have a clause which 'restricts' the type of engagement seems to mean that there can no longer be a definition of those engaged as part time and in some cases casuals. Part time and some casual employees are those who work a particular set of working hours less than a full time employee by the widest definition.

Where parties are able to reach arrangements to deal with accident pay, especially in context of broad scale cuts to Workcover entitlements, it is unreasonable to deny workers the right to seek to reach agreement on these matters. Where an employer sees fit to agree, it's not the State Government place to intervene.

710K General matters

The exclusion of the arrangements specified in (a) to (d) from Modern Awards is again capricious and unnecessary. Where Modern Awards carry such provisions they do so as a result of a previous historical structural arrangement in the system which forced parties to place such arrangements in Awards. Arbitrarily removing them and simultaneously denying the right to deal with the matters in negotiations for Agreements given the imposed wages/bargaining freeze is clearly unfair.

Removal of the ability for the QIRC to grant interim or retrospective wage increases.

Hampering the ability of the QIRC to make interim or retrospective wage increases deprives them of a key power to balance the bargaining power between employer and employee. Providing interim increases can have the effect of allowing longer more fruitful discussions to occur on matter advantageous to the employer. Retrospective increases can allow for acknowledgement of measures previously implemented but unrewarded. The RTBU submits that this provision creates a potential logjam for productivity and sensible bargaining.

High income earners

The arbitrary removal of high income earners from award and agreement protection is unnecessary. It is unclear why workers with skills that warrant higher wages should not also have the benefit of collective bargaining. It does not aid in productivity, in fact it creates the likelihood of inefficiencies given some who could be classed as high income earners work in teamwork environment which function on the basis that each team members works to the same conditions of employment. This provision is an arbitrary and unhelpful inclusion.

Conclusion

The RTBU is concerned about the speed with which the Bill is being moved through the approval process. It does not allow for proper scrutiny by the stakeholders nor the public.

It is demonstrable that the Bill has significant shortcomings which must be addressed to all for balance to be restored.

The Government has stated that these proposed changes are in line with the outcomes of the Commission of Audit. The fact remains that regardless of what one might think of the efficacy of that which was reported, the changes proposed by the Bill are likely to add inefficiency, unfairness and imbalance which can be of assistance to no party.

The RTBU believes the Committee should seek for a longer consultation period and significant amendments to be made to the Bill before it is further considered.

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[i] https://lnp.org.au/news/treasury/lnp-will-cut-waste-to-revitalise-front-line-services/ accessed on 24/10/2013