THE UNION FOR QNU NURSES AND MIDWIVES

QUEENSLAND NURSES' UNION

Submission to The Senate Education and Employment Legislation Committee

Fair Entitlements Guarantee Amendment Bill 2014

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Introduction

The Queensland Nurses' Union (QNU) thanks the Senate Education and Employment Legislation Committee (the committee) for providing the opportunity to comment on the *Fair Entitlements Guarantee Amendment Bill 2014* (the bill). The QNU is the principal health union in Queensland covering all categories of workers that make up the nursing workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 50,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNU.

The QNU notes with concern that the public has been given just five days in which to consider and respond to the bill. This is not adequate time in which to make a detailed submission. Hence, we only address the proposal to cap the maximum redundancy pay entitlement at 16 weeks' pay.

We ask the committee to read our submission in conjunction with that of the peak union body, the Australian Council of Trade Unions (ACTU).

Cap on Redundancy Pay Entitlement

The QNU opposes the amendment proposed in item 6 – paragraph 23(b) of the bill which repeals the existing four weeks' per year of service cap on redundancy pay entitlements and replaces it with the limitation that a claimant's redundancy pay entitlement cannot exceed 16 weeks' pay.

This amendment aligns the maximum redundancy pay entitlement under the Fair Entitlement Guarantee (FEG) scheme with the maximum payment set by the National Employment Standards (NES) contained in the *Fair Work Act 2009.*

In his address to the parliament, Leader of the House and Minister for Education, the Honourable Christopher Pyne (2014) stated that 'over time, the costs borne by the scheme have increased significantly. Demand has increased from 8,626 claimants being paid $72.97 million in 2006-07 to 16,019 claimants being paid $261.65 million in 2012-13. This trajectory of increase in the cost of the scheme is not sustainable. To ensure the future sustainability of the scheme, changes must be made'.

If the scheme is not sustainable, then the government should be asking *why* the number of claimants is increasing, not *how* to put in place measures to restrict the amount paid to claimants. We point out that the rise in costs is a direct result of business failure, not through any fault of the employees the scheme was established to protect. However, instead of addressing the cause of increased pressure on the scheme, this federal government immediately seeks redress by penalising the workers who may benefit from it. By doing so, this amendment shifts more risk from the corporate sector onto workers.

According to the Minister's logic, 'adopting the NES' amount on the redundancy pay entitlement may limit the amount of a claimant's redundancy pay entitlement, but this is considered to be appropriate given the scheme's status as a safety net for workers who are owed debts by their insolvent employer' (Commonwealth of the Parliament of Australia, Schedule p.1.).

The NES represent a safety net of entitlements for employees where no other relevant industrial instrument applies. Where an award or agreement provides more beneficial redundancy provisions, they will take precedence. This is the reasoning underpinning our industrial relations system for all entitlements. However, the Minister now believes that selective, inconsistent application of the NES is appropriate for redundancy entitlements where an employer cannot meet that obligation through insolvency. We argue that if the funding of the scheme is 'unsustainable' then it is because employers and the government are not taking appropriate measures to ensure their contributions make it so. They should not transfer this breakdown onto workers.

According to the Minister, the current entitlement 'creates a moral hazard - it provides an incentive for employers and unions to sign up to unsustainable redundancy entitlements, safe in the knowledge that if the company fails, the FEG and the Australian taxpayer will pay for it' (Pyne, 2014). Redundancy entitlements become 'unsustainable' when employers make decisions that place the financial viability of the business at risk, not when the parties are negotiating agreements. We suggest that the 'moral hazard' occurs when businesses do not look to long term sustainability and seek to serve the interests of their shareholders to maximize returns in the short term rather than the interests of their employees or the public.

The Minister believes it is somehow unreasonable for a long-serving employee to receive a redundancy payment above the NES because these payments may 'go well beyond what can be considered a reasonable community expectation of what a social insurance scheme should pay' (Parliament of the Commonwealth of Australia, 2014). The introduction of a 16 weeks' cap 'reflects a much more reasonable standard for what will be paid under this scheme.' We ask reasonable for whom?

On the one hand the Minister catastrophises the situation by referring to the overall increase in expenditure on redundancy payments under FEG, then undermines the proposition to introduce a cap by referring to Department estimates that the 16 week cap will affect only around six per cent of future claimants (Parliament of the Commonwealth of Australia, 2014).

As a fallback, the Minister assures us that where a claimant is owed more than 16 weeks' redundancy pay by their insolvent employer, they will be able to pursue the portion of the debt that is not paid by the scheme in accordance with the *Corporations Act 2001*. So the onus for recovery of entitlements falls to the worker who must navigate a complex legal environment to obtain their full redundancy payment. Again, the costs and responsibility shift to the individual.

The Prime Minister, Tony Abbott, (2014), has said that the 2014 budget is about "shifting our focus from entitlement to enterprise; from welfare to work; from hand-out to hand-up". The reality is the federal budget and initiatives such as the changes to the FEG aim to shift the role of government from:

- meeting people's basic needs through equitable collective programs and processes, to imposing more costs and risks on the individual;
- providing some basic financial security for everyone, to imagining everyone has the capacity to be an entrepreneur and capable of significant earnings; and
- providing cost-effective risk management, through government, for important needs, to assuming everyone has the same opportunity and capability as the elite 10 per cent.

With this approach the Abbott government has further shifted corporate risk to the individual such that Australians workers must now accept their rightful entitlements are no longer fully protected.

References

Abbot, A. (2014) Address to The Sydney Institute, Tuesday, 29 April, Sydney retrieved from http://www.pm.gov.au/media/2014-04-29/address-sydney-institute

Parliament of the Commonwealth of Australia (2014) House of Representatives *Fair Entitlements Guarantee Amendment Bill 2014 Explanatory Memorandum.*

Pyne, C. (2014) House of Representatives, *Fair Entitlements Guarantee Amendment Bill 2014*, Second Reading Speech, Thursday, 4 September.