Queensland Council of Unions

QCU Submission for the 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

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Executive Summary

State Governments in Queensland and New South Wales have been elected with sizable majorities, a situation compounded in Queensland with a unicameral electoral system. In the lead up to the respective state elections, none of the punitive measures that have been adopted by these governments were articulated to the electorate and in the case of Queensland undertakings that were given were repudiated by the new Government upon taking office. The large majorities have been attributed to a range of reasons, such as the sale of public assets by the previous Bligh Government, but it cannot be suggested that any mandate can be claimed by either the O'Farrell or Newman Governments to attack public sector workers' conditions of employment or basic human rights.

It is also apparent that the Newman Government in particular has used the administrative and legislative tools at its disposal to unilaterally remove existing conditions of employment and employee protections in direct contravention of ILO conventions. Basic rights and obligations that have formed part of the Australian industrial landscape for decades have been removed by a Government that has no regard for its own workforce. Public sector employment has long been associated with tenure and one would expect a government to be a model employer, however the Newman Government has denuded its own workforce of the rights enjoyed by all workers outside of Government employment.

A submission of this nature is limited by both size and time. This submission can only begin to illustrate the misery and social disruption that was callously and unnecessarily caused by the Newman Government. The actions of the Newman Government have produced untold hardship to thousands of hard-working Queenslanders and the Government itself has taken a lead role in vilifying public sector employees. Furthermore the economic impact of the cuts to employment and services have produced a statistical impact that has been felt at a national level.

It is the submission of the Queensland Council of Unions that the Senate has a moral obligation to take whatever steps are necessary to protect employees of state governments from attacks that would not be tolerated if imposed on private sector employees. The specific questions asked by the Senate in the Terms of Reference are answered in this submission in such a way as to urge the Senate to intervene to protect the basic human and industrial rights of State Government employees. The mechanism to address the administrative and legislative extremes that have been evident in the Queensland jurisdiction is through the use of the external affairs powers under the Constitution.

Introduction

The Queensland Council of Unions (QCU) is Queensland's peak body of registered unions of employees. The QCU has 33 affiliates many of which cover employees who have been impacted upon by the recent conduct of the Newman Government. The submission briefly outlines a background to the legislative and administrative changes that have been adopted by the Newman Government. In so doing it demonstrates how trite and unjustified these changes, dressed up as reforms, have been. There is nothing original or necessary about the attacks perpetrated by the Newman Government on its own workforce. Rather these attacks are demonstrably following a formula adopted by conservative governments regardless of the circumstances.

This submission contrasts the undertaking given by the then Leader of the Opposition, Campbell Newman prior to the 2012 State election with the conduct of the Newman Government after its election. Whilst the Newman Government did attain a remarkable majority in the 2012 election, it is palpable that no mandate exists for the gutting of entitlements for employees and obligations for the Government as an employer. Specific details of the reprehensible behaviour of the Newman Government will illustrate how rights that have their genesis in ILO conventions have been dispensed by legislative and administrative changes. In order to place a human face to drastic changes brought about by the Newman Government, the submission shall also include a single case study that is representative of some 14,000 employees of the Queensland Government.

Finally, contextualised by the material provided in the body of the submission, the QCU shall answer the specific questions raised in the Terms of Reference of this inquiry. The mechanism to address the administrative and legislative extremes that have been evident in the Queensland jurisdiction is through the use of the external affairs powers under the Constitution.

Background to recent events

The propensity of conservative State Governments cutting jobs and services has become somewhat predictable (Brisbane Times 2012). The template adopted by the incoming governments consists of an analysis of the state's finances that demonstrates a crisis thereby justifying an attack on the conditions of employees and to cut jobs and services. In so doing the new Government can shelve or directly repudiate election promises (Quiggin 2012). This now well worn formula was first adopted by the Greiner Government in New South Wales in the late 1980s. Contemporary protagonists have later admitted to creating a "popular demand" for neo-liberal policies by blaming the previous government for over-spending where no such an economic crisis exists (Walker and Con Walker 2012:7/8). The formula was subsequently adopted by the Victorian Kennett Government and other conservative Governments, including the Howard Government, in the 1990s (Bachelard 2004; Quiggin 2012; Walker and Con Walker 2012:7/8)

Some twenty years later, the process has been recommenced by conservative governments in Western Australia, New South Wales and Victoria (Walker and Con Walker 2012:i; Quiggin 2012). The O'Farrell Government introduced a range of changes that were justified by the supposedly crippled state of the economy (Holmes 2011:5; Madden 2011). These included freezing the level of wage increases that could be paid to employees at 2.5% (NSW Parliament 2011; Holmes 2011:5; NSWNWA 2013:4); limiting employees' rights to workers' compensation (Holmes 2011:5; Homes 2012:13; NSWNWA 2013:13); reducing workers' collective bargaining rights (NSW Parliament 2012; NSWNWA 2013:4,8); slashing public sector employees' rights (Workplace express 2012d); and cutting jobs through the budget process (Thomas 2012; NSWNA 2012). It would appear that the O'Farrell Government provided the contemporary prototype for the Newman Government's attack on public sector employment. Much of the dogma applied by the O'Farrell Government and adopted by the Newman Government is strangely reminiscent of recent events in certain states of the United States.

The election of several conservative Governments in states in the United States coincided with the proposed introduction of universal health coverage by the Obama administration. These newly elected conservative Governments in 2011 demonstrated a trend of attacks on government employees (Allegretto, Jacobs and Lucia 2011:7; Slater 2012b:473; Slater 2012a:87; Secunda 2012:4). In so doing these Governments, assisted by the conservative media vilified and demonised public sector workers and relied upon the politics of jealousy to engender public sympathy for the attacks. The attacks are well described as follows:

> … poisonous rhetoric by some proponents of this and similar laws that attempt to portray average working men and women as greedy, lazy bureaucrats, simply because their employer happens to be an arm of the government. (Slater 2012b:493).

In the wake of the 2008 global financial crisis, coincidently caused by an incompetent financial sector, newly elected conservative governments sought to re-write history by blaming the supposedly generous conditions of employment and compensation (rates of pay) being afforded to public sector workers. Propaganda used by the conservative Governments and commentators relied upon unrealistic comparisons between public sector workers and their private sector counterparts. Comparisons used for this purpose did not take into consideration age, qualifications and specialised experience. If such comparisons were to include such variables, a reasonable and independent analysis would draw the conclusion that public sector employees were in fact paid less than their private sector counterparts(Slater 2012b:489; Slater 2012a:198; Secunda 2012:23). Relevantly for this discussion, the contrary argument is that public sector workers have employment security not enjoyed by employees in the private sector (Slater 2012b:490). However, as we have seen, employment security within the public sector now amounts to nil.

Moreover the financial crisis in the United States for which public sector workers were being blamed had absolutely nothing to do with public sector workers or their conditions of employment (Slater 2012b:474; Secunda 2012:22). Credible research (as opposed to political rhetoric and hate mail on blogs) establishes:

> Budget deficits were primarily caused by the housing crisis and subsequent economic downturn which resulted in a decline in revenues as the economy contracted. Finally, controlling for the decline in housing prices, we find no statistically significant correlation between union density, union strength, and the size of state budgets. (Allegretto, Jacobs and Lucia 2011:9)

17 states in the United States, most notably Wisconsin and Ohio, elected conservative Governments with an agenda to attack public sector workers. In what appears to be a policy check list for the Newman and O'Farrell Governments, measures purportedly justified by the global financial crisis included:

- Removal of provisions in collective agreement concerning privatisation and/or contracting out;
- Limiting bargaining outcomes to the Consumer Price Index on base rates only;
- Restricting the scope of matters about which bargaining can occur;
- Restricting fact-finding to the Government's financial situation;
- Unilateral imposition of the Government's preferred offer;
- Attacking pension funds;
- Restricting unions' political activity;
- Limiting collective bargaining rights for certain categories of employees; and
- Onerous voting requirements for union recognition. (Slater 2012a:206, 207; Slater 2012b: 482, 483, 486, 489 Malin 2012:150, 155, 156, 157; Secunda 2012:2, 8,9)

It is quite interesting to note the similarity in the policy of restricting the ability of public sector workers to bargain, which is aptly described as follows:

> In short, the attempt in SB-5[1] to create a form of "bargaining" in which one party (the employer) can unilaterally choose its own offer and the other party (the union) has no further recourse is not an attempt to improve the collective bargaining process. This is the kind of "bargaining" a parent does with a young child. With neither binding interest arbitration nor the right to strike, unions would have had no leverage in negotiations, effectively ending their right to engage in meaningful and productive collective bargaining. (Slater 2012b:489).

Thus we see that the predictable and senseless policy prescription of the hard right wing in the United States is ready made for the conservative Governments recently elected in Australia. The similarity of the measures adopted by the various conservative state Governments and their counterparts in Queensland, New South Wales, Western Australia, Victoria and the Northern Territory cannot be coincidence. It is a formula to pursue a global, neo-liberal agenda for removing conditions for employment, bargaining rights and of particular relevance to this submission, entitlements to employment security. This submission will now focus on the conduct of the Newman Government with respect to employment security for its own workforce.

The Conduct of the Newman Government – following the formula

Prior to the 2012 state election

It is perhaps ironic that the landslide victory of the Newman Government can be attributed to the sale of assets by the previous Labor Government. As members of the Senate might be aware, the Queensland union movement campaigned long and hard against asset sales by the Bligh Government because it was the wrong decision and it would appear that the voters of Queensland concurred (Quiggin 2012).

Despite the apparent inevitability of the victory by the Liberal National Party (LNP), the leader of the party decided to provide undertakings to Queensland public sector workers (Newman 2012). Subsequent events demonstrate that it is now apparent that Mr Newman had no intention of keeping the undertakings he made to public sector workers (Quiggin 2012). The undertakings, viewed historically, are truly breath taking in their level of subterfuge. Those specific undertakings are worthy of observation by the Senate and can be found under the heading "What he said before the election" on the following site:

http://www.howcanwetrustyou.org.au/

As Leader of the LNP, Mr Newman promised that public servants could look forward to a bright and rewarding future under a Newman led LNP Government. Mr Newman committed to work hard with public servants and their unions in order to make such a future possible. Specific and unequivocal undertakings from Mr Newman included no forced redundancies and to scrap the Bligh Government's "unfair and arbitrary" 2.5% cap on wage increases. Further Mr Newman undertook to bargain in good faith with the relevant unions and provide public sector workers with support necessary to do their jobs.

In what can now only be considered as a satirical comparison with the Bligh Government, Mr Newman was critical of Machinery of Government (MoG) changes undertaken by the Bligh Government and the "arrogant stance" that was said to be adopted by the Bligh Government to bargaining. This comparison is astounding considering the immediate introduction of further MoG changes upon the election of the Newman Government.

[1] SB-5 is the bill introduced in Ohio that was subsequently overturned by referendum (Slater 2012b:486; Malin 2012:150; Slater 2012a:206)

Moreover, the wages policy described by Mr Newman as "unfair and arbitrary" that was in place under the Bligh Government was for a floor of 2.5% with the capacity for negotiation of increases beyond that floor limit. For example, in return for productivity improvements, Teacher Aides were able to negotiate a 3% increase under the Bligh Government's negotiating framework (QIRC 2012a:15 clause 39.0). Interestingly Nurses and Midwifes also secured a 3% increase under the previous Government's framework but the agreement was signed off after the Newman Government had taken power (QIRC 2012b:6 clause 13; AAP 2012). The Nurses and Midwifes agreement was to be the last agreement dealt with under the previous bargaining framework reportedly to the chagrin of senior figures within the new Government.

Prior to election Mr Newman described the Bligh Government's wages policy as "unfair and arbitrary" but promptly set about to introduce a wages policy that was far worse for public sector workers. Rather than having 2.5% as a floor, 2.5% promptly became a ceiling for wage offers made by the Newman Government. The Government seemed to take a perverse delight in reducing the level of the offer as it approached differing sectors of the workforce[2] (Workplace Express 2012c).

After the 2012 state election

On 24 March 2012 the Queensland state election resulted in a landslide victory for Mr Newman and the LNP. Almost immediately the Newman Government, and in particular Treasurer Nichols began declaring that a financial crisis existed and that it was the priority of the Newman Government to attack the mounting debt crisis that Queensland was said to be facing (Costello, Harding and McTaggart 2012). As previously mentioned however, there was no black hole in the Queensland budget and the condition of the Queensland budget was well known to the then Leader of the LNP before the election when Mr Newman made the very specific undertakings to employees of the Queensland Government.

On 6 June 2012 the Queensland Parliament passed an amendment to the Industrial Relations Act 1999. The Industrial Relations (Fair Work Harmonisation) and Other Legislation Act 2012 had been introduced into parliament by Attorney General Bleijie on 17 May 2012 to, amongst other things, ensure recognition of " the importance of prevailing economic conditions" (Queensland Parliament 2012a:1; Workplace Express 2012a). The Act's objectives included (Queensland Parliament 2012a:2):

- require the QIRC to give consideration to the State's financial position and fiscal strategy, including the financial position of the relevant public sector entity, when determining wage negotiations by arbitration;
- provide a process whereby the treasury chief executive may brief the QIRC about the State's financial position, fiscal strategy and related matters;
- introduce a power for the Minister to make a declaration terminating industrial action if the Minister is satisfied that the action is threatening the safety and welfare of the community or is threatening to damage the economy;
- introduce an arrangement modelled on the Commonwealth's Protected Action Ballot Order regime to clarify and strengthen the employee balloting process for the taking of protected industrial action in connection with a proposed certified agreement; and
- introduce a specific process for an employer to directly request employees to approve a proposed certified agreement. (Queensland Parliament 2012a:2)

[2] Up to 2.7% offer to Firefighters (Jabour 2012); 2.7% offer to Teachers (Waters 2012); then 2.2 % offered to Paramedics; 2.2 % (UV 2012) offered to public service employees (Workplace Express 2012c)

This Act magically preempted the finding of the so-called audit chaired by Peter Costello and focused the attention of the QIRC on the state's financial position and its fiscal strategy. Consistent with the predetermined strategy of the Queensland Government, the act amendment was intended to ensure that the state's finances were a primary consideration of any arbitrated decision by the QIRC (Workplace Express 2012a). In addition to requiring the QIRC specifically to take account of the 'financial position of the State and the relevant public sector entity and the State's fiscal strategy' in making a wage determination (over and above any consideration of 'capacity to pay' arguments put by the Government as an employer), the legislation allows information on the state of the economy and on the state's fiscal strategy to be provided to the QIRC by the Government as a briefing, without the unions having the right of cross-examining this evidence rather than in the form of evidence that can be cross-examined and tested by parties to a dispute (Workplace Express 2012b). This effectively allows the government to appear both as an employer party and purportedly as a representative of the public interest. Highly unlikely that it will make any representations in the latter capacity that would conflict with the representations made in the former capacity. The balance of power between employer and employee parties is therefore clearly weighted more heavily in favour of the employer. This provision runs contrary to any notion of procedural justice.

It was quite clear at this stage the Newman Government intended to arbitrate collective bargaining outcomes when agreements would be proposed to unions that were clearly unacceptable to their members (UV 2012). In stark contrast to undertakings given by Mr Newman to work with public servants and their unions prior to the election, the Queensland Government was now setting the scene to arbitrate rather than negotiate and to put unrealistic propositions to the workforce (Workplace Express 2012c). It also sought to tip the playing field in the balance of austerity by imposing an additional requirement on the QIRC (Workplace Express 2012 b).

The *Industrial Relations (Fair Work Harmonisation) and Other Legislation Act 2012* also selectively adopted provisions from the federal legislation such as the protected action ballots and the Ministerial declaration to cease industrial action. In relation to the latter, for example, there is an important distinction. In the Commonwealth context, the Minister in the overwhelming majority of (but not all) cases would be intervening 'in the public interest' in a dispute between unions/employees and an employer, that is, the Minister and the Commonwealth Government are interested third parties as, for example, in the QANTAS lockout (Sangkuhl 2011:1). In the Queensland case, however, the Minister/government will almost always be a direct party to the dispute as the employer.

The Orwellian title of the Act is at odds with its actual intention. These provisions were intended to reduce the capacity of public sector employees to take industrial action in support of claims whilst bargaining with the Government (citation). It also coincided with an ideological attack on workers' conditions through the process of enterprise bargaining. Unions were provided completed documents that stripped away conditions of employment and provided for sub-standard wage increases supposedly in compensation for the substantial reduction in entitlements (UV 2012; UFUQ 2012). The Queensland Government provided paramedics and firefighters with propositions that could never have been expected to be agreed including the removal of any reference to consultation concerning work related matters (Jabour 2012). This proposition effectively removes the capacity for emergency service workers to have any input into their work including health and safety issues. The proposal being put to public servants was that they agree to a wage increase that would in many cases be less than their next incremental payment thereby resulting in a real reduction in wages. Again the reality of bargaining under the Newman Government was a far cry from the utopian outlook that was promised by the then Leader of the LNP before the election.

On 15 June 2012 an interim Costello Report claiming to be an audit of Queensland finances was provided to the Queensland Government. The "audit" reached the predetermined and clearly politically partisan conclusions that Queensland was living beyond its means (Quiggin 2012). As is now well known the so called "audit" did not meet the definition of an audit and contained several shortcomings in terms of auditing standards. The report:

- made no attempt to formally enunciate the criteria it used to evaluate performance – in this case, the financial performance of the previous government of Queensland, during a downturn in an economic cycle and natural disasters. (Arguably some criteria were implicitly applied: they reflected subjective opinions about the virtues of smaller government; and that governments should not borrow to fund investments in infrastructure);
- did not acknowledge any limitations of the work it had undertaken e.g. a failure to use the content of the audited financial statements for Queensland (notably Operating Statements, Statements of Cash Flows and Statements of Changes in Net Worth covering the Total State Sector);
- failed to acknowledge that its claims that the previous government had 'borrowed to support budget' were not supported by evidence contained in relevant financial statements;
- provided forecasts of future debt levels that apparently were based on trends in graphs without referring to underlying data, without explaining that some borrowings in the past were made by agencies subsequently privatised, and without acknowledging that these forecasts were not based on any independent economic modeling;
- while providing alarmist claims about growth in 'gross debt', failed to acknowledge that official statistics prepared by the Australian Bureau of Statistics ignore the concept of 'gross debt' and instead report the widely accepted indicator of 'net debt';
- failed to acknowledge that 'net debt' data presents the opposite picture to the alarmist claims about excessive levels of 'gross debt' and that on this basis, Queensland has a far stronger financial position than other states;
- failed to provide a summary of the work undertaken by members of the Commission (as opposed to public servants who may have faced incentives to avoid drafting material that was inconsistent with any predetermined conclusions of the so-called 'audit'. (Walker and Con Walker 2012 10)

In other words, the report differed from an audit in such respects that it was able to make claims that exaggerated the extent of the financial circumstances in Queensland and created the "crisis" upon which the Queensland Government would justify its decisions (Quiggin 2012). Similarly the Costello Report selectively focuses on figures that will justify the predetermined state of crisis and ignore those figures that would not assist in such a finding (Quiggin 2012: Walker and Con Walker 2012:19). The analysis adopted in the Costello Report is well compared to an analysis of household where only debts are included and assets are ignored:

> Unsurprisingly, given its political objective, the Commission chooses to focus on the largest possible measure of debt, namely the gross debt of the entire public sector. The choice of a gross measure means that no account is taken of the value of financial and physical assets held by the public sector. If the same approach were taken in evaluating the financial position of a household, it would entail worrying about an outstanding credit card balance, without considering whether the household had money in the bank to make the required payment.
>
> Similarly, it would imply that a family with a house valued at $500 000 and a mortgage of $200 000 was worse off than one living in rental housing, with no assets and no debts. The inclusion of the debt of government business enterprises is even harder to justify. These enterprises are required to cover debt from their own earnings and to generate a commercial rate of return on the equity invested in them. The Commission's analysis is akin to suggesting that a household would be worse off owning a profitable business, because the business is partly financed by debt. (Quiggin 2012)

To start the cull of public sector employees, in the order of 4,000 public servants on temporary contracts of employment had their contracts terminated on 30 June 2012 to become known as "Black Friday" for those unfortunate employees. The rhetoric surrounding the wholesale axing of temporary employees was to the effect that the Bligh Government had employed so many temporary employees because of the impending debt crisis (Hurst 2012a). The reality is quite different and well understood by anyone with knowledge of public sector employment, particularly in Queensland. Temporary employment has long been a common entry point for the public sector with many new entrants accepting temporary positions in order to gain a foothold for a more secure position in the future. This practice is decades old and predates several recent Labor governments evidenced by the fact that temporary public servants originally had their own industrial instrument (QICAC 1985). In truth those employees on temporary contracts had the least enforceable legal rights and were able to be retrenched without any additional emoluments or recourse to a tribunal[3] (Brisbane Times 2012).

Removal of Protections

In addition to legislation, arbitrated awards and collective agreements, a number of conditions of employment for Queensland Government employees are provided for by directives issued either by the Public Service Commission or the Minister responsible for Industrial Relations. Directives have had the ability to over-ride collective agreements and awards[4]; however, previous governments have hitherto not used directives to undermine employee's established rights.

Operative 2 July 2012, a new Directive 06/12 *Employee Requiring Placement* (PSC 2012a) replaced the existing Directive 12/09 *Employee Requiring Placement Following Workplace Change* (PSC 2009). The existing directive set out a framework by which agencies could manage employees displaced from their permanent position as a result of workplace change, such as the reorganisation or restructure of an agency or part thereof. Directive 12/09 also included a range of safeguards for employees in the event that placement became necessary, all of which were removed by the new directive 06/12. Most notable by its omission was paragraph (f) of clause 7.1 which had read as follows:

> Tenured public service employees must not be forced into unemployment other than in exceptional circumstances. Agencies must work actively with employees affected by new workforce arrangements to secure their ongoing tenure. Where appropriate, agencies may also seek the assistance of other agencies to secure the ongoing employment security of an employee. Agencies should work co-operatively with each other to meet the Government's commitment to employment security for public service employees. (PSC 2009:2)

Quite clearly the thought of protecting employment was now furthest from the minds and policy direction of those making the decisions. The long standing principle of a tenured public servant able to provide advice to government without fear or favour (Anderson, Griffin and Teicher 2002:47) was trashed in favour of a strategy which favoured the destruction of employment security for Queensland Government employees. Not only did Directive 06/12 remove existing safeguards for employees, it set about to establish a procedure intended to manufacture the consent of employees. The new clause 6.2 set out the procedure that was to be used to cajole employees into taking a "voluntary" redundancy:

[3] Section 72 (1) (d) of the *Industrial Relations Act 1999* excludes employees engaged for a specific period or task from the unfair dismissal jurisdiction

[4] Section 52 of the *Public Service Act 2008* provides that a directive may prevail over an industrial instrument.

6.2 Procedures for employees requiring placement

(a) In the first instance, the department and the employee must proactively consider options to facilitate the immediate placement of the employee into a suitable alternative permanent role.

(b) Where an employee is unable to be placed into an alternative permanent role following workplace change, the department must advise the employee in writing that the employee has been designated as an employee requiring placement and provide the employee with two weeks to decide between two courses of action:

(i) Accept a voluntary redundancy (in accordance with the directive relating to early retirement, redundancy and retrenchment); or

(ii) Pursue transfer (and/or re-deployment) opportunities.

(c) Where an employee declines a voluntary redundancy under clause 6.2(b)(i), no further voluntary redundancies will be offered.

(d) Where the employee does not advise of their decision, in writing, within the two week period, the employee will be considered to have elected to pursue transfer (and/or re-deployment) opportunities. (PSC 2012a:1/2)

The employee is thus forced with the life changing choice of being placed on a list of employees to be redeployed to another position or to take a "voluntary" redundancy within a fortnight of receiving notice. As we will see, the option of becoming an employee requiring placement is quite rightly portrayed to the employee as being an option fraught with limited prospects. The once-only offer is clearly intended to place pressure on the employee (Hurst 2012c). The acceptance of a "voluntary" redundancy brings with it an incentive payment of 12 weeks pay that is otherwise lost forever to the unfortunate employee (Minister Assisting the Premier 2012:7). Moreover the employment of the employee whose position has been made redundant was to be reviewed at the end of four months, with a view to retrenchment, if the employee in question was unable to be redeployed (PSC 2012a:4) . The four month review period was however of little comfort to an employee in these circumstances by virtue of clause 6.6 (b) of the *Employee Requiring Placement* Directive:

> A department, in conjunction with PSC, may initiate a review at an earlier time if it considers reasonable placement efforts have been undertaken and/or a transfer opportunity for the employee is unlikely to occur as a result of the employee's specialised skill set or location. (PSC 2012a:4)

Thus the employee has the choice of severance pay of 12 weeks pay (in addition to other entitlements) or being placed on a list of employees requiring placement that could be reviewed at any time having regard to "the employee's specialised skill set or location". Efforts by the premier to suggest that "not one permanent employee has been sacked" lack all credibility. It is clearly evident that there was no choice for the employee who faces the choice of the so called "voluntary" redundancy and redeployment (Hurst 2012b).

Of perhaps the greatest significance to the Senate's current enquiry was the issuing of Directive 08/12 by the Public Service Commission Chief Executive on 31 July 2012 (PSC 2012b; Workplace Express 2012c). Commission Chief Executive Directive 08/12 is benignly entitled "Industrial Instruments Employment Security or Contracting Out Provisions" and is barely more than a page of A4 paper. None the less, the ruling contained in this directive consists of the simple statement that "(w)here there are provisions for Employment Security or Contracting Out in an industrial instrument, the Employment Security or Contracting Out provisions contained in the industrial instrument do not apply". In this ruling a range of existing provisions that had been the subject of bargaining outcomes between unions and Government and formed part of existing conditions of employment for Queensland public sector

employees were unilaterally removed without negotiation. How does this single action on the part of the Newman Government compare with the commitment made by the Leader of the LNP before the election to work with unions and public servants had nothing to fear? It is an absolute repudiation of the commitments made before the election and could not be more diametrically opposite to the picture that was painted before the election. Even after the election, the Premier continued to use the line that there was "no forced redundancies" but no one actually believed him (Hurst 2012b).

It soon became evident that the 29 words contained in Directive 08/12 were not sufficient on their own to over-ride the previously negotiated and existing entitlement of more than 200,000 public sector workers in Queensland. A challenge to the legal basis for 08/12 was imminent (Workplace Express 2012e). This in turn led the Newman Government to amend an existing Bill dealing with a raft of administrative functions and jurisdictional changes, the *Public Service and Other Legislation Amendment Bill 2012*. The amendment to the Bill was said to "provide legislative certainty to the Government's intentions regarding employment security, contracting out …" (Queensland Parliament 2012b:1).

Whilst the Bill may have sought to euphemistically provide "certainty" to the prohibition of contracting out and employment security clauses, it went one step further than directive 08/12 by limiting the application of termination, change and redundancy (TCR) provisions. Directive 08/12 excluded TCR provisions from the definition of employment security provisions that were to be made null and void by that same directive. The exclusion of TCR provisions would lead the reader of Directive 08/12 to the conclusion that whilst certified agreement provisions that had been agreed as a process of collective bargaining were to be nullified, then at least the long-standing obligations that have been placed on the employer by virtue of the TCR provisions contained in arbitrated awards would continue to operate. However that was not to be the case, the *Public Service and Other Legislation Amendment Bill 2012* also included an amendment to *the Industrial Relations Act 1999* by the inclusion of a new section 691D which reads as follows:

> 691D Termination, change and redundancy provisions
>
> > (1) This section applies if a relevant industrial instrument includes a TCR provision about notifying an entity of a decision or consulting with an entity about a decision.
> >
> > (2) The following principles apply—
> >
> > > (a) the employer is not required to notify the entity of the decision until the time the employer considers appropriate;
> > >
> > > (b) the employer is not required to consult with the entity about the decision until the employer notifies the entity of the decision;
> > >
> > > (c) the employer is not required to consult with the entity about the decision other than in relation to implementation of the decision.
> >
> > (3) The TCR provision is of no effect to the extent it is inconsistent with any of the principles mentioned in subsection (2).

(4) In this section—

TCR provision means a termination, change and redundancy provision of a relevant industrial instrument that is an award.

Examples—

The following provisions, as in force on 30 July 2012, are examples of termination, change and redundancy provisions—

• clauses 4.1, 4.7 and 4.8 of the Queensland Public Service Award -State 2012

• clauses 4.5, 4.6 and 4.7 of the District Health Services Employees' Award - State 2012

• clauses 4.11, 4.12 and 4.13 of the Ambulance Service Employees' Award - State 2012. (Queensland Parliament 2012b)

Given that one of the primary objectives of the TCR provisions is to provide employees and their representatives with advanced warning of the termination of employment of employees the "principles" set out in subsection (2) above render those provisions useless.

Termination, Change and Redundancy (TCR)

To place TCR provisions in the historical context, it must be understood how and when they came about. Test cases had been run in other industrial jurisdictions[5] concerning TCR and these cases established a range of obligations on employers. In addition to an extension of notice periods and monetary compensation (in the form of severance pay) to be paid to employees in cases of redundancy the emerging TCR standards placed obligations on employers to consult with their workforce and their workforce's representatives in advance of positions being made redundant. The logic behind such a facilitative provision is to enable employees the maximum time to adjust to impending redundancy. Perhaps more importantly, TCR provisions provided an opportunity for the employer and employees to examine alternatives to redundancy.

TCR was adopted in the Queensland jurisdiction by the Queensland Industrial Conciliation and Arbitration Commission (QICAC) in 1987 (QICAC 1987). The QICAC issued a Statement of Policy that was intended for inclusion into state awards by reference to the statement of policy. The wording of that statement of policy was adopted in its entirety in a number of awards, relevantly to this inquiry; its terms were included in the *Queensland Public Service Award – State.* The wording contained in the statement of policy is consistent with the ILO Convention on Termination of Employment (158) and recommendation 166 (QICAC 1987).

[5] NSW in 2003 NSW Industrial Relations Commission Shop, Distributive and Allied Employees' association (NSW) & Ors v Countdown Stores & Ors 7 IR 273: Commonwealth Federal TCR Case 8IR 34

Clause 4.7 of the *Queensland Public Service Award – State* was one of the provisions that was seriously restricted by virtue of the new section 691D outlined above and this fact was put beyond doubt by its mention in the examples listed in that section. The text of clause 4.7 is set out hereunder:

> 4.7 Introduction of changes
>
> 4.7.1 Employer's duty to notify
>
> (a) Where the employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
>
> (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:
>
> Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.
>
> 4.7.2 Employer's duty to consult over change
>
> (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
>
> (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.7.1.
>
> (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees:
>
> Provided that an employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests. (QIRC 2012c)

A subsequent challenge to the constitution basis for the *Public Service and Other Legislation Amendment Bill 2012* was unsuccessful (Supreme Court of Queensland - Court of Appeal 2012). The Australian Workers Union has appealed the Court of Appeal decision to the High Court of Australia (Workplace Express 2013).

2012 Budget

Following the gutting of the relevant industrial instruments of any protection for employees in the case of redundancy, the stage was set for a massive reduction in the number of employees employed by the Queensland Government (Brisbane Times 2012). On 11 September 2012 the Queensland Government released the State Budget that included the axing of 14,000 jobs across the Queensland Government. The budget cuts also included cuts to

funding to a number of community organisations that had been providing essential services to some of Queensland's most vulnerable people (ACL 2012; QCCOSS 2012a; 2012b).

The process of slashing employment had been well underway before the State Budget. Chief Executives of various Queensland Government Departments had been given arbitrary figures to reduce the level of staff within their agencies. It was also subsequently revealed that Departmental Chief Executives were to be paid a bonus based on the number of employees made redundant (Workplace Express 2012e).

On 12 September 2012, Queenslanders demonstrated their anger at day of action rallies around Queensland. 12,000 people assembled in Brisbane and marched on Parliament House to hear from speakers who were able to tell the story of the misery brought about by the Queensland budget. It was also the case that the well worn formula of creating a financial crisis where no such crisis exists was starting to wear thin with those employees of the Queensland Government who had their employment security removed and were facing an uncertain future. Days before the state budget two reports (previously cited in this submission) were released that provided no doubt that the basis upon which the Queensland budget was premised was a falsehood (Walker and Con Walker 2012 10; Quiggin 2012).

To provide an insight into the personal impact of the culling of the public sector by the Newman Government, it is instructive to provide the small number of case studies that time and space provides. Submissions from individuals and organisations will corroborate the case studies contained in this submission (AWU 2013; NSWNWA 2013; Cole 2013; Fagan 2013).

Case Studies

"Jane"

The first employee who is the subject of a case study we will call Jane to maintain her anonymity. Jane had been employed by a Queensland Government Department since November 2007 and in that time she had been promoted twice within the Human Resource Division of the Department and at the relevant time had reached the relatively senior level of AO7[6]. Jane has tertiary qualifications of Bachelor of Multimedia, Griffith University QLD (GPA 6.88). It can be presumed that Jane's work performance was better than satisfactory as she was promoted once in April 2010 and again in October 2010.

On 31 July 2012 Jane, like other employees of the Department received an email from the Acting Director General of the Department that advised of impending job losses for employees. According to Jane, there was no consultation whatsoever with respect to the process of establishing the need for redundancies or measures that might have been put in place to avoid the job losses as would have been required had the award provision continued to operate.

Jane did attend a staff forum addressed by the Deputy Director General of the department. At the staff forum, a predetermined ratio of HR positions relative to the remainder of the Department was identified with positions in addition to this ratio to be declared redundant. Jane requested that the PowerPoint presentation that had contained the ratio be made available but was advised by the Deputy Director General that the numbers were not finalised and that the former was not comfortable in releasing the information. Jane suggested providing the presentation without the slide that included the ratio but this never occurred. At the same time media reports were providing a more accurate prediction of the fate that awaited Jane and her colleagues. Jane found it particularly disappointing that she was receiving more accurate information from the media than she was from her employer.

[6] Administrative Officer Level 7 is the second highest level within the administrative scale of the Queensland Public Service Award – State.

Employees in Jane's department were invited to submit a resume in order to be assessed against future needs of the department. This invitation was made in the absence of any structure or the numbers of positions to be made redundant. Strangely employees were also advised that the failure to submit a resume would not be held against those who chose not to submit a resume and the resume was not the only information upon which the decision as to who stays and who goes would be made. Jane chose to submit a resume and sought advice as to how selection criteria might be addressed. Given the specialist nature of Jane's skills she was advised by a senior official of the department (given the title of Reform Coordinator) to focus on that specialisation. Jane found this difficult as three ambiguous and generic criteria were developed for all of the positions within Jane's branch. Given the senior nature of her position, Jane, in addressing the generic selection criteria, was unable to focus on her leadership capabilities that were so integral to her performance of her duties.

On 24 August 2012, the Director of Jane's division was made redundant and from that time on, little or no information was provided to employees within that division. Employees were given the option of how news of their redundancy was to be delivered (by phone or email) and Jane opted for email. Jane's feeling of unease was not assisted by the presence of a security guard on her floor when she arrived at work. Jane was advised that her position was surplus to requirements and that she would have to make an election of either accepting a "voluntary" redundancy or being placed on list of employees requiring placement, consistent with Directive 06/12. Jane enquired as to whether there were any AO7 positions available in the register of positions that the Department was required to keep and she was advised that there were none. Further, Jane was advised at this point that realistically there was not going to be any jobs available for her.

Jane was naturally disappointed at being advised of the abolition of her position. Accordingly Jane enquired as to the difference between her skills and experience and other employees at the AO7 level who were to remain in employment as she wanted to understand how decisions were made. Jane was rather bemused by the response which was along the lines that there is not always a reason. Jane further sought advice on capability comparison report. The response Jane received was in very general and ambiguous terms and none of the comparisons discussed with her pertained to her own circumstances. Jane was told in a later meeting that the reason she was not needed was because the department was seeking employees with generalist skills. This is consistent with the more immediate advice that there was sometimes no reason and was completely inconsistent with earlier advice she was given to emphasise her specialist skills in addressing selection criteria.

At the same time Jane and her colleagues were being made redundant, Jane noticed some inconsistent treatment of employees within her agency. The "reform" team that had been put together to manage the job cuts suffered remarkably few retrenchments. According to Jane, at the same time as mass sackings by way of the so called "voluntary" redundancies, a number of senior employees had been introduced into acting positions within the department at the senior levels of Director or AO8[7]. To Jane it made no sense to be bringing in new employees in a temporary capacity when so many long-term employees were losing their livelihood. Jane believed that a number of the people in acting positions were being moved around to avoid expressions of interest being called for the temporary vacancies the employee were filling[8]. From her position in the Human Resources Branch, Jane was also able to conclude that there had been a deliberate effort to withhold vacant positions from the register of positions in order to understate the number of vacant positions and overstate the dire prospects that faced employees awaiting placement.

[7] Administrative Officer O8 is the highest administrative position under the Queensland Public Service Award and positions senior to that are at the Senior Officer or Senior Executive Service.

[8] Public Service Commission Directive 01/10 Recruitment and Selection places obligations to advertise vacancies and to appoint based on merit.

It would be difficult to prove some of that which Jane supposes to be the case with respect to the process; however the lack of transparency and inconsistent, even conflicting, advice she received leads to there being no confidence in the integrity of the process. "It's all about mates" was the inference that Jane drew from the procedures that adopted in the Agency she worked to bring about the massive jobs cuts that were mandated by Government. Jane is within her rights to consider that such a flawed process has some ulterior and/or undesirable motive.

It is also absurd to suggest that the choice that was offered to Jane was any choice at all. Jane could either take a voluntary redundancy that had a sizable incentive payment that would only be offered once or she could take her luck with a placement that she had been advised provided very slim hope. The options as they were put to her include a plethora of information and assistance in relation to a redundancy and paucity of information about placement. The absence of information about the placement can be illustrated by the fact Jane only learnt of salary maintenance (PSC 2012a:4), if Jane did choose to stay and was able to secure a position at a more junior level two days before the day upon which she was required to make the irrevocable decision to accept or not accept the redundancy.

"Julie"

Julie, also not her real name, is the second person to be the subject of a case study. Julie has been working for the Queensland Government for a period of approximately 8 years but has previously worked in the Commonwealth public service and also previously with the Queensland Government. Julie has a Bachelor of Arts with double major and post-graduate qualifications[9]. Julie also possesses a Certificate IV in Training. The most recent position held by Julie is that of Senior Project Officer at the AO6 level.

Unlike Jane, Julie did not take the option to accept a "voluntary" redundancy when it was offered to her. Julie's reasons for not accepting the redundancy payment are well-considered and appropriate having regard to her circumstances. Jane has in the order of 23 years to remain in the workforce and considered that she has much to more to offer the people of Queensland. Her qualifications are specific and it is unlikely that they would be readily able to be used in the private sector.

In addition, Julie had formed the educated view that her medical history would make finding employment outside of the Queensland Government impossible. Julie has sustained two work related injuries, both being journey to work claims. In February 2008 Julie sustained significant injuries as a pedestrian. Again in March 2012, Julie was involved in a motor vehicle accident that also resulted in significant injuries. Julie's rehabilitation has not been completely successful and her rehabilitation has not assisted in the process following the decision to seek to remain in the employment of the Queensland Government.

The ominous date of 11 September was the day in which Julie describes as "a disaster for all Queenslanders". Julie received a letter on this day advising her that the position that she held was surplus to requirements and that there were no other suitable positions available to her. Julie was given 14 days to select one of two options - either accept "voluntary" redundancy or to be placed on the list of Employees Requiring Placement (ERP) in accordance with Directive 06/12 (PSC 2012a). As previously stated, for the cogent reasons that pertained to Julie's circumstances, Julie elected to be placed on the ERP list on 25 September 2012.

[9] The specialised nature of Julie's qualifications means that it necessary to not disclose the discipline within she holds qualifications in order to maintain her anonymity

Following the election of the ERP option, both Julie and the Department had the obligation to attempt to find alternative employment for Julie. The alternative employment was supposed to be undertaking by a process of matching employees on the ERP list with any vacancies throughout the Queensland public service. Julie took this obligation seriously but as we will see, her ultimate fate had already been decided. On 17 December 2012, Julie received further correspondence inviting her to demonstrate why she should continue to remain on the ERP list. In other words Julie was invited to show cause why her employment should not be terminated by way of retrenchment.

Julie responded to the letter of 17 December 2012 on 8 January 2013 by way of an email. Julie's response was detailed and outlined a range of factors that had hampered her being placed not least of which was the recovery from a serious injury in March of 2012. Julie summarised her specialist skills and outlined the types of positions within a range of Queensland Government agencies in which these skills could be well utilised. In addition, Julie set out four proactive steps that could have been undertaken to greatly improve her ability obtain a suitable placement.

On 29 January 2013, Julie received further correspondence signed by the Deputy Director-General advising her that it had been determined that it was not appropriate to continue the placement effort. The Deputy Director-General's letter refuted Julie's suggestion that her recovery from injury had in anyway hampered her efforts for placement. The letter did not address any of the other issues raised by Julie in her email of 8 January 2013 and would appear to be a pro-forma letter other than the amendment to include a rejection of Julie's suggestion that her recovery from injury had hampered her placement. It appeared to Julie that it would not have mattered what was contained in her response, the decision had been made to go through all of the steps set out in the directive (PSC 2012a) to eventually and inevitably arrive at the conclusion that Julie was not able to be placed.

Furthermore, Julie did not remain idle within the intervening period. Julie applied for ten vacancies within Queensland Government agencies following the advice that her position had been declared surplus to requirements. In all cases Julie had qualifications suited for the positions but was not considered for any of the positions. When Julie sought feedback as to why she was not being considered for the positions she was advised that the successful applicants had been from overseas and had qualifications significantly in advance of any of the domestic applicants. It was apparent that no attempt had been made to match her to the vacant positions within the various agencies where the vacancies existed. In one case Julie was advised by a colleague in another agency that he thought she must have already been placed in another role because she would have been so suited to a vacancy within the colleague's agency. It was apparent that there had been no effort to match Julie with suitable vacancies in accordance with the directive (PSC 2012a).

Julie responded to the letter of 29 January 2013 with an email of 8 February 2013. Julie outlined her concerns with the placement process as discussed above and took issue with the bland repudiation of her suggestion that her recovery from injury had hindered her attempts at placement. Julie further advised the department of the individual hardship that being retrenched would cause her. None the less, Julie anticipates that she will be retrenched. Her pessimism is well founded given the failure of the Queensland Government to attempt to place her in accordance with its own directive (PSC 2012a) and the quite apparent failure to take individual hardship into consideration in the process of mass sackings.

Julie's work pertained directly to disaster recovery. The work performed by Julie was for the end use of the *Queensland Floods Commission of Inquiry 2012*, the Queensland Reconstruction Authority, Local Government Authorities and persons or entities seeking grants for flood repairs. The work being performed by Julie included a backlog of work from disasters that had occurred in Queensland in 2010 and 2011, let alone the more recent flooding that has occurred in early 2013. It is apparent that Julie is highly qualified and experienced and was performing a very important function for Queensland. It also would suggest that the work she was doing could only be considered to be front line service delivery.

Despite undertakings to the contrary, the Queensland Government has clearly attacked front line service delivery (Caruana 2012). Julie, the case study above, Ms Cole (2013) and Dr. Fagan (2013) have all outlined the significant work that they had been doing for Queensland. Prevention of the spread of infectious disease, assisting patients with dementia and assisting in providing valuable analysis for recovery from disaster are all blatant examples where valuable services to Queenslanders have been removed, disrupted or completely ignored. Whilst performing an administrative role Jane was also a highly skilled and valuable employee whose contribution will undoubtedly be missed.

The two case studies contained in this submission in addition to the two submissions (Cole 2013; Fagan 2013) that had been received by the Senate at the writing of this submission all demonstrate the flawed process that was undertaken by the Queensland Government from the point of view of affected individuals. It is not surprising that such a massive downsizing that has never been witnessed in Queensland before would result in an unsound process. A lack of transparency, no consultation and the inevitability of the retrenchment of those unlucky enough to have had their positions made redundant are features of the process that has been undertaken by the Queensland Government. These however are not isolated examples, they are a sample of four out of some 14,000 employees in this category (Nichols 2012:7).

It is also quite striking that the employees in these cases studies and having made submissions at the time of this submission being written are women. The fact that the four mentioned here being women was certainly not by design but perhaps a reflection of the results of the process that was undertaken by the Queensland Government. Time frames prevent any in depth analysis at this stage, but the characteristics of the employees chosen to be made redundant either by way of "voluntary" redundancy or by the inevitability of being placed on the ERP list would make for useful research in the future.

The details of the submission above justify the answering of specific questions asked by the Senate in the Terms of Reference as follows:

Inquiry terms of reference

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 (the Act) applies

The introduction of section 691D of the Industrial Relations act 1999 (Qld) has clearly diminished the protections and entitlements of employees of the Queensland Government. Long established principles that require an employer to discuss impending job losses with employees and their representatives have been hindered to such an extent that they are now meaningless.

In contrast, for employees in the federal jurisdiction such provisions are now provided for as part of the national employment standards contained in the Fair Work Act.

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

Australia ratified ILO convention *Termination of Employment Convention*, 1982 (No. 158) on 26 February 1993 and that ratification remains in force. As above the introduction of section 691D directly and intentionally repudiates principles contained in Convention 158. This is easily proven to be so as the precise examples used in 691D override award provisions based on articles contained in convention 158.

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

Australia ratified ILO Convention *Right to Organise and Collective Bargaining Convention*, 1949 (No. 98) on 28 February 1973. The actions of the Queensland Government are in direct contradiction to the basic principles of collective bargaining. In particular the unilateral removal of previously bargaining provisions in relation to contracting out and job security was a flagrant use of legislative power to over-ride existing entitlements without negotiation. The removal of the important conditions was not undertaken on just terms.

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

As above, the introduction of section 691D, has repudiated fundamental principles in relation to ILO Conventions.

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

The propensity of the Queensland Government to amend state legislation is problematic for employees of the Queensland Government. Continual changes that are undertaken without consultation and/or justification have constantly prejudiced employees of the State Government. Under the Fair Work Act and under previous Queensland legislation, agreements have been able to be concluded between employers, employees and their unions with little difficulty in the vast majority of cases.

In addition it is noted that Australia is not a signatory to *Labour Relations (Public Service) Convention, 1978 (C151)* that provides for the same protections applying to employees outside of Government employment to be afforded to Government employees (ILO 1978: articles 7 &8). It is recommended that Australia becomes signatory to this convention.

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

The Fair Work Act would provide employees of the Queensland Government with far greater protection than does the existing (and recently imposed) state legislative framework.

Noting the scope of states' referrals of power to support the Act, what legislative or regulatory options are available to the Commonwealth to ensure that all Australian workers, including those in state public sectors, have adequate and equal protection of their rights at work

It is the view of the QCU that the Commonwealth does have the capacity to ensure that its industrial relations legislation applies to state public sector workers as a means to redress the disadvantages they face, particularly where a state industrial relations regime breaches ILO conventions. Together Queensland has provided a submission that justifies the use of the external affairs power in providing legislation that could cover employees of State Governments. The QCU supports that submission and endorses the use of the external affairs powers for the purposes of ensuring consistency of entitlements for both public and private sector workers across the country.

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