LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr IM Berry MP (Chair)
Miss VM Barton MP
Mr WS Byrne MP
Mr SK Choat MP
Mr AS Dillaway MP
Mr TJ Watts MP
Mr PW Wellington MP

Staff present:

Mr B Hastie (Research Director)
Ms A Jarro (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE INDUSTRIAL RELATIONS (FAIR WORK ACT HARMONISATION NO. 2) AND OTHER LEGISLATION AMENDMENT BILL 2013

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 30 OCTOBER 2013

Brisbane

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Committee met at 10.43 am

BLACKWOOD, Dr Simon, Acting Deputy Director-General, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General

BRADY, Mr Mark, Senior Director, Queensland Health

JAMES, Mr Tony, Executive Director, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General

McKAY, Mr Peter, Deputy Commissioner, Office of the Public Service Commission

CHAIR: Good morning. I declare this public briefing on the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 open. Thank you for your interest and your attendance here today. The Legal Affairs and Community Safety Committee is a statutory committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee which adopts a non-partisan approach to its inquiries. Before proceeding any further, I want to introduce members of the committee present today. I am Ian Berry, the member for Ipswich and chair of the committee. With me are Mr Peter Wellington MP, member for Nicklin and deputy chair of the committee; Miss Verity Barton MP, member for Broadwater; Mr Sean Choat MP, member for Ipswich West; Mr Trevor Watts MP, member for Toowoomba North; Mr Bill Byrne MP, member for Rockhampton; and, finally, Mr Aaron Dillaway MP, member for Bulimba.

On 17 October 2013 the Attorney-General and Minister for Justice, the Hon. Jarrod Bleijie MP, introduced the bill into parliament. The bill was then referred to this committee for examination and report to the House by 14 November 2013. This morning the committee is being assisted in its examination of the bill by officials from the Department of Justice and Attorney-General, Public Service Commission and Queensland Health. The committee's proceedings are lawful proceedings and are subject to the standing rules and orders of the Queensland parliament. I ask all people present to turn mobile phones off or put them on silent. In the unlikely event of a need to evacuate, please follow staff directions. Members of the public are reminded that they are here to observe the hearing and may not interrupt the hearing. In accordance with standing order 208, any person admitted to this briefing may be excluded at the discretion of the chair or by order of the committee. Representatives of the media may attend and may record the hearing.

Moving to our consideration of the bill, I welcome the officials—Dr Simon Blackwood, Mr Tony James, Mr Peter McKay and Mr Mark Brady. Good morning and thank you for coming along today, gentlemen. Dr Blackwood, before we move to questions from the committee, would you like to start with an opening statement in relation to the bill?

Dr Blackwood: Thanks very much, Chair. We did not have an opening presentation to provide in relation to all of the matters within the bill. We hoped that the explanatory notes we had provided would be sufficient to clarify the issues. However, having had a look through the submissions received in the last few days, we thought it might be worthwhile to just provide some information about one issue which seems to be creating some comment.

CHAIR: Was that MPs' salaries, was it? I make a light moment at the beginning only.

Dr Blackwood: Thanks, Chair. Well, that may be it, but we did not see it in any of the submissions. The one that we wanted to draw the committee's attention to was notice of termination and redundancy. Concerns about redundancy entitlements were commonly received in the submissions and obviously they will be raised in further hearings. What we wanted to emphasise is that the Queensland Employment Standards, which are provided for in the bill in relation to notice of termination and redundancy pay, are as were previously in the Industrial Relations Act.

The three points to note are that it maintains the existing notice of termination benefits and obligations under chapter 3, part 3 of the Industrial Relations Act, which is notice of termination of between one and five weeks depending on length of service and age of employee. So that is

exactly replicated in the new bill. The second point is that it adopts the redundancy provisions in the Fair Work Act with the level of benefit currently provided for in schedule 3 of the Industrial Relations Act, and that is up to a maximum of 16 weeks redundancy payment depending on length of service. However, I emphasise to the committee that these are the minimum standards that have been provided for around the country over the last 10 to 20 years in all jurisdictions. It maintains the exclusions to redundancy pay outlined in section 16 for employees with less than one year's service, section 17 for casuals engaged for a specific period or task and termination due to misconduct, and section 19 in cases where there is a transmission of business.

The other issue that has been raised in relation to the 16 weeks is that these amounts are less than those currently contained in directive 11/12 of the public sector which has a maximum payment of 52 weeks. First, we would say that that issue has been raised by a number of parties and they are correct in their observation that the redundancy pay is prescribed as 16 weeks, but under the Public Service Award and schedule 3 of the IR Act we clarify that more favourable directive provisions continue to prevail. That is a reference to section 71CB. So there is no intention to change the situation where the minimum standards provided for are 16 weeks redundancy, but then there are directives—and local government will also have their own arrangements—which will provide for redundancy payments which are in excess of the minimum of 16 weeks. So that has been a situation that has prevailed for the last 20 years or so and there is no intention to change it. As I say, if you look at section 71CB of this bill, it provides for directives that are more favourable than what is in the Queensland Employment Standards.

The other only issue that has been raised in relation to the redundancy payments is that of the Queensland Industrial Relations Commission—and this is at page 6 of our explanatory notes, and we have highlighted that again at the bottom of that page—and an order reducing the amount of redundancy payment. The bill provides that an employer may apply to the Queensland Industrial Relations Commission for an order reducing the amount of redundancy payment the employer would otherwise be required to pay according to the statutory formula for redundancy payment calculation. Again, that was at 85C of the existing Industrial Relations Act. The same provision has continued in the new bill, and that provision was originally in the termination and change statement made by the Queensland Industrial Relations Commission. So, again, that has been a principle within the legislation before this bill. So we just wanted to clarify that because there had been a lot of comment in submissions about how the system works.

CHAIR: Thank you for that. We will now move to questions.

Mr DILLAWAY: I was wondering if you could just outline to the committee what the most significant improvements are to the Queensland industrial relations regime under this bill.

Dr Blackwood: In terms of the changes, as we have indicated, there are legislated core employment standards. So they are based on the existing Industrial Relations Act 1999 and the National Employment Standards contained in the Fair Work Act. One issue to note is that the sick leave has been brought in line with that in the National Employment Standards, which is a move from eight to 10 days. Other than that, the changes go to separate issues about the efficiency of the industrial relations system.

Mr WATTS: In plain language, just so I have completely got it around the redundancy, so the redundancy minimum is 16 weeks and, despite what others might have speculated, there can be maximums above that that are still going to exist once this is passed?

Dr Blackwood: That is right; that is correct.

Mr WATTS: So speculation to the contrary would just be scaremongering that people are going to lose conditions?

Dr Blackwood: Yes, that is right; it is incorrect. With regard to the 16 weeks, the Industrial Relations Act, like the Fair Work Act and the Industrial Relations Act in Queensland prior to 2010, provided entitlements for people right across the industry, both private and public sector. The 16 weeks has been a base minimum in that, typically, small to medium sized businesses might not have their own redundancy policy. Larger companies and government have traditionally had their own redundancy policy which provides for more.

CHAIR: I have a question that probably relates to my attempt at humour and it relates to the substantial number of submissions from radiographers and sonographers who have been able to get their submissions very similar in content. Can you comment upon their working conditions and how they will be affected by these laws? One of their criticisms is that they say that their group is a set of professionals and they have difficulty understanding why they should be identified with other

professions or professionals. Are you able to comment on that? So there are two parts to the question. Firstly, why should they now be lumped with everybody else? Secondly, how are they affected by all of this reform?

Dr Blackwood: I suppose just from our perspective to outline the key elements of the bill, firstly, the award modernisation will reduce the number of awards, but that will be done in an approach which is rationalising the number of specific awards. The aim there, as we have indicated, is to reduce from about the current 80 or 90 to 83 state and local government awards. That is a process that occurred federally and a process that is aiming at just rationalising awards. So there may be some issues for people there. I suppose the second issue is the introduction of the threshold of $129,300, which will provide, subject to regulation, for groups who earn over $129,300 to be placed on individual contracts—subject to the decision of departments, government and ministers and the Public Service Commission and the health department about the employment arrangements they consider most suitable for people over that wage level of $129,300. As we have pointed out in the bill, that threshold is consistent with the arrangements under the Fair Work Act.

CHAIR: I might just flesh out some matters that interest me, having read your submission. Effectively, as you say, the modernisation process will reduce the number of awards—the award represents the core as to employment—but then you have directives on that as well as legislation. That effectively is how a person is going to be governed in their job?

Dr Blackwood: That is right.

CHAIR: Okay. Mr James, do you want to follow up on that?

Mr James: Yes. The award modernisation process is governed under part 8 of the bill and it sets out the objectives of modernising. The award modernisation process will introduce a safety net of core modern awards. Above those will sit any certified agreements and bargaining, which allows room for bargaining, and then of course there are the directive-making powers as well.

CHAIR: Yes, and one would assume that the enterprise bargaining of course will be the differences between the professions.

Mr James: That is right, and also through the award modernisation process. I know that the submissions made a big play on 'one size fits all'. I imagine those matters will be, by the objects of the awards and the commission's modernising functions at 140BB, taken into account through the modernising process.

Mr BYRNE: Just on the redundancy issue, is it not true, though, that the directives you are talking about maintaining the existing provisions can be changed unilaterally?

Mr McKay: I can respond to that. The directive is a directive made by the commission chief executive of the Public Service Commission. To the best of my recollection, when redundancy arrangements were first introduced into the Queensland public sector in, I think it was, 1990 they were done by a public sector management standard issued by the then Public Sector Management Commission, and redundancy arrangements for the public sector have been managed in a similar way and issued by a similarly titled person from a central agency—

Mr BYRNE: So the answer is yes? They can be changed unilaterally?

Mr McKay: They are issued by the commission chief executive.

Mr BYRNE: Yes. The second part is—

CHAIR: Just before you go on, I got the impression you are saying yes but historically nothing has changed.

Mr McKay: Historically there has been little change to the entitlements issued under those by various chief executives of the Public Service Commission and its predecessors, except to say that I understand that redundancy entitlements at the moment are at historical highs. So the redundancy arrangements that were introduced in 2012 in fact provide the most significant, for most employees, element of redundancy since they were first introduced in, I believe, 1990.

CHAIR: I did interrupt my friend from Rockhampton. Sorry, Bill, but if you want to continue.

Mr BYRNE: Further to redundancies, the provisions of this bill particularly ban anything to do with redundancies and enterprise agreements. Is that correct? That is correct, is it not?

Dr Blackwood: Yes, that is correct. The arrangements are clarifying that you have a minimum which is appropriate to be dealt with through a Queensland Employment Standards in the same way that it is in the Fair Work Act. So that is what every employer would have to pay.

CHAIR: That is your base?

Dr Blackwood: That is your base and then employers can enter into their own policies and procedures. That is typically how, as I say, the majority of big employers have dealt with the issue of redundancy: they set up their own entitlements.

Mr BYRNE: Was the term 'harmonisation' in the title of the bill as a result of a recommendation from the department?

Dr Blackwood: I do not think that was as a result of a recommendation from the department.

CHAIR: If you do not know, you do not know. Effectively, is 'harmonisation' a reference to the fair work—

Dr Blackwood: It is the current Fair Work Act.

Mr BYRNE: I am asking the witnesses.

Dr Blackwood: Last year the government introduced changes in relation to the Industrial Relations Act. It was introduced as a fair work harmonisation and this was a continuation based upon a number of the key elements of this bill which are the introduction of making clear that there are Queensland employment standards which provide the base, the senior employee income threshold of $129,300 and a process for award modernisation. What we have made clear in our explanatory notes for the information of the committee is the consistency with legislation of other jurisdictions and also the extent to which it differs. In that respect we have highlighted that some of the matters differ from the Fair Work Act and then finally the time frames for bargaining and arbitration are not modelled on a process existing elsewhere. So that is the approach that has been taken in this and we have clearly set that out in the explanatory notes.

Mr DILLAWAY: I know that Queensland Health is leading the role in this industrial reform. I am wondering if you could give examples of why that is the case.

Mr Brady: A number of reports have said that we have a very complex set of conditions, which is a result of something like 24,000 pay combinations. We are looking to ensure that our awards can be modernised and rationalised so that terms and conditions are simpler and also provide flexibility to ensure that the new way of delivering services through our hospital and health services is facilitated.

Mr DILLAWAY: You mentioned that there are 24,000 pay combinations. What effect does that have on the efficiency of industrial relations in Queensland Health?

Mr Brady: I think it is no secret to say that reports have found that that was one of the major contributions to difficulties with changing our payroll system, so we certainly have to simplify that. Also, the processing of numerous forms and those sorts of things is very resource intensive and we would be looking to simplify so that our resources are not used to process forms instead of maximising our service delivery.

CHAIR: With this rationalisation of the awards, is it expected that there will be a saving? Do you see that as being a direct consequence of the simplification process?

Mr Brady: I think with the processes there will be eventual savings. I am not in a position to quantify that. Being able to reduce our processing upfront for payroll combinations and forms will certainly result in savings and efficiencies.

Mr WATTS: You said there were 24,000 pay combinations. I am curious. At the moment do situations exist where two nurses might be doing the same job in a very similar set of circumstances but are actually on different pay levels?

Mr Brady: Not so much different pay levels, but different allowances at different levels. The base rate would be the same but the nurses award itself has five schedules plus some core conditions. For example, a nurse may be engaged as a public hospital nurse or a community nurse and be doing the same job next to each other and receive different allowances and have different leave due to shiftwork and that sort of thing which causes complexities and unfairness that we wish to ensure is equitable across-the-board.

Mr WATTS: I guess there are some people out there who are saying, 'Isn't this just Work Choices?' What would you, Dr Blackwood, say to someone who would say, 'Isn't this just Work Choices?'

Dr Blackwood: We can advise that in the explanatory notes we have set out how we think it is consistent with other legislation. It draws on a number of the elements in the Fair Work Act, but as I said before, it differs in some respects. Certainly in relation to what provisions are allowed for in awards and agreements it takes a more restrictive approach than that provided for in the Fair Work Act. To answer, it is harmonising with some elements of the Fair Work Act but there are differences. It is its own act and it has been drafted in that way drawing on what has happened in industrial

relations federally over the last 10 to 15 years, the key elements of which are award modernisation, development of minimum employment standards as a bottom and then looking at how the arbitration and conciliation process works. As we said, this has not been modelled on what is happening elsewhere and is driven by policy decisions about how long the arbitration has been taking. It is a mix of different elements from the industrial relations systems.

CHAIR: In the mix of all the states involved, where are we fitting in terms of the flexibility of our workforce and the modernisation of awards?

Dr Blackwood: In terms of modernisation, this will obviously bring Queensland up to the standard that has been achieved federally where all the awards were modernised over the last four to five years. That work has not been undertaken in Queensland and that is why it is providing that it should be done in a period of up to two years. In relation to flexibilities, I think the government has emphasised that it will provide greater efficiencies and contribute to productivity in terms of the general thrust of the bill in terms of what will be allowed for in awards and agreements. That is probably what we can say in relation to the bill.

Mr BYRNE: Dr Blackwood, I appreciate your honesty in what you have just said about the bits of this supposed harmonisation bill that do not align with the Fair Work Act. Does the Fair Work Act make it illegal to allow payroll deductions for union membership?

Dr Blackwood: No.

Mr BYRNE: Does the Fair Work Act limit the number or scope of what can be agreed to in an enterprise agreement as we see in this legislation?

Dr Blackwood: No. As we have said, there are some differences and that is right. We have set out some of the differences in this bill in relation to agreements and awards compared to the Fair Work Act.

Mr BYRNE: I understand that.

Mr WATTS: If I may ask a question in relation to payroll deductions, at the moment obviously deductions are made out of someone's pay where they want a personal bill paid directly by the employer. Realistically, what we are saying here is that, if someone wants to pay their bills, they can make that automatic deduction out of their bank account but we will pay the pay directly into their bank account.

Dr Blackwood: Yes, that is right.

Mr WATTS: So they get the money and then if they want to pay someone else, they can make that suitable arrangement with their financial institution, not get their employer to do it on their behalf.

Dr Blackwood: Yes, that is right. That is what this bill provides for.

Mr BYRNE: Where in the Fair Work Act does it remove the ability of the independent umpire to award interim pay rises?

Dr Blackwood: As I said, there are some issues that are unique to this bill and that is one.

Mr BYRNE: Where in the Fair Work Act does it prohibit the independent umpire from granting retrospective pay rises?

Dr Blackwood: We can provide a list of those differences. As I said—

Mr BYRNE: I am struggling to understand the 'harmonisation' component of this bill.

Dr Blackwood: I should just explain. In terms of the broad framework—and there are going to be some differences and there are some differences—the key issues that we have elaborated on in terms of its harmonisation with the Fair Work Act are Queensland employment standards. That was an issue that debated around the Fair Work Act when it was introduced and it set national employment standards. As we have indicated in the notes, they are consistent except for a number of variations in relation to maximum weekly hours and request for flexible working arrangements.

Mr BYRNE: I understand that.

Dr Blackwood: So we have made that quite clear. That is a key component of the legislation—a key and significant component. The second issue is the award modernisation process and then the third issue, which is significant in terms of the Fair Work Act when it was introduced in 2009, was a high income threshold of $129,300 for determining those employees eligible for consideration for an individual contract, which was quite a different arrangement to what had prevailed before under the Work Choices.

Mr BYRNE: I understand that as well. I suppose I still—

Dr Blackwood: We can provide a list of a number of those different issues which are allowed for in awards and agreements and how they differ between the Fair Work Act—

Mr BYRNE: The two earlier questions were in the context of recent negotiations where the government can effectively drag its feet in terms of concluding those negotiations to the detriment of workers. That is the piece that concerns me, that these deliberations can carry on infinitum into the future where the only people being disadvantaged will be workers who are in negotiations for their EAs. Is that a possibility? How is the government going to be obliged to negotiate in good faith under this act?

Dr Blackwood: There will be differing views on what we mentioned about the time frames, but the amendment of the time frames to shorten the period for conciliation and arbitration is significant. There will be debate about whether a longer period for arbitration should be allowed, but the 90 days will ensure that, where certified agreement disputes are not settled through agreement up-front, that conciliation and arbitration period is going to be a lot quicker. The arbitration process—

Mr BYRNE: There is capacity in the system to deal with this, I assume, by the 90 days?

Dr Blackwood: That will be a matter for the commission and the vice-president. The act says that they will get 14 days conciliation and then a commissioner is to give a report in the next 14 days on what had been the issues in conciliation and then arbitration for a period of 90 days. The commission is given the capacity to extend that if necessary, and a number of submissions have expressed concern about that issue. However, the government believes that that will ensure that protracted conciliation and arbitration processes do not occur in the future. The idea is to reduce arbitration periods which, in some cases, have gone on for one, two and three years.

Mr DILLAWAY: If I could touch on that, maybe you could just explain the impact that that has actually had on the employees by having those situations where arbitration has gone on for two or three years.

Mr McKay: We think one of the key features of the legislation is the way in which bargaining, agreement making and, ultimately, arbitration in failed agreement making might occur. Drawing on some recent experiences, the previous negotiations for a health practitioners agreement within Queensland Health took over 450 days, I understand—for the negotiation process.

Mr DILLAWAY: So 450 days? A year and a half?

Mr McKay: A year and a half. To use the example of the core Public Service agreement that applies to around 50,000 employees of government departments, had the provisions of this bill applied to those negotiations that commenced in around August-September last year, people under the core agreement would almost certainly have been guaranteed a pay rise no later than Christmas last year. Under the current arrangements, it is unlikely that employees under that agreement will receive a pay rise through the arbitration process before Christmas next year. So it would have made a significant difference in that respect.

Mr WATTS: Just to clarify, so that would be two years shorter?

Mr McKay: Yes, that is correct.

Mr WATTS: So under the provisions now, it will actually potentially shorten that arbitration by two years?

Mr McKay: Yes.

Mr WATTS: So they get a pay rise two years earlier?

Mr McKay: Yes. This would allow negotiations to continue, so long as negotiations are being productive; allow either party or both parties—or all parties—to the negotiations, if the negotiations are being unproductive, to move it quickly into conciliation; for the commission to deal with it quickly in conciliation and try to assist the parties to reach agreement but, failing that, to move immediately to arbitration; and for arbitration to take a limited period, with the ability to extend that only at the discretion of the vice-president of the commission so that the parties are focused on using the arbitration process to quickly bring about a resolution rather than have a matter drag on for a number of years.

CHAIR: Mr McKay, I do not necessarily want you to comment but you can if you wish. My perception is that bargaining really only works when there is a perception that there is a time limit. Is that effectively the strategy that is being used here—to say there is a time limit and it is one where you need to conclude your bargain? It is simply not on the never-never plan. Is that the thrust of it?

Mr McKay: Yes. What we have attempted to do is make sure there is not a long tail built into the negotiation process, as we currently do, so that negotiations happen once an agreement is getting to its expiry, allows the process of negotiation to occur and then—

CHAIR: And there is a fallback position if in fact it does not get resolved?

Mr McKay: Yes, so that we use the independent umpire to deal with failed negotiations but that it is clear to all parties and the commission that it must be done in a timely manner, so that all parties in the commission always remain focused on getting to an outcome.

Mr CHOAT: I would like to go back to the issue of redundancy. Quite frankly, for a lot of people, be they in private enterprise or the Public Service, redundancy packages can be seen as a great opportunity. Obviously there is the pay-out and there is also the tax consideration, which is very, very important, and they are the basis of people making their decision. I declare: I have been through two redundancy processes, once with the core Public Service and of course as a result of the privatisation of QR to QR National.

CHAIR: One of your favourite subjects, member for Ipswich West!

Mr CHOAT: My understanding in QR National—it was not so long ago—is the severance was three weeks pay for every year of service but a minimum of 15 weeks or five years. So in the case of the core Public Service, as I see this, it used to be two weeks pay for every year of service. So the minimum is 16 weeks. Moving ahead, if I work, for example, for 26 years I will be getting—I think there is a ceiling of 52 weeks or a year's pay. So that remains?

Mr McKay: Yes.

Mr CHOAT: To be quite frank, I have had some of my constituents come to me because they are concerned. They can see there might be opportunity for redundancy and they are thinking, 'That might be nice in six months time, depending on family arrangements. But if it is going to evaporate, maybe I need to push for one now, if that's possible.' I just want to be clear that the 16-week base remains but there is still consideration—in QR National it was three weeks pay in lieu of notice—of things to be added, or an incentive payment of some sort.

Dr Blackwood: That is right. QR developed their original redundancy arrangements in about 1992, not long after the core, and it was a little bit different. That is what large employers do, which is why they had the three weeks per year of service. It went higher with longer years of service. That reflected an employment strategy where they were focused on giving redundancies to certain groups who they wanted to encourage to leave. So large employers typically will have a variety of different redundancy arrangements, but, as we have said, the public sector directive provides for the standard one across the core of two weeks per year of service to a maximum of 26 weeks plus an incentive payment.

Mr WATTS: You said earlier that in 2012 they are the most generous the Public Service has ever had; is that right?

Mr McKay: That is certainly correct, yes. If I can correct, though, a statement I made earlier, I said there was a directive of the commission chief executive. It previously has been a directive of the commission chief executive; it has now, for a little while, been a directive issued by the minister with responsibility for industrial relations. That is currently the minister assisting the Premier on industrial relations.

Mr WATTS: And they are the most generous we have had?

Mr McKay: They are the most generous. So if the member for Ipswich West had been in that unfortunate situation again, under these arrangements your entitlements would be two weeks per year of service to a maximum of 52 weeks and an incentive payment of 12 weeks, were you to agree to take the payment and leave at a date determined by your employer. There has been little change since around 1990, when these were first introduced, to the payment component of redundancy payments in the public sector. The most significant change to that has been around the incentive payments. So they are changed over time. At one stage they were $6 ½ thousand; at another time they were eight weeks or $6 ½ thousand, whichever is the greater. Around the middle of last year—I can give the committee the date—that was increased to 12 weeks. That is what pushes it to that historical high.

Mr CHOAT: It is just important to me, for my people who have asked me—and there have been a number concerned. I mean, my incentive is now 16 ½ years old. That is the thing that drove me to take my first redundancy or put my hand up. That is very good. I am satisfied with that, thank you.

Mr DILLAWAY: I know there has been a considerable amount of commentary in the media particularly about implementing individual contracts for senior staff including senior medical officers and visiting medical officers. I just want to draw out of you the reasons behind that. If people do not sign individual contracts are they going to be sacked?

Mr McKay: Perhaps if I can provide some general comment and Mr Brady might be able to provide some specific comment around the senior medical officers and visiting medical officers. The first thing I would say is that what we are attempting to do here is provide a cap. Those below the $129,300 annual salary need not have any concern at all. They are not captured in any way. They are not in anyone's focus for an individual contract. That provides that absolute certainty for them.

For those who are high-income earners, who earn above that threshold—the same threshold that is in the Fair Work Act—the arrangement then is that if there is a benefit that might be considered by government to move that class of employee on to a contract there is the ability to regulate to do that and to make arrangements.

Mr Brady will be able to provide some more information around the VMOs and SMOs, but in that respect it is identified that there are certain groups that we would want to identify as the most senior management—the leadership of an organisation—and whose remuneration should reflect their seniority within the organisation and the particular role they play. In respect of management positions, that is currently done in the public sector by senior officers and senior executives who are not covered by awards and, in the case of senior executives, are covered by individual contracts, by other people who are on contracts made under section 122 of the Public Service Act.

What this also does is, in instances such as VMOs and SMOs, allow us to focus on where we want to drive performance out of a particular group of employees. So in that respect it is not necessarily about the executive leadership they provide within an organisation but that we think you can, by individualising the employment arrangements, more effectively drive performance from those high-income earners. Mr Brady can perhaps talk more about that if you wish.

Mr DILLAWAY: Yes, sure.

Mr Brady: That is the view of Queensland Health for our senior medical officers and visiting medical officers. We think it is appropriate that such highly paid professionals would be employed on performance based contracts. That is typical of what happens in the private sector and other jurisdictions with senior medical officers, and visiting medical officers for that matter. There is no intention if a visiting or a senior medical officer refuses to sign a contract—after all, a contract is an agreement—that they will be dismissed. They can continue on their current industrial instrument until it expires.

Mr McKay: One thing I perhaps did not clarify well enough is that simply attaining the threshold of $129,300 does not place you on an individual contract. There has to be a definite decision taken that that group or class of employee would be one that is offered contracts.

Mr WATTS: Section 195, I think it is, will mean that a regulation would have to be put in place—not just reach the threshold—and at that point there would be a contract negotiation. But if someone did not want to enter into that contract negotiation, they would stay on their current industrial instrument until it expired?

Mr McKay: Correct.

CHAIR: I was particularly interested as to the figure of $129,300 in relation to superannuation payments. Could you explain what the $129,300 represents? Is it gross salary?

Mr McKay: That is the salary including superannuation. It is what we might call the total employment cost for an employee.

CHAIR: Is that indexed? How does that change from time to time? Obviously it will become irrelevant maybe in a few years.

Mr McKay: It is to be prescribed by regulation.

CHAIR: My next question is perhaps from what Mr Brady mentioned when he referred to comparability with the market—the industries which would be employing the same sort of people. Maybe this is a summary, but effectively what you are saying is that we are now into the market forces. In other words, clearly, if you are over $129,300, if you want to attract somebody or pay somebody or keep somebody on who you believe is valuable, they are the factors you take into account in offering that private agreement? Is that the thrust of it?

Mr Brady: That is right. We would see an individual contract for our senior medical officers as a way to retain our best and brightest doctors and also attract world-class doctors by having remuneration that is structured to do that.

Mr BYRNE: Mr Brady, on the contract issues, who is going to have the delegations to negotiate the parameters of these contracts? In a normal commercial sense contracts can be negotiated on a variety of base pays, conditions et cetera. What uniformity is guaranteed in those negotiations and who is the arbiter about what is in and out of a contract?

Mr Brady: The way we envisage this working in Queensland Health is that a contract will be a framework document that will be underpinned by the new creation of this act, which is the health employment directive, which is issued by the director-general. The parameters of the contracts will be in that health directive. Then negotiations will happen at the hospital and health service level, under the supervision of the chief executive. Remuneration can then be discussed individually and then that agreement would be reached within the parameters of the framework.

Mr BYRNE: That is what I thought would occur. So basically, you are saying that the CEO of those area health boards et cetera is going to have considerable latitude in the terms and conditions associated with individual contracts?

Mr Brady: The way we envisage it is that base pay would be based within the directive, as would mandatory allowances, such as the current motor vehicle allowance, the current professional development allowance, and then there would be a performance portion of the contract and also, where it is required—say, outside of the metropolitan area where it is more difficult to recruit people—there would be components for attracting people to rural or regional areas.

Mr BYRNE: As in fly-in fly-out options. All of that is inside the negotiation?

Mr Brady: I am not aware of any discussion of fly-in fly-out for doctors. We are looking at the contracts at the way the employment arrangements are now, but to be on performance based contracts. I am not aware of any specifics in relation to some HHS arrangements.

Mr WATTS: So just to clarify, my health and hospital board covers the Darling Downs area and obviously some areas that are west. So the health and hospital board would have some flexibility to negotiate a contract that suits both them and potentially an officer they need in a remote location, which could include more pay, better conditions or different circumstances that are localised to that, whereas currently they would not be able to do that? Is that what you are saying?

Mr Brady: There would be more flexibility within the individual contract.

Mr WATTS: To localise it.

Mr Brady: Yes, to localise what is needed, but under the current arrangements there are still some mandatory, across-the-board provisions for recruitment and retention in rural areas. We will be maintaining the component of recruitment and retention to ensure that we attract doctors to our rural and regional areas.

Mr WATTS: So ultimately in relation to that kind of employment there is flexibility for an increase but the thresholds will remain? Is that what you are saying?

Mr Brady: Yes. There will be base mandatory parts of the contract including base pay and those allowances, as we discussed, but then different work arrangements, different specialties or different circumstances are going to be addressed in the contract.

Mr DILLAWAY: There have been, again, some concerns raised about the Queensland Employment Standards allowing an employer and an employee to agree to cash out excess annual leave balances above the four-week annual accrual. Dr Blackwood, could you explain to the committee how this could be of benefit to both the employer and particularly the employee?

Dr Blackwood: In terms of annual leave, the first thing I just clarify is that that is based on the provisions in the Fair Work Act. Obviously, the key to it is that there needs to be agreement between the employer and the employee about the cashing out of annual leave. That is a situation where the employer and obviously the employee needs to make a decision that it is of benefit to them. So that will be tailored to particular workplaces. In some instances, people might be concerned about reaching that agreement. On the other hand, it may work for some employees. So that is why it has been tailored in this way—so they can reach agreement to pay out the annual leave.

CHAIR: It has always been difficult, certainly in private industry, to have somebody simply accumulating. Of course, as wages go up you end up with a fairly substantial amount of money for which a private employer may then have difficulty in paying. Is that the context in which this provision has been made—to stop the large build-up? Holidays are for breaks, of course.

Dr Blackwood: For breaks. That is the usual reason you have a standard rule that people should take the breaks for four weeks or as they accumulate. That is the approach taken, for instance, in the public sector. But this recognises that some people may accumulate a lot of leave and they want to have it paid out. What we would say is that you need to look at the circumstances of that particular employment. Obviously, it may suit some employers and employees where there has been a large accumulation.

CHAIR: A corollary of that is: what powers does an employer have to ensure that employees take timely holidays and not accumulate? Is that a power within the system?

Dr Blackwood: Within the public sector, it has generally been an approach, really from the employer's point of view, of encouraging employees to take the leave and then when they have more than 35 or 40 days to really put strong encouragement on it.

CHAIR: Can you force an employee to take—

Mr McKay: The Public Service Act provides arrangements.

CHAIR: I just wanted to flesh that out. Thank you for that.

Mr WATTS: On a similar line, I just wanted to confirm that there is provision that leave must be taken at a certain threshold. But generally, if it is to be paid out, this would be an agreement by both parties?

Dr Blackwood: That is right.

Mr WATTS: So one would offer, 'I don't really want to take leave. How about I get paid out,' and the employer can agree or the employer might offer to say, 'I would really like you here in January. Do you want to get paid out?' Is that how it works?

Dr Blackwood: That is right. The critical thing in relation to the payout, the cashing out of annual leave at 71EG, is that there is agreement about entering into the paying out of the recreation leave so that you avoid the situation where an employee might be forced to have their leave paid out and they really wanted to take the leave. So it is critical—

Mr WATTS: There is no coercive power.

Dr Blackwood: No. That is right. That is what is being made clear in the legislation consistent with the Fair Work Act. It has to be an agreement.

CHAIR: Thank you for that.

Mr James: The agreement must be in writing as well, at 71EG(4), and it cannot go below the four weeks minimum annual accrual. So you cannot cash out all of your leave.

CHAIR: Okay. I would just like to mention certified agreements and ask you a question in relation to that. You mentioned about what happens in other states. The bill specifically specifies mandatory permitted and non-allowable content in certified agreements. The Queensland Teachers Union says there are no restrictions now but there will be restrictions under the certified agreements. I am just asking you to specify what restrictions are involved and why they are included in the bill. Do you understand my question?

Dr Blackwood: Yes, we do. That is in the non-allowable content and certified agreements. So that is 71OL. We have set out what is provided there.

CHAIR: The rationale for it is perhaps what I am really asking. On the one hand we do not have restrictions now. We are going to have restrictions. The rationale.

Dr Blackwood: In terms of the rationale for restrictions in relation to certified agreements, the government says that they should only contain wages and matters linked directly to the employment relationship and improvements in productivity and performance. So it is saying that a number of other matters, which are not really directly linked to that and restrict the efficient delivery of services et cetera, should not be included in certified agreements.

CHAIR: Thank you for that.

Miss BARTON: There has been some concern expressed to me that the changes that are being made, particularly in terms of the streamlining of negotiations and bargaining and so forth, will have an impact on the right for industrial action. I was just wondering if you could expand on that and perhaps provide some clarity to me, because my understanding is that it does not impinge on the right to industrial action. I was just wondering if you could provide some specific information.

Dr Blackwood: As we have outlined before, there are some time frames that have been introduced in relation to assisted conciliation and arbitration. The aim is to ensure that, where negotiations have failed, that the process of conciliation and arbitration brings those negotiations to

an end. It does make clear that, whilst industrial action can continue to be taken under the act in the bargaining process, a change here is in relation to assisted conciliation. Once you are into assisted conciliation, then industrial action cannot be taken. So that has been introduced into the bill.

Miss BARTON: But in terms of the earlier component of the process—

Dr Blackwood: That is right. It does allow for industrial action during the negotiation process. That is right. That is preserved within the new bill.

CHAIR: I might just turn to a different subject, because we have dealt with the major part of the bill and that is the fixed-term appointments of the Queensland Industrial Relations Commission. There is some provision for commissioners to retire at 70 and then be on a fixed term et cetera. Of course, there is always that notion of independence of the judiciary—the independent arbitrator. It can be a perception, even though I might qualify that by saying that there are many instances, magistrates of which are one, where you can retire at 70 but you can be reappointed as a fixed-term magistrate. Similarly, the provision here is one year. Why was one year chosen? Can I have your comments on whether you think that impinges on the independence of that judiciary? It is a twofold question.

Dr Blackwood: In terms of looking at a time period, we adopted the same as it is provided for in the New South Wales legislation and federal. They had adopted that at a minimum of one year. The thinking behind it was that the Industrial Relations Commission in Queensland has been through a lot of changes. Over the last 10 years industrial jurisdictions reduced, workloads fluctuate, and governments are mindful that in the next two to three years, with the award modernisation process, there will be again an increase in the workload. So the issue there is trying to balance from a public point of view and government point of view the efficient allocation of resources whilst, as you say, maintaining the independence of the commission itself and the commissioners. On that basis, whilst we have provided for some fixed-term appointments over one year in this bill in line with what is happening in New South Wales and the Commonwealth, the expectation would be that you are still going to have the majority of people in your commission tenured through to 70 years of age. Obviously, for the government there is a concern, with changes in workload, of the need to be able to manage your resources to meet that workload change. So this just gives an additional sort of mechanism for the government to ensure, in particular with the award modernisation and the increase in workload, that we can assist the commission to respond. You would have seen that we have also highlighted in the explanatory notes that there will be additional resources for the registry to assist with the award modernisation.

CHAIR: So effectively we are not paying for long-term commissioners in circumstances where workloads may well be reducing—hopefully from your position, I am sure.

Dr Blackwood: Yes, that is right, from a government point of view. You would have seen just recently the New South Wales government had to make changes in its IR commission as a result of the decrease in workload.

Miss BARTON: I was just going to quickly ask before we wrap up, because I am conscious of time—

CHAIR: Yours will be the last question.

Miss BARTON: Thank you. This is obviously part of a suite of reforms and changes that are being made. I was just wondering if you could detail when your work on the components of this particular bill started and whether it was just something that had been developed right at the outset as a suite of reforms or whether the process was undertaken after the first suite of reforms had gone through.

Dr Blackwood: We have just set out in the explanatory notes at the beginning there the reasons these legislative reforms are being introduced and, in particular, responding to recommendations of the Queensland Commission of Audit and the Blueprint for Better Healthcare in Queensland, specifically recommendations 130, 131 and 132 of the Commission of Audit, which highlighted changes that it considered needed to be made to the industrial relations system. So these industrial relations amendments are seeking to advance those recommendations of the Queensland Commission of Audit and the Blueprint for Better Healthcare in Queensland.

CHAIR: On behalf of the committee, I would like to thank you for your attendance today and certainly for the work that you have done in preparation and in addressing the issues in the bill and in answering the committee's questions. I would also like to thank members of the public here today and those who are listening to the proceedings online for their interest in the work of the committee. The committee will hold a public hearing with invited witnesses on Friday, 1 November 2013.

Members of the public are invited to observe the hearing or view the proceedings live or online. I now declare the committee's public briefing for the examination of the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 closed. Once again, thank you very much for your attendance today.

Committee adjourned at 11.46 am