STRONGER TOGETHER

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THE AUSTRALIAN WORKERS' UNION

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MR

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via Email: ***eewr.sen@aph.gov.au***

Dear Secretary,

RE: Senate Inquiry into the conditions of employment of state public sector employees and the adequacy of protection of their rights at work as compared with other employees

I refer to the Senate Inquiry calling for submissions relating to the conditions of employment of state public sector employees and the adequacy of protection of their rights at work as compared with other employees.

The Australian Workers' Union of Employees, Queensland (AWUEQ) represents a large number of public sector employees across Queensland who provide important services to Queenslanders, day in and day out.

The election of the LNP Newman Government in March 2012 has seen the stripping away of protections and rights at work of AWUEQ public sector workers in contrast to employees covered by the *Fair Work Act 2009* (the Federal Act). This submission will outline how this diminution has occurred, the unfairness of it and the impact on public sector workers.

Whether the current state government industrial relations legislation provides state public sector workers with less protection and entitlements than workers to whom the Fair Work Act 2009 applies

On 4 April 2011, aspiring premier Campbell Newman stated to Queensland public sector workers that he was not "a right-wing ideologue" and that "what I'm saying is this that the public service has nothing to fear from me."[1]

[1] http://www.brisbanetimes.com.au/queensland/you-have-nothing-to-fear-newman-tells-public-service-20110404-1cv6x.html

Since becoming Premier, Newman and his government have demonstrated that such undertakings are lies and that they cannot be trusted to keep promises or honour legally binding agreements.

Over many years public sector workers in Queensland have bargained with their employer to include job security and contractor provisions in their certified agreements – measures that are specifically designed to provide fairness and peace of mind for ordinary workers. Such provisions allow employees and their families certainty so that they can plan and live their lives without fear of being undermined and kicked into touch by an uncaring employer.

As with any form of negotiation, public sector employees have made concessions in the course of successive bargaining negotiations to secure such entitlements, including restraining higher wage outcomes in lieu of job security protections. Public sector workers have voted on these bargaining arrangements and have a legitimate expectation that the settled terms of such agreements will be honoured by their employer, just as any party to a commercial contract would be entitled to expect in the private sector.

The Federal Act provides for employers and employees to enter into mutually supported industrial outcomes that contain employment security provisions. Job security is rightly recognised as a fundamental entitlement and protection in a mature economy like Australia and, as such, there is no restriction in federal certified agreements containing job security and contracting provisions.

This is not the case in Queensland. Not only are public sector employees effectively prevented from negotiating around employment security in prospective agreements, but their existing and settled entitlements to the benefit of employment security provisions have been ripped out of their certified agreements by the Newman government's underhand and sneaky amendments to the *Industrial Relations Act 1999* (the State Act).

On 29 August 2012, legislation amending the State Act commenced with the effect that pre-existing industrial outcomes on employment security entitlements are no longer legally enforceable.

In reality, this constituted a unilateral variation of a swathe of Queensland public sector enterprise agreements without the consent of all parties to those agreements.

If such a unilateral variation had been undertaken by a government with respect to its contractual commitments to a private business, the howls of outrage would be heard from the executive boardrooms right throughout the State.

In stark contradistinction, it should be noted that the federal Labor government did not unilaterally extinguish existing Australian Workplace Agreements when it succeeded in legislating for the creation of the Federal Act, understandably because this would have had the effect of disturbing existing legal arrangements that parties had legitimately entered into prior to that enactment.

The AWUEQ has been heartened that the federal Labor government has passed legislation to provide some protection to public sector workers if their work units are proposed to be transmitted to the private sector. Where such a transfer of business occurs now, public sector workers enjoy the maintenance of their existing terms and conditions of employment if they are subsequently employed by the new private sector employer – a right enjoyed by every other Australian worker under the Federal Act.

Whether the removal of components of the long held principles relating to termination, change and redundancy (TCR) from state legislation is a breach of obligations under the International Labour Organisation (ILO) conventions ratified by Australia

Public sector awards and agreements contain TCR provisions derived from a long standing ruling of the former Australian Industrial Relations Commission. In particular, these provisions state that where changes to the composition of a workforce are required, an employer is obliged to consult with employees early, discuss the state of the business and work collaboratively in an effort to mitigate the effects of that change. The provisions were framed with the understanding that losing a job is stressful and potentially debilitating for an employee and their family.

The amendments made by the Newman government unilaterally varied all TCR provisions to exclude particular requirements for consultation about decisions concerning the potential redundancy of public sector workers. The message to Queensland public sector workers could not be any clearer from this government, namely - "*we don't want to hear your opinions, you have nothing valuable to add and you shouldn't be given an opportunity to try and save your jobs.*"

The legislative amendments introduced by the Newman government are completely contrary to the principles established in Article 13 of ILO Convention C158 Termination of Employment, to which this country is a signatory.

Whether the rendering unenforceable of elements of existing collective agreements relating to employment security is a breach of the obligations under ILO conventions ratified by Australia relating to collective bargaining

As outlined above, the Newman government has rendered inoperative certain provisions relating to job security, contracting and TCR within public sector agreements in Queensland.

The removal of these agreed provisions by legislative fiat seriously breaches the principles of collective bargaining and agreement making outlined in ILO Conventions.

The ILO Conventions provide for "voluntary" negotiation between employee and employer parties with a view to regulating terms and conditions of employment through collective agreement making. The unilateral stripping of agreement provisions by the Newman government makes a mockery of good faith bargaining and corrodes the reliability and stability of bargaining outcomes and agreement making. One is entitled to seriously question whether the right to collectively

bargain, and the utility of that process, retains any meaningful role at all within the Queensland industrial relations system.

As Creighton and Stewart advise at p718 of *Labour Law* (Fifth Edition) in relation to Article 4 of the ratified Right to Organise and Collective Bargain Convention 1949 (No 98) –

> *"Article 4 has been interpreted and applied in such a way as to protect a number of fundamental features of collective bargaining including the following –*
>
> > *... Other than in exceptional circumstances (such as a national emergency) the public authorities must not interfere with the outcomes of the bargaining process, for example by denying the parties the right to give effect to their agreement because it is considered to be contrary to 'government policy' or the 'public interest'."* (emphasis added).

The Newman government has clearly denied the parties the right to give effect to their agreement, which is a breach of ILO Conventions.

Whether the current state government industrial relations frameworks provide protection to workers as required under the ILO conventions ratified by Australia

The current industrial relations framework in Queensland does not provide protection to workers as required under the ILO Conventions, which have been ratified by the Commonwealth.

Public sector workers in Queensland have had protections stripped out of agreements and awards through legislative amendment. As such, many workers are now exposed to a program of forced redundancies brought about by the Newman government.

Whether state public sector workers face particular difficulties in bargaining under state or federal legislation

Contrary to conventions 98 and 158 as well as recommendation 91 of the ILO, the Queensland industrial relations framework has been materially altered to the extent that the process of agreement making is even more remotely connected to the fundamental premise of voluntary participation and resolution.

Notwithstanding the fact that pre-existing agreement provisions relating to job security, contracting and TCR now have no effect, the Newman government has stymied genuine bargaining by directing court members to reach certain decisions conforming to government fiscal policy.

Specifically, the amendments at section 149 of the State Act mandate the Queensland Industrial Relations Commission to consider the public interest when making a determination, including the State's financial position.

There is no such interference by the federal government in the Federal Act. Under the federal industrial system, the integrity of a deal between the parties is maintained consistent with any undertakings at the point of certification.

Unlike their federal public sector counterparts, Queensland public sector workers are faced with the reality that any protections and/or entitlements contained in a certified agreement may be removed unilaterally by legislative intrusion.

Whether the Act provides the same protections to state public sector workers as it does to other workers to the extent possible, within the scope of the Commonwealth's legislative powers

In the submission of the AWUEQ, the Federal Act provides protections to state public sector workers through the ratification of certain ILO Conventions.

Following the Newman government's legislative amendments (as described above), the AWUEQ made application to the Queensland Court of Appeal challenging the validity of those amendments.

In relation to the legislative powers of the Commonwealth, the AWUEQ argued that the insertion of s691D into the State Act was rendered inoperable by provisions contained in Division 3 of Part 6-4 of the Federal Act. Specifically, the Federal Act draws in Australia's obligations under ILO Conventions in relation to termination of employment, including consultation requirements with employees and their union/s.

It was argued that under the Federal Act, the use of the terms "employee" and "employer", as distinct from "national system employee" and "national system employer", evinces an intention on the part of the Commonwealth to "cover the field" with respect to the application of the ILO Conventions incorporated within the Federal Act. As that argument stands, all employees in Queensland (including public sector employees) are entitled to the protection of the ILO Conventions.

On the basis of the Court of Appeal's dismissal of the AWUEQ case, an application for special leave to appeal has now be made by the union to the High Court of Australia.

Whatever the outcome of this legal process, it is evident that at this point in time Queensland public sector employees do not enjoy the same protections as employees covered by federal legislation.

Potential options for the Commonwealth to ensure the protection of rights of state government employees at work

Fortunately for public sector workers in Queensland, the federal Labor government enacted legislation in late 2012 to extend transfer of business protections to public sector workers. As a consequence, should a decision be made by the Newman government to contract out public sector work to the private sector, the terms and conditions that public sector workers presently enjoy will follow with them should they be employed by the new private sector employer.

Were any options to be considered by the Commonwealth to ensure the protection of rights and entitlements of State government employees, the most appropriate step should be to explicitly state that it is the Commonwealth's intention to cover the field with respect to the application of the various ILO Conventions incorporated within the Federal Act to all employees throughout Australia, whether employed in the private or public sector.

Yours faithfully,

BEN SWAN
ASSISTANT SECRETARY