Industrial Relations
(Transparency & Accountability of Industrial Organisations)
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President Gerardine (Ged) Kearney
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The Research Director
Legal Affairs and Community Safety Committee
Parliament House
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By email: lacsc@parliament.qld.gov.au

Dear Committee Members,

Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill

The ACTU is the peak body representing 47 unions and almost two million working Australians and their families.

We welcome the opportunity to make a submission to Legal Affairs and Community Safety Committee concerning the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill* 2013 ("the Bill"). While it is not common for the ACTU to make submissions concerning legislation that would apply only in one State, three factors have led us to make a submission on the Bill. Firstly, we count among our affiliates a number of trade unions which represent employees in the state public services, who would be significantly impacted by this Bill. Secondly, because many of the organisations that are registered in Queensland have federal counterparts, the Bill will have the result of imposing additional reporting requirements that will add an enormous layer of complexity and detail to the current transition that is underway to meet the recently revised requirements under the federal system, for no benefit. Thirdly, the Bill represents an unprecedented level of State interference in the ordinary functions of unions. Its provisions represent in our view an almost unprecedented attempt by an Australian government to interfere in the ability of the unions to be democratic, self-governing and independent. The Bill represents an attack on the basic rights of workers to organise into independent unions, free of unnecessary legal oversight or government control.

As the sole peak association for trade unions in Australia, the ACTU plays an important role in monitoring the extent to which Australian governments (federal, state and territory) comply with international labour standards. This includes through the provision of comments on an annual basis to the Australian Government and to the ILO Committee of Experts on the Application of Conventions and Recommendations with respect to Australia's compliance with ratified ILO conventions. The provisions contained in the Bill, if enacted, are sure to attract our pointed commentary in this forum and beyond.

Regrettably, there has been very little time provided by Queensland Parliament for interested parties to make comment on the provisions of the Bill. We could be forgiven for assuming that this is by design. The only neutral comment we feel we are able to offer in relation to this Bill is that it appears consistent with the current government's ideological approach to industrial relations as evidenced by its previous amendments to the law in this area.

In the limited review we have been able to conduct, a number of provisions of Part 2 of the Bill struck us as extraordinary. In particular we wish to bring the following matters to the Committee's attention:

Clause 4

This and the related amendment at clause 57 clearly have nothing to do with transparency and accountability. These provisions appear directed to lowering the level of workplace awareness of unions and participation in union activities, even in workplaces which have benefited from longstanding and mutually beneficial relationships between the employer and unions.

Clause 7

This provision may have the effect of, and we suspect is designed to achieve the result of, leading employers and unions into believing they are unable to make consent arrangements for union officials to enter their premises, by any means.

Clauses 10-13

Whilst unions operating the in Federal System would be familiar with the requirement to provide entry notices in connection with entry to a workplace, these amendments do not mimic the federal right of entry scheme. Rather, the amendments will have the effect of confusing both unions and employers/occupiers about the relevant requirements for entry to particular locations and are an invitation to provoke conflict, for no discernible gain.

Clauses 14-18

It is unclear why these amendments are required. Removing the existing requirement that consent to pay deductions must be evidenced in writing will certainly not be conducive to effective dispute resolution. Once again, the provisions invite conflict, for no discernible gain.

Clauses 19-21

These amendments are directed to making “general duties” type provisions applicable to conduct outside of financial management. While it might be said that what is proposed introduces some level of consistency as between union management and corporate management, even a cursory understanding of how company law became what it is today will illustrate why such consistency is a flawed goal.

The duties on company directors today largely reflect the change in direction that was provoked by the “Company Directors’ Duties” report of the Senate Committee on Legal and Constitutional Affairs in 1989. That report followed the corporate excesses of the 1980s and was cast against a background where traditional thinking about corporate power and the capacity of company members (shareholders) to control companies, was under challenge. Put simply, corporations had a lot of power over investors' and consumers' wealth, and were not subject to sufficient control. The scheme of director's duties and the associated amendments introduced by the legislation which followed (*Corporate*

Law Reform Act 1992) were designed to rein in the way the corporate sector did what it existed to do – deliver profit to shareholders without short changing creditors. There is no valid point of comparison that would suggest such an approach to the regulation of unions is warranted. Australia, let alone the State of Queensland, is not confronted with a union movement that is an unbridled force that threatens the nation's economic security. In truth, aside from a handful of matters that have attracted media attention, including for political reasons, union governance has been a non-issue for 30 years. Moreover, the extent to which union members can said to be "investors" is their unions has no parallel to their level of investment in the corporate sector either through their superannuation or through their other financial decisions.

Further, we note that the general duties which are proposed in the Bill are out of step with the corresponding federal laws where the duty of good faith is cast as a requirement to act "…in good faith with *what he or she believes to be in the best interests* of the organisation…". Likewise, legislation governing corporations as whole provides a business judgement rule to protect directors where they have made, for all the right reasons, what turns out to be the wrong decision. It is oppressive to subject unions to the standard now proposed - where the benefit of hindsight is jail time.

Also, we wish to record our grave concern that subjecting the management of unions to this standard outside of financial matters clearly involves inviting an agency of the State to make a value judgement about the best interests of a union and its members, and metering out judgement on union officials where there is a misalignment between such values. This is clearly a matter where the law would be inconsistent with Article 3 of the United Nations' ILO Convention on Freedom of Association and Protection of the Right to Organise.

Clause 26

Whilst it is good governance practice for any organisation to maintain a register of material interests of its officers and their relatives, we are concerned that the proposed requirements do not in fact reflect best practice but rather create barriers to persons nominating for office in a union. This because the disclosure requirements proposed in the Bill are not subject to any materiality test, the disclosures are made to the world at large and because the disclosure requirements are variable by regulation.

Clause 29 – Proposed Division 1B

Unions are already required to function democratically and these proposed amendments bring no benefits to union members. We envisage that these oppressive reforms would draw international criticism for their inconsistency with Article 3 of the United Nations' ILO Convention on Freedom of Association and Protection of the Right to Organise.

The provisions have a very broad reach, given that what unions do in advocating for workers' fair share of the benefits of the economy, and workers' protection in a deregulated labour market, is inherently political. This is particularly the case where unions wish to oppose the actions of the State as the employer of its members (for example where jobs are to be lost or government functions privatised or outsourced). These amendments could have the effect of making unions less responsive to members by wrapping them in red tape to the point they cannot function effectively. Such is clearly evident from the provisions which require the conduct of ballots by the electoral commission, as well as the proposed majority participation rule and the requirement for the union to pay the costs of such a

ballot. It is even more concerning that much of the detail that would govern the practical operation of these provisions has been left to be determined by regulations.

Clause 30 – Proposed Division 2A

A *register of gifts* is a matter more appropriately governed by a union's financial policies and procedures. We encourage such policies and procedures to be put in place through each union's democratic representative structure, as did the independent panel the ACTU appointed to report on best practice union governance. We consider it entirely inappropriate that the detail of such requirements be centrally controlled to the degree proposed, particularly where the extent of disclosure is susceptible to regular change through amended regulations.

The *register of political spending* contemplated by proposed section 557B places a further unwarranted degree of red tape on unions by adding to the requirements proposed to be imposed pursuant to clause 29.

The *register of loans, grants and donations* described in proposed section 557C is again a pointless exercise in red tape. While the monetary threshold for registration is the same as that required under the corresponding federal laws (wherein many Queensland based unions are recognised in their own right or have a federal counterpart subject to federal reporting requirements), the points of detail in relation the disclosure requirements are sufficiently different so as to require different documents to be produced.

Further, how any of these disclosures are within the legitimate interest of any person other than a member of the organisation (or in some instances, the regulator) is not evident. Clearly the requirements impose a far higher standard than that imposed on the corporate sector, particularly by requiring such disclosures to be made to the public at large.

Clause 30 – Proposed Division 2B

The concerns raised above are equally applicable to the matters covered in proposed Division 2B. Once again, to the extent that there is some overlap with requirements that exist under the corresponding federal laws, the differences are such as to require more effort for no material gain.

Clause 55 – Proposed Division 4

These provisions would permit the Queensland Government to appoint an administrator of its choosing to replace the democratically elected leadership of a union, for an indefinite period, and would require such an administrator to report to the Minister as required on the union's operation. Considering that most of the unions that are active in the State system remain in that system because of their role in representing persons employed by the State of Queensland and its instrumentalities, these provisions are truly extraordinary.
We once again suspect that these amendments will draw international criticism for violation of international labour standards.

Clause 57

These provisions extend the amendments recently made by Queensland government, in that they further demonstrate that the government will pick and choose which provisions of industrial agreements it will comply with and which it will not. We have already made our views known to the Senate Education, Employment and Workplace Relations Committee concerning these prior

amendments which contravene international standards including the Termination of Employment Convention and the Right to Organise and Collective Bargaining Convention. The proposed extensions amplify our concerns. These amendments are yet further examples of the government taking unilateral action to restrict the scope of negotiable matters and interfering in collective agreements already in force.

We note for the record that we have had the opportunity to review the submission filed by the Queensland Council of Unions and we fully support the views expressed therein. While we have grave doubts that the Committee will be prepared to seriously consider the matters raised in any formal sense, we do hope at the very least that its members will take the time to privately review its provisions. This Bill poses a very real threat to the operation of a healthy democracy in Queensland and effectively places the government in role of arbiter of what is a legitimate basis for industrial association and what is not.

Yours faithfully,

Tim Lyons
Assistant Secretary