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President Gerardine (Ged) Kearney
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Ref: D No. 149/2014

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Select Committee on Certain Aspects of Queensland Government Administration Related to Commonwealth Government Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Email: qga.sen@aph.gov.au

Dear Senators,

Re: Certain Aspects of Queensland Government Administration Related to Commonwealth Government Affairs

The Australian Council of Trade Unions (ACTU) is the peak union body representing 46 affiliated unions and the interests of almost two million members across Australia. The ACTU also plays an important role in monitoring the extent to which all Australian jurisdictions comply with national and international labour standards. In this capacity, along with our state counterpart, the Queensland Council of Trade Unions (QCU), we have been engaged in ongoing scrutiny of the legislative changes made by the Newman Queensland Government. In particular, we are concerned that certain aspects of the Queensland Government's changes may place at risk the Commonwealth Government's ability to meet our international obligations.

The ACTU fully endorses the submission made by the Queensland Council of Unions to this enquiry. We also welcome the opportunity to provide a separate submission, as there are several key areas we wish to highlight as being of specific concern.

Judicial independence

The ACTU notes the specific reference to judicial independence in the terms of reference of this inquiry. In this context, we wish to draw the Senate Select Committee's attention to a number of changes made by the Queensland State Government.

Several changes have been made to Queensland's industrial relations system which served to dilute the power and independence of the Queensland Industrial Relations Commission (QIRC). For example, under the *Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012 (the FWH Act),* enacted in June 2012, the QIRC has now been directed to be briefed by the government on a range of matters, such as the State's financial position and fiscal strategy, and to take this into consideration when making decisions. Of course, it has always been the custom of industrial tribunals to

take such matters into consideration; by legislating this, it appears that the State Government may be attempting to unduly influence the QIRC in its decision making. In addition, appeals of the Public Service Commission are now being referred to the QIRC, which causes some ambiguity and confusion in relation to the separate roles of these two bodies. Moreover, as part of the second tranche of Fair Work Harmonisation legislation, the Queensland Government has now introduced fixed one-year terms for their industrial commissioners. This is a radical departure from the previous system, which granted life tenure to its industrial commissioners. Life tenure is an important cornerstone of an independent judiciary as it ensures that judicial appointments, once made, are not subject to revocation for political reasons. These legislative changes suggest an alarming trend towards a potential dilution of the independence of the QIRC.

There is a longstanding tradition within the Australian industrial relations system, stretching back to the introduction of the Conciliation and Arbitration Tribunal in 1904, in which our tribunal processes are kept independent of the government of the day. This tradition stretches to such matters as appeals processes, composition of tribunal bodies, and the matters that tribunals take into consideration as part of their decision making. Any attempts to undermine this independence would be a massive step backwards, and would only serve to undermine the strength of our industrial relations system.

The ACTU recommends that the Committee condemn the Newman Government for attacking the independence of the QIRC.

The ACTU also recommends that the committee endorse the critical importance of industrial relations tribunals operating without fear that the Government of the day will make changes to the operations of the Tribunal just because they are unhappy with the decisions the Tribunal is making.

Protected industrial action and the right to organise

Australian workers have a statutory right to freedom of association, which is enshrined in the ILO's *Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87)* (Convention No. 87). This Convention recognises the fundamental right of workers to organise and to join a union. In particular, Convention No. 87 specified that workers' organisations have the right to draw up their own rules and constitutions, and to self-organise their own administration and activities, free from political interference. As a general principle, this means that unions and other collective associations should have the right to self-regulate through democratic, membership-driven processes. Australia is also a signatory to the ILO's *Right to Organise and Collective Bargaining Convention, 1949 (No. 98),* which enshrines the right of individual workers to join together and take action to improve their employment conditions.

The Newman Government's legislation has introduced several important changes to industrial action processes, making it more difficult for workers to take collective action. The initiatives introduced by the Newman government, including through the introduction of Protected Action Ballot Orders and employer-sponsored agreements, may contravene the freedom of association and collective bargaining provisions in Conventions No. 87 and 98.

For example:

- the FWH Act allows a very low threshold for Ministerial intervention to terminate industrial action, much lower than the equivalent provisions in the Fair Work Act, which essentially allows the State Government to forbid industrial action, despite the obvious conflict of interest inherent in the Newman Government being the employer of many public sector workers;
- The Act also provides for forced arbitration
- The State Government has also introduced legislation that invalidates a number of agreed-upon terms in State Awards and collective agreements, invalidating terms that relate to 'contracting out' and employment security.
- Through the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013,* the Newman Government attempted to place a $10,000 cap on union spending, after which union members would be forced to proceed to a ballot. Thankfully, this unworkable and undemocratic measure was overturned in the High Court, but

it does illustrate the lengths to which the Newman Government has attempted to go in order to stifle the internal activities and process of worker organisations.

All of these changes appear to contravene important international principles in relation to the rights of workers to organise and bargain for better working standards.

The ACTU recommends that the Committee condemn the Newman Government for breaching our international obligations.
The ACTU urges the Committee to recommend that industrial relations legislation must uphold rights to freedom of association and the right to self-organise free from political interference.

Protecting redundancy entitlements

By enacting the *Public Service and Other Legislation Amendment Act 2012,* the Newman Government has served to significantly strip back and water down employee entitlements and conditions in relation to redundancies. In our view, this constitutes a breach of the ILO's *Termination of Employment Convention 1982 (No. 158)*(Convention No. 158), which was ratified by Australia in 1993. This Convention sets out basic principles in regards to the termination of employment, and, in particular, requires employers to engage in meaningful and timely consultation around redundancies.

The Queensland Government's approach to redundancy entitlements is of particular concern to us as it has potential ramifications upon Commonwealth arrangements. As a general principle, any weakening of redundancy entitlements is a step back for Australia's industrial relations system. Australia has always recognised the importance of strong redundancy protections for workers impacted by major organisational change, and such protections have proved invaluable at times of major corporate collapses, such as the collapse of Ansett Airlines in 2001; and in the context of Queensland, massive job losses in the public sector make such protections invaluable. At such times, it is more important than ever that workers are properly consulted and compensated.

The ACTU recommends that the Committee condemn the Newman Government's attack on fair redundancy entitlements and recognise the importance of Governments support for fair redundancy entitlements as a key support for economic transition.

We thank the Committee once again for the opportunity to make this submission, and are at the Committee's disposal should further information or clarification be required.

Yours sincerely,

Ged Kearney
President