Queensland Council of Unions

Human Rights Bill 2018

Submission of the Queensland Council of Unions

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QCU Submission

The Queensland Council of Unions (QCU) is broadly supportive of the *Human Rights Bill 2018* (the Bill). The QCU supports the general thrust of the Bill that would require all future legislation to be compatible with the basic human rights that are set out in the Bill. We do however suggest that the right to collectively bargain and a number of other workplace rights should be specifically introduced into the Bill. Accordingly, this submission deals largely with freedom of association and associated human rights.

The major focus of freedom of association in Australia has, ironically, been to de-unionise the Australian workforce. Whilst adopting the language of freedom of association, various governments have emphasised the right of employees not to join a union as a policy (Peetz and Lee 1998:8; Thorpe and McDonald 1998:26). The policy shift of employers and governments has contributed to the decline in union membership in Australia and subsequently weakened the bargaining power of labour (Peetz 1998; Thorpe and McDonald 1998:29). This has had a profound impact on the ability of employees to influence outcome at a workplace or industry level and is major contributor the record low wage growth that Australia is currently experiencing.

Conversely, there has been little effort on the part of any parliament to redress the decline in union membership by positively framing the advantages of union membership to workers. Conservative political parties and sections of the media continue to demonise the union movement as part of an agenda that appears intent on de-unionisation of the workforce. Whilst the right to join a union and freedom from discrimination because of union membership is enshrined in laws at both a state and federal level, enforcement of positive right to join a union is rare if not non-existent (Bellace 2014:445; Stewart 2018:324). The dismantling of legislative protections for unions has allowed anti-union activity to flourish with impunity.

In an earlier submission to the Legal Affairs and Community Safety Committee in 2016, the QCU had suggested that there were several International Labour Organisation (ILO) conventions that should be reflected in the Bill resulting from the inquiry into human rights (QCU 2016):

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and
- Labour Inspection Convention, 1947 (No. 81)

It is noted that clause 22 of the Bill deals with the right to peaceful assembly and the right to freedom of association. This drafting appears to conflate the rights conferred by articles 21 (peaceful assembly) and 22 (freedom of association) of the United Nations International Covenant on Civil and Political Rights (ICCPR). This combination does not in itself pose a problem; however, it is noted that ILO conventions and another United Nations Covenant go beyond the mere mention of freedom of association and the right to join a union.

The obligations of the ILO conventions provide specific obligations on signatories to ensure the right to establish and join unions, in addition however they provide for protection against discrimination and promotion of collective bargaining (Thorpe and McDonald 1998:25). These further obligations are relevant in an Australian and Queensland setting due to the adverse impact on the right to collective bargain by legislation.

One of the major concerns of the union movement over recent decades is how legislation has been used by conservative governments to impinge upon the rights of freedom of association and collective bargaining. A prime example of this type of restriction was the Australian Workplace Agreements (AWAs) that existed in the Workplace Relations Act from 1996 until their eventual removal by the *Fair Work Act 2009*. The AWA enabled employers to compel employees to enter into statutory agreements that overrode collective agreements and prevented the worker covered by the AWA from seeking a collective agreement and prevented a union from entering a workplace to discuss matters with that worker (Bray et al 2005:241: Gardner 2008:36; McCrystal 2009:17). In this regard it simultaneously restricted the worker's freedom of association and collective bargaining rights.

The AWAs were replicated in Queensland legislation as Queensland Workplace Agreements (QWAs) but did not achieve a great deal of coverage. In our 2016 submission (QCU 2016) however we did mention a couple of recent experiences that occurred during the Newman Government 2012- 2015:

- Forcing certain employees on to individual contracts thereby denying them the benefits of collective bargaining;
- Making the threshold for the Minister to order the cessation of protected industrial action ridiculously low and then limiting the matters that could be arbitrated once protected action was ceased; and
- Removing the obligation on government to discuss major workplace change with employees and their representatives.

In our submission the rights to collectively bargain and freedom of association are inextricably linked. Freedom of association is devalued in the absence of a right to collectively bargain (Owens

et al 2011:528). For this reason, we would advocate the extension of the rights that are protected by the Bill to expressly include the right to collectively bargain.

The ICCPR is not the only United Nations Covenant that deals with workplace rights. In addition to the ICCPR, the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) article 8 also includes:

> (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

It would follow that the right to strike is a natural extension of the right to form unions and collectively bargain, subject to conformity with national laws. This is consistent with the broader application of freedom of association to include the right to collectively bargain.

ICESCR also deals with minimum conditions and article 7 reads as follows:

> Article 7
>
> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
>
> (a) Remuneration which provides all workers, as a minimum, with:
>
> > (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
> >
> > (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
>
> (b) Safe and healthy working conditions;
>
> (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
>
> (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 7 of ICESCR contemplates fair and reasonable wages, a safe system of work, equal opportunity and what has recently (by comparison to the covenant) been described as work/life balance.

In our submission the Human Rights Bill could be amended to specifically set out a range of other workplace rights such as:

- The right to collectively bargain;
- The right to take protected industrial action;

- The right to a fair minimum wage;
- The right to safe and healthy working conditions;
- The right to equal opportunity; and
- The right to reasonable limitation of working time.

Bibliography

Bellace, J (2014) "Hoisted on their own petard? Business and human rights" *Journal of Industrial Relations* Vol 56 (3)

Bray, M., S. Deery, J. Walsh and P. Waring (2005) *Industrial Relations: a Contemporary Approach* McGraw-Hill Irwin North Ryde 2005

Gardner, M (2008) "Beyond WorkChoices: Negotiating a Moment" *The Economic and Labour Relations Review* 2008 18: 33

Lee, M and D Peetz (1998) "Trade Unions and the Workplace Relations Act" *Labour and Industry* Vol 9 (2)

McCrystal, S (2009) "The Fair Work Act 2009 (Cth) and the Right to Strike" *Australian Journal of Labour Law* 23:3

Owens, R, J Riley and J Murray (2011) *The Law of Work 2nd edition* Oxford University Press South Melbourne 2011

Queensland Council of Unions (2016) *Submission to Human Rights Inquiry* Legal Affairs and Community Safety Committee 18 April 2016

Stewart, A (2018) *Stewart's Guide to Employment Law 6th Edition* The Federation Press Sydney 2018

Thorpe, M and J McDonald (1998) "Freedom of Association and Union Membership" *Labour and Industry* Vol9 No 2