LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr IM Berry MP (Chair)
Miss VM Barton MP
Mr WS Byrne MP
Mr AS Dillaway MP
Ms A Palaszczuk MP
Mr TJ Watts MP

Staff present:

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

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

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 1 NOVEMBER 2013

Brisbane

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Committee met at 9.28 am

BLANEY, Mr Shaun, Senior Adviser, Industrial Relations, Governance/Industrial Advocate, Local Government Association of Queensland

GOODE, Mr Tony, Workforce Strategy Executive, Local Government Association of Queensland

EVANS, Mr Trevor, Chief Executive Officer, National Retail Association

CHAIR: Good morning. I declare this public hearing for the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 open. Thank you for your interest and for 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 that adopts a non-partisan approach to its inquiries. I am Ian Berry, the member for Ipswich and the chair of the committee. The other members of the committee with me here today are Miss Verity Barton MP, the member for Broadwater; Mr Bill Byrne MP, the member for Rockhampton; Mr Aaron Dillaway MP, the member for Bulimba; and Mr Trevor Watts MP, the member for Toowoomba North. Due to conflicting parliamentary business with the PCMC, the member for Nicklin is an apology for today's proceedings. So too is the member for Ipswich West, who is not available to join us today. By a committee decision we will be joined by the Leader of the Opposition, Ms Annastacia Palaszczuk, the member for Inala.

This bill was referred to the committee for examination and report to the House by 14 November 2013. The committee advised the public of its examination of the bill on the committee's website and by writing directly to a number of individuals and organisations. A briefing was held with the department on Wednesday morning and today the committee will hear evidence on the bill from a number of invited organisations. I wish to stress that the committee is undertaking its examination process on behalf of the parliament and has as yet made no recommendations nor put forward any proposals.

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 off mobile phones or to put them on to silent mode. In the unlikely event of the 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.

I now welcome the representatives from the National Retail Association and the Local Government Association of Queensland. Good morning. Thank you for coming along today. Can I begin by asking if you object to being filmed or recorded by Hansard and the media—and I assume not—and that you confirm that you have read the guide 'Appearing as a Witness'? Can you please introduce yourselves, speaking clearly for Hansard, and then please make a short opening statement if you wish. The committee will then proceed to ask you questions.

Mr Evans: On behalf of the National Retail Association, I would like to make comments specifically in relation to one aspect only of the proposed amendments and that is to allow applications for trading hours orders to be heard by a single commissioner in the Queensland Industrial Relations Commission. The association supports the specific amendments laid out in the bill following its recent experiences of its applications in the commission taking longer and longer to be heard and decided. Over the last few years the time between filing an application and the hearing of a typical matter has blown out from around four to five months to a period of more like 12 to 18 months for most of our current caseload. We consider that the proposed amendments in the bill offer a sensible and workable solution to overcoming many of the causes of the delays now being experienced in the hearing of applications. We also consider that the proposed amendments align well with the Queensland government's commitments to reducing red tape and regulation to

encourage business activity. While these amendments will not significantly reduce statutory page counts, we believe that the speed and efficiency of government decision making is a metric to be considered when you are assessing the benefits of regulatory reform. Thank you.

CHAIR: Thank you very much.

Mr Goode: Can I begin to thank the chair and the members of the committee for the opportunity for the association to make comments on this bill. We will rely primarily on our written submission, but we take this opportunity to reiterate our support for the bill. We welcome the greater alignment between the IR legislation that is going to be operating in Queensland and the Fair Work Act that this reform bill will facilitate.

In particular, the LGAQ welcomes the award modernisation initiative of this bill. The current award coverage of local government is far from ideal, with myriad awards with the potential to affect local government. Even the primary awards, which cover probably over 80 per cent of our employees, allow for considerable overlap of coverage and are split somewhat along historical jurisdictional lines that have very little, and a lot less, meaning in the modern local government workforce. You then introduce confusion and uncertainty with awards that is a hangover from the interplay between the state and federal legislation in response to the Work Choices. Frankly, in our mind we have what we can only describe as a bit of a mess. Award modernisation will allow these existing anomalies to be examined and addressed. It will provide for the removal of any institutional inequities in employment conditions such as leave, hours of duty and work value that exist for workers working in local government. It will remove some of the confusion and uncertainty around existing awards and, hopefully, will simplify the award coverage for local government.

There are very little, if any, changes proposed by this bill that acutely offend local government. We see the changes providing opportunities for councils during extremely difficult economic times to reinvigorate councils to enhance their relationship with employees through the tools provided by this legislation. Local government, I would contend, has a proud record of valuing employees, but also residents of the community serviced by the very council as well as voting constituents in that community. Councils vary in size, shape, geography and financial circumstances as do the circumstances of individual workers. We welcome the flexibility provisions introduced by this bill. We are also pleased to see that all of those flexibility provisions carry with them appropriate safeguards to protect the interests of employees and employers alike. We commend the bill with its reform, which we regard as progressive and reflective of the contemporary demands of our sector. Thank you.

CHAIR: Thank you. You are not making a statement, I assume, Mr Blaney?

Mr Blaney: No.

CHAIR: Does anyone have any questions? If not, I will ask a question. You have told us the things you like. I am particularly interested if there is anything that you do not like about the bill. It is a Dorothy Dixer, I suppose—or it is a fairly open question—but if you have anything that you could help us with, I would appreciate it.

Mr Goode: We have identified a few minor matters in our submission that we have identified that we think need a bit more work. If they could be addressed it would improve the certainty for employers and employees alike. There are some issues there. It will come down to the details, naturally, but on a first reading of the bill as proposed, in the absence of that detail of the actual regulations, we do not find anything in there at the moment that is particularly offensive.

I see a fair bit of comment in relation to the capacity to employ part-time commissioners. It would always be our contention—our preference—to have full-term commissioners, as exists at present. But I suppose we also recognise that over the next 12 to 18 months there is going to be a spike in workloads and those spikes in workloads could appear at any time. So the notion of employing a fixed-term commissioner just to address those spikes makes sense.

CHAIR: They are expensive items.

Mr Goode: It is an expensive item if the workload drops off and all of a sudden you have all of these well-paid people sitting around. So in that regard, when we first read that, we had some questions over it. But knowing, with the award modernisation process, the backlog of certified agreements that will ensue from that award modernisation process, it just makes eminent sense for us to have some people put on for a fixed term just to address those workloads as long as it becomes for the purposes of addressing those spikes in workload.

CHAIR: It is not novel, either. The previous government had retired magistrates or retiring magistrates coming back on fixed terms.

Mr Goode: Very much so. Other than that, no, we do not find anything particularly offensive in the legislation.

Mr BYRNE: Mr Chair, I have some questions.

CHAIR: Yes, member for Rockhampton.

Mr BYRNE: Tony, you comment in your submission about award modernisation. You have reflected on that in your opening statement.

Mr Goode: Sure.

Mr BYRNE: You would be aware that, under the federal modernisation process, there was protection against employees losing take-home pay as part of that process. Do you support the fact that a similar provision does not exist in the modernisation element of this legislation?

Mr Goode: I was unaware, to be quite honest with you, that it did not exist. I suppose in our experience it has always been in any award review process—whether that be a new award or an amendment to an existing award. I have yet to experience the situation where pay levels are actually reduced for existing employees. I have seen adjustments occur where future employees may be subject to different employment conditions, but I would always anticipate that with the working conditions, particularly when it comes to local government, we would never be seeking any reduction for existing employees.

Mr BYRNE: So you are giving an assurance that the LGAQ would not apply this to reduce take-home pay packages for existing employees?

Mr Goode: We have recently—going back now probably 18 months—we first lodged an application for a new award, an alternative award. Inherent within that was a transitional provision, which guaranteed existing employees would not suffer any financial disadvantage. So to answer your question, it would always be the association's view that it would not be in the interests of any local council to seek to reduce in the award the current take-home salary of existing employees.

Mr BYRNE: Thanks, Tony. The term 'harmonisation' with the Fair Work Act that you included in your written submission was about attracting workers from outside local government. It is important, in your view, that they have a similar IR system to the one that they are used to. I suppose that is a recruitment tool or something of that nature, is it? On that basis, I do not have a problem accepting that principle. Are you concerned at all about the numerous and significant differences between the proposed legislation and the Fair Work Act itself?

Mr Goode: I see the proposed legislation being more aligned to the Fair Work Act than exists at present—so moving in that direction. If I had to go back and look at the Fair Work Act I am sure I could find parts of it that I particularly do not necessarily agree with. So in that regard, I would never seek to have the state industrial relations legislation just be a mirror image of the fair work legislation. But what we support is those areas of alignment which are, so far, encapsulated in this piece of legislation.

Mr BYRNE: So what you are basically telling us is that it is a selective harmonisation—

Mr Goode: Absolutely.

Mr BYRNE: With Fair Work—

Mr Goode: I would say I would hate to see Queensland go backwards to keep up with the rest of Australia.

Mr BYRNE: That is an interesting proposition.

CHAIR: It always happens when you ask for an opinion.

Mr BYRNE: Yes. I am happy to take that. That will do me for the moment.

CHAIR: Member for Broadwater?

Miss BARTON: On page 4 of your submission you detailed recent time frames for hearing and deciding on trading hours applications. It is quite clear from that that there are significant delays. I think on page 5 you contend that the reason for that is that it is difficult coordinating three commissioners. I was just wondering, particularly going into the busy Christmas trading period, if you could detail what the cost to business is of the delay in hearing these applications and the impacts that that has, particularly on some of the smaller businesses that might be a part of your association.

Mr Evans: There are probably various causes of delay that we have encountered more recently in our applications in the Queensland Industrial Relations Commission. I think the backlog of other sorts of cases—whether they are in the industrial relations space; whether its workers compensation or so on—have certainly played a part. I think there has also been a bit of a role in

terms of illnesses and retirement and handover of commissioners that have also impacted on our cases. Certainly, all of those factors have hindered the ability of the registry and the commission, I understand, to coordinate the schedules of three commissioners at once in order to quickly hear our matters. So we see the proposed amendments as certainly lending assistance to overcome those sorts of barriers and should really play a role in bringing time frames down.

In terms of the cost to our members and businesses generally, obviously, we have never advocated for full deregulation or open-slather 24-7 trading, but we are always interested in looking at the particular needs of individual localities—tourism zones, CBDs, pre-Christmas shopping periods and the like—in the interests of retailers and consumers particularly where the ability of retailers to service their customers really comes into sharper focus. So while it is very difficult to quantify exactly the benefits of quick decision making, we are very keen always to get these sorts of matters settled quickly.

One case in particular, which I think has only just recently been resolved, was in relation to the pre-Christmas shopping period that we previously managed to secure for the Chermside Shopping Centre. That was certainly a case that was at risk of delay and blowing out to the other side of Christmas. But in that particular instance I think we have just had a decision come down. Ideally we would be seeing decisions handed down in relation to the rest of our caseload before Christmas as well. Certainly we have times for hearings now in November and December, but I do not know whether decisions after those hearings will be coming down before Christmas and that is a shame because obviously the Christmas period is incredibly critical for retailers. The typical retailer probably takes up to 50 per cent of their yearly profits over the Christmas period, which we would define as November and December and maybe a little bit of January. It is no secret that retail has been doing it tough over recent years. A poor Christmas does really jeopardise the ability of retailers to open their doors and keep their staff on during the quieter times of the year.

CHAIR: I think most business is doing it tough at the moment. Mr Goode, in relation to attracting talented employees, is there a difference between the old and the new legislation as to whether it is going to be better or worse?

Mr Goode: It is our view that the additional flexibility and agility that this new legislation will give will provide councils with greater flexibility to attract people. We are finding increasingly, particularly given the significant differences in the geographic location of councils and their financial situations, that one size certainly does not fit all when it comes to attracting staff. Different conditions of employment, different issues, are found particularly attractive by different employees. We are anticipating this legislation will allow greater agility, greater flexibility, for those councils to come up with employment packages that will be particularly attractive, first of all in getting people there but, more importantly, keeping them over time. We are in increasing competition with the resource sector, which we can never compete with financially. In remote areas it is becoming very difficult to attract professionals to those organisations. Councils are constantly being required to come up with innovative solutions to get people out there and then, once they are there, to keep them. We believe this legislation does enhance the flexibility available to councils.

CHAIR: With private agreements, $129,300—

Mr Goode: That is for higher paid employees.

CHAIR: Is that something that concerns you?

Mr Goode: Not necessarily. My understanding is that is the cut-off point for unfair dismissals that came out of the fair work legislation. We have been agitating for some time for greater exemption from award coverage for higher paid employees, particularly senior managers, for the reasons we encapsulated in our submissions. We are finding more and more having to turn to contracts for services rather than employment. If you look at the history of local government, we are historically an organisation that values employment of staff rather than contractors. So again with the increased capacity to offer, particular the higher paid professional people, an individual contract with flexibility and with particular conditions that suit them, we believe that will help us more with the retention of our valued professionals at the moment.

Mr WATTS: I am interested in regional and remote councils. You are suggesting the changes that are contained within this bill will, in fact, improve the chances of those remote and regional councils to be able to both retain and attract suitable employees?

Mr Goode: Councils employ a number of means and methodologies for offering incentives for keeping the higher paid professionals in those remote and rural areas. This will allow us a more formal approach to doing that through the use of the higher paid contracts. At the moment we do it through a series of secondary contracts, but there is the issue that they are always covered by the

award, they are always covered by the EB agreements. Very rarely do those people actually see themselves in that particular vein. What this legislation will do by the introduction of these higher paid employment contracts will allow us to have the formal provisions to be reflective of those informal ones that we have been instigating for some time.

Mr WATTS: Did I understand you correctly that that will mean that there is more chance of full-time employment rather than a contracted position?

Mr Goode: We are finding it increasingly difficult to attract and retain the more qualified people in our remote areas. Accordingly, we are often pushed to a situation where we have to formally contract those services out to private companies. As I said to you, councils would always prefer to have people living and working in their community rather than fly in, fly out. We believe that this legislation, with this capacity to put them on higher paid contracts, should enhance our prospects, where it is appropriate, to have those people as paid employees.

Mr WATTS: The introduction through the bill of that flexibility that will help in regional areas, is there any downside in more urban areas?

Mr Goode: We do regular skills shortage surveys. We do this annually. We go out and look for areas which are having difficulty attracting and retaining staff. The evidence that we have in relation to the south-east corner, for example, is completely at odds with what happens in regional and rural areas. I can see nothing in this legislation, by the introduction of these additional flexibility provisions, that would impact negatively in any way on the south-east corner high urban employment at this stage.

Mr WATTS: Just to summarise that so that I am clear, you are saying that the bill will enhance prospects of better outcomes for regional communities in terms of attracting the staff they need to be able to operate effectively, but there is no downside for the south-east corner?

Mr Goode: That is correct.

Mr DILLAWAY: I know it is in your submission, but maybe if you could just explain a little bit more the benefit of the opportunity for a mutual agreement between employer and employee for cash-out of accrued annual leave?

Mr Goode: Can I emphasise from the outset that it will always be the position of local government that we would prefer all employees to take their leave as it accrues. The ideal situation would be that this particular provision would not have to be availed upon, but the reality is that we have reached a situation within local government that a significant number of councils have accumulated an unreasonable amount of leave liability. Just by way of example, we have one council in the south-east corner that currently has an outstanding leave liability over and above the normal four weeks. Taking for granted that every employee has a four week entitlement already—it is not touching that; over and above that—they have an outstanding leave liability of about 78,000 hours. There are about 630 employees with this outstanding leave liability. That equates to about a $3.5 million—$3.6 million liability on their books at the time. That particular council has a very good track record of promoting within. About 40 per cent of their positions every year are recruited from people from lower levels. That $3.5 million has the potential every couple of years to jump up by about by $500,000 just by the positive practice of promoting people.

CHAIR: And there is bracket creep, as well as CPI.

Mr Goode: The leave is accumulated at a certain level but then when it is taken it is at a higher level. It is a compounding problem. It has got to the stage now, particularly in the south-east corner in the last three years, where the external auditor has recommended to those particular councils that they may also consider the payout of excessive leave, but they did not have the capacity to do so. We also did a survey across 16 other councils in Queensland, which we call a HR metrics exercise. Looking at those 16 councils we went one step further, we gave them an eight week leave balance. We said we will not touch eight week leave balances, we will accept that you have already accumulated eight weeks, but above the eight weeks what has been accumulated. There was an average, per employee of those 16 councils, of an additional 12.22 days. That is an extra two weeks per every single employee. That equates to about an extra $2,000 per employee that council has on its books. That is all employees over and above their eight weeks that they have already accumulated. That is just becoming an economic financial nightmare for those councils. For whatever reason, employees have not applied for leave. There is no evidence we can find of any council refusing employees leave. Employees have opted not to apply for it and for whatever reason councils have opted not to exercise their discretion at this stage to direct it.

It has reached a situation right now where even if a council decides, 'Okay, we'll get tough and direct everyone to take all their excessive leave', it has got to such a magnitude that it would make the council operationally unsound. So we welcome this particular clause. We see it as an opportunity to try to redress an existing problem that has compounded over recent years. It would be our argument that once that problem has been brought under control then hopefully councils will implement a leave-taking regime which basically says to employees, 'If you don't take your leave within a certain period of time you will be directed to do it', so that it will not happen again. But right now we have a financial liability problem that needs to be addressed and this particular provision will give those councils, subject to the employees agreeing to it—and I want to emphasise that. It will not be, 'You have no choice. You have got to take the money.' You can still take the leave. We have also insisted, when we talk about this particular thing, that there should always be a minimum leave balance that should not be pushed below. In this case I think the legislation says four weeks.

Mr DILLAWAY: Is there any evidence that council employees across even the 16 that you have looked at have approached their employer to suggest that if the opportunity was there that they would like to cash out some of their annual leave?

Mr Goode: We have sought anecdotal information. We have not conducted any formal surveys in this area. But every one of those councils that we have spoken to has said they see it as a problem. Their main problem is that it has snuck up on them and for whatever reason the council has not directed their employees. None of those councils have suggested to me in any way, shape or form—and we have asked them—that at any stage they have refused the leave applications of employees. There have been times when employees might have asked for leave at a certain time and council has said, 'No, that is not convenient at this stage', and they have then suggested an alternative, but there is no evidence to suggest that that leave accumulation has been the cause of council refusals.

Mr Blaney: I can add a little bit there. We have noticed a significant increase in the last few years, in particular, around requests by councils about the ability to cash out leave balances. I think what we see is your transient workforce coming across from the national system into the local government sector and they are used to being able to cash out leave there and not being able to do it within the realms of the state jurisdiction. Just to add to Mr Goode's comments before about creating incentives and things through having greater ability to contract for high income employees, one of the other benefits of these sorts of things is that you can tailor these sorts of arrangements to suit individual circumstances. So we see that core element of flexibility there harmonise with the national system as another contributor to being able to better tailor salary packages and the like for individuals.

CHAIR: A council that is cash poor might opt to give greater leave perhaps.

Mr Blaney: It can be mutually agreed. One size does not necessarily fit all. People have financial burdens and they would rather take a bit of extra remuneration rather than the leave. As long as they have sufficient for their own needs. Councils would be able to offer that under this bill where currently they cannot really do that.

Mr BYRNE: I have read the submission from LGAQ. You would be aware that this legislation is highly controversial and generating a considerable amount of community disquiet. I need to confirm in my mind that the LGAQ is happy with the provisions that come from this bill. Firstly, to make it illegal to make payroll deductions to union membership; secondly, to prohibit interim pay rises that were once awarded by the commission as part of the process; thirdly, to prohibit retrospective pay increases as was part of the previous arrangements; fourthly, to install a completely different arbitration process than that that was previously and successfully run; and fifthly, to limit enterprise agreements to the very narrow options that exist within this present bill. You are happy with all of that?

Mr Goode: Do you want me to address each one individually or just in general?

Mr BYRNE: I need to get a sense of where the LGAQ is at with this.

CHAIR: I think the answer to that is yes.

Mr Goode: The answer is yes, in a practical sense.

Mr BYRNE: If that is the case, in your submission you talked about your capacity to attract quality workers. I find it very difficult to see how your acceptance and support of those measures is going to, in any way, make employment under local government more attractive. Can you explain that?

CHAIR: Before you go on, are you happy for him to deal with the five points?

Mr BYRNE: I am happy for him to deal with the questions any way he wants. He is a free man at the moment.

Mr Goode: I cannot remember each of the dot points that you raised. The first one was about union deductions, I think. Was that the first one?

Mr BYRNE: Yes, that is the first one.

Mr Goode: As a local government we have never had any problems with union deductions. If anything, we utilise it to our advantage because it gives us a means of measuring trends of union membership in our councils over time. It is not something that we have particularly sought, but, at the same time, I am very conscious of the fact that fewer and fewer of our employees are relying on union deductions from payroll and going more for direct debit.

Mr BYRNE: I understand.

Mr Goode: I did not see it as a major issue. Naturally, it will reduce the administrative workload, albeit by a small amount, in some of our councils. We do not have any particular concerns with it. We do not think it negatively impacts upon employees because there are still more than reasonable viable alternatives to be a union member.

Retrospective pay is not something we have necessarily been fond of. I should emphasise from the word go that we are talking here about an award system which has minimum rates and conditions. The local government sector is regulated by, effectively, certified agreements. If you look at the wage levels of employees in local government—I do not have the exact figures on me, but the last time I looked—the rate above the award is somewhere between 20 to 60 per cent above. I do not necessarily see the issue about award minimisation being a significant issue at this stage.

Retrospective payments are something that we have never necessarily been in support of when it comes to the negotiation of certified agreements. We believe that, at all times, payment for wage increases should be a subject at point of agreement. That is the way we have always done our certified agreements. I would not necessarily have sought it, but I do not have any concern with that particular element of the legislation. I cannot recall any of the other specific points.

CHAIR: I have limit enterprise agreement—

Mr BYRNE: I talked about the way in which the arbitration process is going to be significantly changed.

Mr Goode: As I said in our submission, we are not talking about a sector which is new to enterprise bargaining. Most of our councils are up to EB 6 or EB 7 by now. The biggest concern we get from councils is the issue of enterprise bargaining fatigue—the fact that it seems to drag on, does no-one any good and ultimately comes down to an issue of a quantum of pay increase plus often disputes over other incidental issues that do not always directly affect the employment relationship between employers and employees.

We do welcome the change. We think by bringing the enterprise bargaining down to a smaller focus will be beneficial. This came as a bit of a surprise to us. After we had more discussions about it, we believe the fact is we do not necessarily see bringing the commission in at both conciliation and arbitration as a necessary evil in itself.

We have councils now which are increasingly calling upon the commission for assistance in conciliation when it has reached a stage where neither party is prepared to give ground. The people in the middle are the employees. Bringing the commission in early, making them settle it and if they cannot settle it by conciliation then going to arbitration we have no particular problem with.

Mr Blaney: That being said, we do not have a particular prevalence of arbitration of agreements in our industry. As Mr Goode mentioned, what we do have is a tendency for the parties to sometimes bring the matter to conciliation ahead of when it probably needs to be there. I think a condensed process where you know that once you get to that point in time you are basically going to get an outcome pretty quickly will probably only support the fact that the parties really need to go back to the table and think about it before they go down that path. If they do engage in this new process as proposed it is a pretty quick path to getting an outcome. That might be an outcome that neither party wants. The fact that we do not have a lot of arbitration means that in the overall scheme of things it is not going to affect us that much. But when we do need that vehicle we would like to see that side of things done as quickly as possible.

CHAIR: That concludes the committee's questions of you. Thank you for your attendance this morning. We appreciate it.

COOKE, Mr Anthony, Industrial Officer, United Firefighters Union Queensland

DEARLOVE, Mr Mark, President, United Firefighters Union Queensland

LEAVERS, Mr Ian, General President and Chief Executive Officer, Queensland Police Union

MAHONEY, Mr Stephen, Senior Industrial Officer, Queensland Police Union

MOLONEY, Mr Graham, General Secretary, Queensland Teachers Union

RUTTIMAN, Ms Kate, Deputy General Secretary, Queensland Teachers Union

CHAIR: I now welcome representatives from the United Firefighters Union, the Queensland Police Union and the Queensland Teachers Union. Thank you for coming along today. Can I begin by asking you to indicate if you object to being filmed or recorded by Hansard and the media and that you confirm that you have read the guide on appearing as a witness. Can you please introduce yourselves and speak clearly for Hansard and then make a short opening statement if you wish. The committee will then move to ask some questions of you. We will start with the United Firefighters Union.

Mr Cooke: The Firefighters Union thanks the committee and the chair for the opportunity to appear today. The first thing I would like to say on behalf of the Firefighters Union is that we provide unequivocal support for and endorsement of the content of the submissions to the committee by the Queensland Council of Unions and the other affiliated unions in consideration of this, the latest change to the legislation since this government was elected.

The Firefighters Union was able to make a submission to the committee on 28 October. It covered the principal areas we identified were of significant bearing to our members. However, I would like to make a brief statement about two aspects of our submission. They relate to point 6.5 of our submission which relates to the stopping of the making of new awards upon commencement of the act. This part of the bill—proposed sections 821(1) and 821(2) and 822(1)(a) and (2)(a)—will have a significant effect on one aspect of the Firefighters Union's members and that is what we refer to as the auxiliary firefighters. There are approximately 2½ thousand auxiliary firefighters in Queensland. They are spread right across Queensland in all rural and regional communities. They are the ones that answer the calls when an emergency occurs in their region. They leave their primary place of work because auxiliary firefighting is usually their secondary job or they get out of bed in the middle of the night to attend an emergency, whether it is an urban fire or a road crash rescue or any other emergency that occurs in a rural or regional area.

This large group of employees, well over 2,000 of them, working for the Queensland Fire and Rescue Service are currently completely free of an industrial instrument to cover their employment. They have no award and no agreement. They have a procedure which is referred to as a standing order which covers the entire contents of their employment terms and conditions. Consequently, the fire service and the union have, for many years now, been negotiating to cover these employees under some sort of industrial instrument because that is a peculiar situation in this day and age. For the past 12 months we have been negotiating an award to cover these employees, with the assistance of the commission.

The Queensland Fire and Rescue Service auxiliary interim award 2013 is specifically affected by this bill, and I will just explain briefly why. It is caught up by proposed 821(1) and 821(2) and 822(1)(a) and (2)(a) in that it has been 12 months in the drafting, is concluded, has been agreed to by the parties, has been subject to a decision of the commission on 19 September of this year, has been agreed to be backdated to 1 August this year and was ready to go. We were just waiting for the commission to publish this award as being made. We expected that this month—November.

At a briefing of stakeholders on Wednesday this week, conducted by the private sector industrial relations office of the Department of Justice and Attorney-General, Mr Tony James, the executive director, made the following remark when I asked him why those proposed sections in the bill were there. He said to me that it was to prevent unions or employers from wasting anyone's time. What he meant was that this bill unusually includes a reference to the act taking force from the day of its introduction rather than the day of its enactment, which is peculiar. It catches the fact that this award was just about to be made—that is between the point when the bill was released to the public and put before the parliament and it being enacted. Our auxiliary award is caught in that period.

Time has not been wasted if this award is made. In fact, time has already been put into this award. Time would be wasted if the award is not exempted in some way from this retrospective aspect of this particular part of the bill. The bill specifically calls for sections to apply from the date of introduction of the bill. That is the part that is catching us out. It is unusual. It is likely to affect the operation of the new award as far as invalidating it which neither of the parties want. It is also likely to result in significant further delay and time taken to create another new award and reach agreement on that one. It also means potential litigation between the parties.

The provisions of the bill mean we will have to go back to the starting point for this large group of rural and regional firefighters who do this work as part of their community for the community. They are not permanent firefighters. The interesting thing about these employees is that they currently have no ability to have any say in the terms and conditions of their employment. There is no capacity for them to do it because they are covered by a procedure which is set by the commissioner of the fire service.

Therefore, the Firefighters Union submit to the committee today that parliament should take into account this special group of employees and the discrete circumstances of their particular QIRC matter which has just concluded after a year of work. We would hope that that award can be made and operate as an award until such time as other events, which may or may not arise from the passing of the bill, occur.

I wanted to briefly touch on point 6.2 of the firefighters submission which relates to the provision to limit the assisted conciliation and arbitration period. I talk about this with some irony today because the president of the union and I are appearing before you today at exactly the same time as the state secretary of the union and my colleague are in the commission providing closing submissions to the arbitration on our certified agreement which has been in arbitration for 12 months. In those 12 months we have had 14 days of sittings sporadically occurring—one day here and two days there; a few days somewhere else. This is based on when the commission could find the days for the full bench to hear us. It is about 365 days that this arbitration has been going on after almost six months of assisted conciliation.

The proposed bill suggests 14 days for conciliation and 90 days for arbitration. I would put to the committee, take it from someone who is in the trenches, that 14 days and 90 days is not, in the firefighters opinion, going to work. We would suggest that parliament take on board the experience of the firefighters when considering whether 14 days and 90 days is appropriate for the arbitration of a certified agreement.

CHAIR: Thank you for that. Ian?

Mr Leavers: Thank you, Chair and the committee, to be able to appear on behalf of the over 11,000 men and women of the Queensland Police Service. Also with me is our Senior Industrial Officer, Stephen Mahoney, who has been with the police union for a long time and can answer other questions if the case may be.

The Queensland Police Union of Employees has serious concerns about the impact which this proposed legislation will have on sworn police officers and non-sworn members of the Queensland Police Union of Employees. In recent months the Queensland Police Service and its employees have been through a period of enormous change. This includes the first ever redundancies of commissioned officers; an internal restructure that displaced many officers from their substantive positions; a further restructure pursuant to the PACSR report, whereby numerous members have been seconded as at today to the Public Safety Business Agency; implementation of what is generally referred to as the bikie legislation, which has had a significant impact on operational arrangements; and the parties have already begun preparations for G20. Throughout all of these changes there have been ongoing negotiations between the Queensland Police Service and the Queensland Police Union of Employees to ensure the efficient introduction of change and to enhance the operational capacity of the Queensland Police Service.

It is our view that the proposed legislation, particularly where it provides for award modernisation, the imposition of rigid and allowable and non-allowable matters, and the removal or reduction of collective bargaining rights, will interfere with the established working relationship with the Queensland Police Service. By its very nature policing requires the parties to be able to negotiate and implement flexible working arrangements at short notice based on the operational requirements of the Queensland Police Service. The imposition of a one-size-fits-all award modernisation process will undermine the party's capacity to work efficiently.

I am aware and I support the Queensland Council of Unions' written submission and place on the record that I agree with their comments as they relate to the award modernisation process, the removal or reduction of collective bargaining rights and the imposition of rigid allowable and

non-allowable matters. This is a direct attack on workers, not unions, and we all share a concern. This will not reduce red tape, which is the Newman government's mantra; it will further increase red tape which will lead to inefficiencies when we in fact should be making the system more efficient. I do not intend to elaborate on those submissions, but the Police Union's Senior Industrial Officer, Stephen Mahoney, is in a position to outline our concerns with specific sections of the proposed legislation.

CHAIR: Stephen, are you making a comment as well or do I go straight to Mr Graham Moloney? What I might do, because you are with Ian, is go to Mr Graham Moloney or Ms Kate Ruttiman, whoever wants to make an opening statement.

Ms Ruttiman: Thank you, Chair.

CHAIR: You got the short straw, I think, Kate.

Ms Ruttiman: My name is Kate Ruttiman. I am the Deputy General Secretary of the QTU and with me is Mr Graham Moloney, the General Secretary. Firstly, thank you for the opportunity to provide a submission to the parliamentary committee and also the opportunity to appear today. The Queensland Teachers Union strongly supports the submissions of the Queensland Council of Unions and other affiliated unions, including the Queensland Nurses Union, the United Firefighters Union, the Queensland Police Union of Employees, Together Queensland and United Voice. The QTU has provided a written submission to the committee and, while most of the key points are addressed in the submission, we would like to highlight the following.

This amendment is not advantageous to workers. While it is camouflaged as harmonisation, it really isn't. The reality is that the only genuine harmonisation is the addition of the term 'fair work' in the title of the bill, or we might describe it as selective harmonisation. The government suggests that there exists some benefits or improvements to workers' conditions. This is inaccurate. With the exception of the introduction of an increased benefit of sick leave from eight days to 10 days, which in most industries is already standard, the changes reduce the rights of workers rather than enhance them.

The government has introduced a new contract arrangement for high-income employees, stating this is harmonisation with the fair work legislation. This is a misleading statement. The fair work legislation threshold of $129,300 relates to unfair dismissal exemptions; it does not relate to a threshold for an employee to become a non-award employee. Additionally, the $129,300 in the fair work legislation does not include a full remuneration package but refers only to the salary earned—not, for example, their super. The proposed bill also prohibits clauses in awards that restrict the offering of high-income contracts. The impact in Education of this would be to create instability in leadership and the inability to attract and retain principals or school leaders to regional and remote Queensland, with the potential loss of the relocation system.

The Queensland Teachers Union also notes that the intention of the government is to allow award rates to be changed by means of work value cases. This is an onerous exercise and fails to recognise that currently award rates can change following the expiration of an agreement or a determination upon the application of the parties. It is the view of the QTU that the rates in a certified agreement or a determination do go through a work value test at the time of negotiation and/or arbitration and that this section should remain.

It is difficult to clearly determine what elements of certified agreements and awards would be prohibited given the introduction of non-allowable matters in legislation. However, in attempting to decipher the intent, the QTU believes that some of the following might be at risk from its own awards and agreements: curriculum coordination time provided to primary schools; heads of curriculum positions provided to primary schools; the school based management guarantees, which actually offer protections around the government's independent public schools proposals; class sizes; the Remote Area Incentives Scheme; transfers and relocations; and the access of temporary teachers to permanency. This particular clause is a good example of where a directive does not work in the profession given the patterns of work of engagement for temporary teachers. Additionally, the lack of detail around the content of clauses and their prescription in regulation makes it difficult to truly analyse the potential impact of the legislative changes on QTU members.

The QTU also takes issue with the suggestion that protected industrial action can continue to be accessed by members. This is clearly false. While the right might appear in the legislation, the prescription applied to the action is prohibitive. It demonstrates an increase in red tape and the further interference of the government with the commission. The prescription that action now taken during conciliation is no longer protected removes the discretion the commission once had to determine whether or not action during negotiations could proceed.

I also draw the committee's attention to schedule 4 of the act. This schedule does not allow an application for a protected industrial action ballot until 30 days before the nominal expiry date of an agreement. In the QTU's experience, as recently as last year, it takes eight to 10 weeks for such a ballot to be conducted and concluded and be counted. The consequences of these changes to the legislation would make the access to protected industrial action more unlikely.

CHAIR: Thank you very much for that. Perhaps what I might do is ask the first question.

Mr WATTS: I have a specific question, if I may. Anthony, in relation to the auxiliary workers, I represent an electorate where we have some auxiliaries. I am just trying to seek clarification about exactly what it is you are asking for in this legislation. You are asking for that particular negotiation to be exempt. Is my understanding correct?

Mr Cooke: The union is asking that that award is allowed to be made and operate as an award until such time as, if the bill passes, the award modernisation process might catch up to it.

CHAIR: With the retrospectivity to—

Mr Cooke: Yes. We do not want to leave them as they are after all the work that was done for another N number of months or years before they can actually get access.

Mr WATTS: I was not aware they were not covered. I want to be very clear in just that one isolated part because I have a concern for auxiliaries who are protecting homes in the area I live in. I want to make sure that what you are asking for is that to be exempt and the retrospectivity in relation to that negotiation be exempt?

Mr Cooke: That is what we are asking.

CHAIR: What I might do is ask everybody whether there are any other non-award groups that are in some sort of bargaining position that may be similar to what Anthony has indicated?

Mr Mahoney: We do have a situation which is very similar to the United Firefighters Union. It specifically relates to proposed section 821(2). As you are aware, that provides—

An award, or an amendment of an award, made under section 125 on or after the introduction day and before the commencement is of no effect.

The variation that we refer to affects a group to employees who are referred to as Torres Strait Islander police support officers. The background to this situation is that the Torres Strait Island Regional Council and the Queensland Police Service agreed that the council employees previously referred to as community police would be employed by the Queensland Police Service from 1 October 2013 and redesignated as Torres Strait Island police support officers. There are a lot of very good operational reasons as to why this would occur. Obviously a more integrated and structured policing presence throughout the Torres Strait enables training under the Queensland Police Service and so forth.

CHAIR: If I might just cut to the quick, I am trying to find out if they have an award.

Mr Mahoney: They were covered under the Community Police (Aboriginal and Islander Communities and Local Governments) Award. Upon being employed by the Queensland Police Service, that award was no longer applicable.

CHAIR: Okay, so they are non-award or is there a Torres Strait Islander—

Mr Mahoney: Potentially, no. Pursuant to section 147 of the Public Service Act, they were then deemed as general employees and the appropriate award then was the Employees of Queensland Government Departments (Other Than Public Servants) Award. Quite properly, the Queensland Police Service made application pursuant to section 125 of the act to vary this award to, amongst other things, provide appropriate award coverage to these police support officers. The QPUE supported this application and the variation was approved on Friday, 25 October 2013. The effect of the proposed section 821 would be that this variation is no longer applicable and these employees, who have a long history of award coverage, would suddenly become award free.

CHAIR: If I might cut to the quick, in respect of these employees, you are saying that they are going from the community service award to the general employees award et cetera. Is there a difference? Are they disadvantaged in terms of money first perhaps?

Mr Mahoney: The change to the general employees award would initially enable these employees to come under what is referred to as the core enterprise agreement which would be a significant increase of potentially several hundred dollars per fortnight. What we now argue—and I think has been accepted pursuant to the variation being eligible to become members of the Queensland Police Union—is that this enables us to cover them under our certified agreement which gives them an even greater pay rise and also some improved conditions of employment.

CHAIR: I think we get the thrust of it.

Mr Mahoney: I do not want to be in any way misrepresented.

CHAIR: That is okay. I do not want to steal time from the other—

Mr Mahoney: We do have agreement from the Police Service that they will continue to apply those provisions administratively.

CHAIR: So effectively what you are saying is that they will get an increase of $700 per fortnight and the disadvantage is that they in fact should be remunerated above that again, as I understand. They may lose that added bonus.

Mr Mahoney: They do not legally have that protection—

CHAIR: No, they do not.

Mr Mahoney:—once they become award free.

CHAIR: I understand that. Is there anybody in that group in the QTU?

Ms Ruttiman: No, Chair.

CHAIR: Thank you. I just wanted to make sure that we have most people covered in our understanding of who is going to be impacted directly by losing money.

Mr DILLAWAY: Anthony, if I can come back to you, you were highlighting through your submission verbally to the committee your frustrations at the length of both the arbitration and the conciliation period. Would you not agree though that by having a more protracted period of time that it could in fact be of benefit to your members with a similar outcome if that opportunity was present for a shorter time in arbitration?

Mr Cooke: The point that I was trying to make was that it takes time for the union to consult with its members. To use our example, the time it takes the fire service to consult with its IR and its management and the time it takes for the commission to find dates for the bench, those three things combined might lead to a sense of frustration. But the point that I was making is that those three factors cause a 90-day period to be extremely unrealistic in the opinion of the firefighters union. All parties would prefer things to happen as quickly as possible. I am not saying that that is not the case. But the practical reality is that it takes time for the employer to go away and come back for the next discussion. It takes the union time to go away and come back for the next discussion, and it simply takes a long time for the commission, it would appear, to find the days to have all of these matters heard.

Mr DILLAWAY: If, for argument's sake, there was a time limit put on it, what would be acceptable if 90 days is too short?

Mr Cooke: The firefighters union believe that the time limit or the number of days required should be left as a decision to the members hearing the matter. They are the ones—

Mr DILLAWAY: Which it can.

Mr Cooke: Pardon?

Mr DILLAWAY: My understanding is that there can be an extension sought.

Mr Cooke: Yes, the vice-president can allow an extension to the 90 days, but the firefighters position is that it should be left to the members of the bench who are familiar with the matter and who know the process or it should be left to the commission to be making a decision about how long this needs to occur to allow the matters to be properly ventilated, rather than just knowing the clock is ticking and we have N number of days to go. We need to hear the matter promptly. The union's position is that a time cap would cause more problems than we currently have.

Mr BYRNE: I have a question for both the firies and the Police Union.

CHAIR: Is it the same question, Bill?

Mr BYRNE: Pretty much. I am looking for an opinion. I am concerned about the potential to threaten take-home pay for your members as a result of some of the interpretations on public holiday issues in this bill as well as the possibility of the way in which the agreements are going to be structured and narrowed. I have read your submissions, but do you have any particular views on those matters?

Mr Leavers: I will hand over to Steve in relation to this because, yes, there is an issue.

Mr Mahoney: Yes, we do have some very specific concerns in relation to the effect on remuneration for our members. In relation to the public holiday issue, which I think is 71LB, the provision, as I understand it, provides that public holidays will be at ordinary time until such time as the parties have negotiated a modern award. Realistically, we would not expect to even have the

opportunity to negotiate a modern award for some time. The obvious implication is that our employees working on public holidays between now and then, which obviously includes the Christmas period—

Mr BYRNE: That is right

Mr Mahoney:—would be engaged at ordinary time. Not only is there a potential impact on their remuneration; the union and the Police Service have very sophisticated arrangements in terms of ensuring that there is an operational capacity on these days, and there is every likelihood that these sorts of proposals will interfere with those efficiency and productivity arrangements that we have negotiated in relation to working public holidays.

Mr BYRNE: Right.

Mr Cooke: I do not think there is anything specific that the firefighters union can add, other than it is clear from our experience in the current arbitration of the certified agreement that both the Public Service Commission and the fire service are interested in every way possible to eliminate any sort of agreement or penalty or payment or to aggregate wages or to include overtime in a total cost. We are already faced with significant attempts by the employer to reduce our terms and conditions, and this bill, if passed as proposed, would make that worse.

Mr BYRNE: I have a question for the Teachers Union, too. In your pretty expansive statement you talked about the issue of class size.

Ms Ruttiman: Yes.

Mr BYRNE: That is not likely to be anywhere within any future agreements or any other arrangements that I can see. Do you see that issue or other similar issues having further implications, but specifically around those things that are outside the fence now that are not able to be dealt with?

Ms Ruttiman: Absolutely. As I said in the opening submissions, it is not only class sizes. If we look at the prohibitive content or the non-allowable matters, it could fall into one or two or three particular categories. There are things like the allocation of salaries to independent public schools not being the true allocation but actually being kept and distributed according to the employees within that particular school. If the budget is no longer in that format, then obviously that will have an impact with respect to the schools.

There are things around the provision of heads of curriculum. With regard to the curriculum coordination time as it exists and relates within primary schools that have a head of curriculum allocation and do not have a head of curriculum allocation that sit within the agreement, that would need to be reviewed as to whether or not it is relevant. There are also transfers, relocations and the Remote Area Incentive Scheme, all of which are about resource allocation or additional benefits to people who are working in rural and regional Queensland. Also, for people who are working in complex locations, even in the south-east corner, it is important they have the ability to know that should they find themselves in one of those locations they have the ability to work with their employer to receive a transfer that is favourable to them or receive some incentives to work in rural and remote areas.

There is also a whole raft of them in TAFE that is under threat. In fact, there is the whole TAFE negotiation process that we are going through with respect to the fact that, in going through conciliation, the Queensland Teachers Union requested that the matter be sent to arbitration. The matter was referred to arbitration by Deputy President Bloomfield, and the Queensland government has seen fit to appeal the decision of Deputy President Bloomfield to send that matter to arbitration. Should the appeal be upheld, we do not know what will happen with our TAFE members and our senior colleges members because of the lack of transitional arrangements within the proposed bill. We know that the arbitration can proceed if the appeal is dismissed by the Industrial Court, but the time frame for even having that appeal heard at this point in time is quite extensive. It goes to that whole idea of arbitration in 90 days being something that is unrealistic.

If you look at the process for this particular appeal in itself, and if you look at previous arbitrations we have been part of, there is the process of each party providing submissions, parties providing witnesses and responding to those particular submissions before they proceed to hearing. Hearing days and inspections can take anything between 14 to 21 days. When you are having coverage for a state-wide membership and state-wide employees, you need the commission to understand the working conditions and conditions under which our members work through. Inspections are necessary and have formed part of arbitrations, not just ours but other organisations, so there is a clear understanding of the work value that goes with the particular increases that are awarded through arbitration.

Mr BYRNE: I have a quick question. It is a question I framed earlier about your time for balloting. I do not know how it applies to the other unions present, but eight to 10 weeks essentially says that a protected action is impossible.

Ms Ruttiman: That is right.

Mr BYRNE: Is that a reasonable summary? What do the other representatives think?

Ms Ruttiman: Absolutely. It says that it is practically impossible.

Mr BYRNE: So it is a nonsense provision.

CHAIR: Hold on, eight to 10 weeks was the firefighters.

Ms Ruttiman: No eight to 10 weeks was us.

CHAIR: Okay. I would be interested to find out what everybody else thinks.

Mr BYRNE: Do you have a similar experience? Do you have a number that you would consider you could work from?

Mr Leavers: It would be problematic for us.

CHAIR: Are there not any efficiencies that can be brought about? Eight to 10 weeks is rigid?

Mr Cooke: If we had time before 1 November to have a look at the bill and put something forward, we could possibly put something to the committee about efficiencies but we just have not had the time to digest this and come up with a position yet. This process from 17 October to 1 December is not allowing for us to ventilate all of the issues that we find in the bill.

CHAIR: But this process is from the first harmonisation bill in terms of the time for contacting members; is that not the case?

Mr Cooke: Yes. For our protected action that we took last year, it was a process of about—

Mr Dearlove: A number of weeks

Mr Cooke: It was about 11 or 12 weeks.

Mr Moloney: Chair, our eight to 10 weeks is not an estimate. In this context it is based on the reality of the period of time that it took the Electoral Commission last year to conduct the protected action ballot that was being conducted. It is not really a matter of efficiencies that can be generated by the organisations. Because the ballot is conducted by the Electoral Commission of Queensland, we are totally at the mercy of that commission in terms of the rate at which the ballot is conducted.

CHAIR: I thought it was optional.

Miss BARTON: Following on from the questions about ballots, you were saying that the Electoral Commission runs the ballots. But for the eight to 10 weeks are you talking about paper ballots that are sent out? Because my understanding is there is an option available for unions when conducting ballots of their members to look at alternative options. Legislation was introduced and passed earlier this year—I think in the first suite of industrial relations reforms—that allows unions the option to have electronic balloting and look at alternative options.

Mr Moloney: That is within the provisions relating to spending for political purposes ballots, and it does not make that capacity within the schedule. But to the best of my knowledge no organisation has yet been able to find an electronic balloting process that will meet the requirements of the legislation. Now that option does not exist in respect of protected action ballots conducted by the Electoral Commission of Queensland. As I said at the time of making submissions around spending for political purposes, to the best of my knowledge the Electoral Commission of Queensland still does not have the capacity or an agreed process around the use of electronic ballots.

CHAIR: The modernisation process was an innovation commenced by Prime Minister Gillard and the former government. I am wondering whether everybody has a comment in respect of this process of modernisation. Is it not accepted by the unions at all? We will go from my left to right, if that is okay. Perhaps you could start, Mark.

Mr Dearlove: We seem to have got all the bad things out of these harmonisation things. We have never got any of the good parts out of it. By stripping awards—

CHAIR: Some employers could very much say that about the fair work legislation, but go on.

Mr Dearlove: All of the things that we have in our awards and certified agreements have been negotiated over a number of years. For one piece of legislation to strip all of these things out without any sort of negotiation I think is very undemocratic and very un-Australian. It is simply

saying, We're going to modernise things and these are the things you are allowed and everything else you can't have.' Because our negotiation process took so long—because we tried to negotiate in good faith and the other party did not want to change from their opinion, which was to strip 20 parts of our agreement out, stick to casualisation and all these other agreements. We tried to budge in good faith. You are taking any of that good faith negotiation out by restricting anything that you can have in an award.

CHAIR: I think everybody says they negotiate in good faith, don't they?

Mr Dearlove: Yes.

CHAIR: We are running out of time so I will ask you to comment on that briefly.

Mr Mahoney: We also have very serious concerns with the modernisation process. We say that the allowable and non-allowable matters are very rigid and do not reflect the fact that policing is a very sophisticated and dynamic industry. The parties over many years have negotiated very sophisticated and dynamic arrangements to allow for the most efficient operational outcomes possible. These arrangements go well beyond the very rigid allowable matters, and the modernisation process genuinely has the potential to impact on those agreements and arrangements between the parties and—

CHAIR: That is similar to the firefighters, I think. We might move on.

Mr Leavers: This may very well be very complex for us and with the negotiations we have with the Police Service may very well see a great hiccup in relation to the planning and our response to G20. I think some things are missed, but it may very well cause major issues which would affect Queensland and Australia.

CHAIR: Thank you.

Ms Ruttiman: I firstly want to say that the award modernisation process actually commenced under Mr Howard's Work Choices legislation, not under the fair work harmonisation process. As per the other unions, the content of the awards and limitations around what is allowable and non-allowable is obviously an issue.

The other issue is the process of not being able to negotiate a new certified agreement until a modern award is in place and the fact that the legislation itself provides for a period of time of up to two years that an award modernisation process might occur on the request of the minister, not on the initiation of the commission or the parties. Consequently, if we are going to be genuinely starting to negotiate a new EB then our award modernisation process should have started two months ago. It is obviously a problem with respect to the time frames: the inability to negotiate a new certified agreement if there is no modern award and the content of what is allowed and not allowed in the award.

CHAIR: Thank you very much for that. That concludes the committee's questions. Thank you very much for your attendance today. It has been very helpful.

DOUGHERTY, Mr Mark, Industrial Officer, Queensland Nurses Union

MOHLE, Ms Beth, State Secretary, Queensland Nurses Union

TODHUNTER, Dr Liz, Research and Policy, Queensland Nurses Union

TURNER, Mr Andrew, Manager, Workplace Relations, AMA Queensland

CHAIR: Thank you very much. I now welcome the representatives from the Queensland Nurses Union and the AMA Queensland. Good morning and thank you very much for coming along today. I begin by asking if you object to being filmed or recorded by Hansard and the media and that you confirm that you have read the guide on appearing as a witness. Could you please introduce yourselves, speaking clearly for Hansard and then please make a short opening statement if you wish. The committee will then ask questions of you. It has been the tradition—at least for today—to go from left to right. Beth, would you mind starting off the opening statements? Then we will proceed along and then we will ask questions.

Ms Mohle: My name is Beth Mohle and I am Secretary of the Queensland Nurses Union. Appearing with me today are QNU Industrial Officer, Mark Dougherty, and QNU Research and Policy Officer, Dr Liz Todhunter. Mark and Liz were responsible for preparing our submission for the inquiry. So they will be available to answer any technical or specific questions that the committee may have.

The Queensland Nurses Union thanks the committee for the opportunity to present to you today. The QNU has made a formal submission to the committee and we note that this has been posted on the website. The QNU strongly supports the submissions made by the Queensland Council of Unions and the Queensland Council of Unions' affiliates that have also been provided to this inquiry. We will not revisit this morning in any detail the many significant concerns that we have about this bill that are outlined in our written submission. Instead, in the short time frame available to us we will highlight some key issues of concern.

The QNU recommends that the committee seeks immediate withdrawal of this bill from the parliament and informs the Attorney-General of two essential elements of good government: one, the proper role and functions of parliamentary committees and, two, the doctrine of the separation of powers. Further, we wish to highlight to the committee that this bill, if passed into legislation, will breach international labour standards that Australia has ratified. The QNU respects the parliamentary process and the important role that this parliamentary committee plays in our democratic process, including enabling us to put forward our view on this piece of legislation. Indeed, it was the Fitzgerald report that proposed a comprehensive system of parliamentary committees to enhance the ability of the parliament to monitor the efficiency of government. The QNU and our membership put our trust in this committee to embrace the spirit and intent of Fitzgerald. We particularly note the totally inadequate time frame that the public and this committee have had in which to consider this most significant piece of legislation.

The bill purports to be 'harmonising' with the Fair Work Act 2009. That is not the case. The bill, if it becomes law, will strip away current terms and conditions enjoyed by nurses and midwives in our public health system. The bill will also allow the government, which is also the employer, to directly instruct the Queensland Industrial Relations Commission in relation to so-called modernisation of our awards. The extent to which the minister can direct the QIRC is unprecedented and totally disregards the doctrine of the separation of powers. The bill intends to remove two of the principal objects of the Industrial Relations Act in relation to promoting and facilitating the regulation of employment by awards and agreements, and promoting collective bargaining and establishing the primacy of collective agreements over individual agreements. The removal of these two objects, along with the 250 pages of amendments that the Industrial Relations Act required to make good the impact of their removal, represents another fundamental breach and that is a breach of our international obligations in relation to labour standards. I particularly refer to article 4 of the international labour standard Right to Organise and Collective Bargaining Convention 1949 No. 98, which is set out in our formal submission. In short, this convention requires the terms and conditions of employment to be regulated by means of collective agreements.

While this bill, if it becomes law, will strip away a significant number of industrial provisions currently enjoyed by nurses and midwives in our public health system, there is one most serious matter that has been directly targeted by the bill as being a non-allowable matter in any industrial instrument and that is the provision that relates to workload management. The current nursing and

midwifery award and our current certified agreement contain both provisions in relation to the workload management tool known as the business planning framework. This is a recognised business tool designed to determine appropriate staffing levels for nurses and midwives. This ensures that safe nursing practice can be maintained and, therefore, ensures safety for patients. The workload provision was first put into our award in 2002 and by consent of Queensland Health and the QNU has remained an industrial provision ever since. It is a dynamic tool that has been amended and improved over this time. At no point since its inception in 2002 has Queensland Health raised any objection to the ongoing application of this tool. Indeed, this is the very tool that has been used to develop the staffing levels for our new Queensland Children's Hospital, which will open in late 2014.

To highlight one other current industrial entitlement that is now under threat, the bill refers to an amendment to the Hospital and Health Boards Act 2011 in which the director-general will be given the ability to issue health employment directives. While this amendment goes to issues in relation to senior health employees being offered contracts of employment, hidden amongst the amendments is a reference to a health service directive being permitted in relation to professional development training of health service employees, and that is section 51A(2)(e). Professional development leave and a professional development allowance was introduced as an industrial entitlement for nurses and midwives employed by Queensland Health since 2006 as part of an enterprise bargaining outcome known as EB6. This amendment will allow the director-general of health to issue a directive that overrides the current industrial entitlement. Furthermore, as the bill provides that the health employment directive prevails over any industrial instrument, it can therefore reduce the current entitlement of nurses and midwives to professional development.

Finally, the QNU would like to place on record our concerns about the transitional arrangements for the reconfiguration of the QSuper board that are also contained in this bill. We are extremely concerned about reports that only three existing QSuper board members will be continuing on the board after the end of this month. We have expressed our concern about the significant risk that this poses in our letter to the Treasurer accepting my nomination to the board as a representative of the Queensland Nurses Union. In this letter I asked for details of who I should contact to discuss my concerns about how this very significant risk will be mitigated and I am yet to receive a response to my correspondence. This is a critical issue, given that the QSuper board has fiduciary duties to manage over $43 billion of QSuper members' funds.

In conclusion, the QNU would like to place on record that attacks upon the industrial entitlements of nurses and midwives are not some theoretical exercise. The intent of this bill is to fundamentally reject a cooperative, interest based bargaining approach to enterprise bargaining and replace it with an outdated adversarial approach to industrial relations. This will have significant consequences. The QNU strongly believes that this bill will fundamentally undermine industrial stability and, therefore, threaten trust, open and respectful relationships, and the proper valuing of the contribution that nurses and midwives make to the public health system. This will serve to undermine the high standards of clinical practice that are central to the delivery of high quality, patient centred care and the maintenance of the Queensland community's confidence in our public health system.

Nurses and midwives play a critical in our public health system as they are the only professional group who can consistently monitor standards of health service given their unique 24/7 role. If this bill becomes law it will have a significant negative impact on nurses and midwives, and this will in turn result in very negative consequences for our public health system and the patients who rely upon it.

Mr Turner: My name is Andrew Turner. I am the Manager of the Workplace Relations Department of the AMA Queensland. The AMA Queensland is deeply concerned about the major changes planned to the terms and conditions of both senior medical officers, SMOs, and visiting medical officers, VMOs, that will have far-reaching and adverse impacts on the Queensland public health system. As you would appreciate, Queensland public hospitals are a key part of the complex and interdependent system of health care in what is the most decentralised state in Australia. Major change in one part of the Queensland public health system such as the abrupt introduction of individual contracts for senior executive employees will have unintended consequences on other parts.

With the introduction of the bill and the abrupt transition to contracts of employment, our objective is to ensure the maintenance of current workplace protections. Specifically, we are concerned about the following: an absence of any fatigue provisions, which is self-explanatory, for doctors in a high-risk environment; no mandatory meal or rest breaks; lack of dispute resolution

mechanisms in the contract; and the explicit exclusion of the QIRC's jurisdiction, including with regard to unfair dismissal and bullying, loss of tenure and limitation on redundancy provisions, failure to guarantee that SMOs and VMOs will be no worse off across the 17 different HHSs or hospital and health services—which, again, I hope is self-explanatory considering the piecemeal application and interpretation that might be on offer—the discretion of the director-general to amend contracts unilaterally, no mechanism to monitor the implementation of the contracts for collective renegotiation, and no transparent mechanism to determine the future salary increases. While this is not a definitive list of issues because of the abrupt nature of this information being relayed to us—as I say, it is relating to the lack of information available—it is indicative of the serious nature of these issues. We would obviously be of the position that the medical officers certified agreement—the MOCA—the SMO award and the visiting medical officer arrangements should continue in operation until such time as new arrangements in their entirety can be negotiated. The issues there are about workforce and about the provision of safe services across the entire state. We are concerned about both the pace at which these changes are happening and the nature of the changes proposed.

Ms PALASZCZUK: I have some questions for the QNU and the AMA representatives. Thank you very much for your overview. I do understand that there is some uncertainty at the moment with this legislation that is before the House. Could you both please give the committee more of an indication about the range of employees that are likely to be captured under these new individual contract provisions?

Ms Mohle: We have been doing some analysis of this, particularly given that it captures superannuation as well. So it is nursing directors and above at least, we think, for nursing and midwifery, potentially going down to grade 8, which is nurse practitioner. The difficulty that it provides, though, is that it will absolutely play havoc with anybody acting up into those positions. So what will happen to people who might be in a nurse manager position but the hospital might want them to act up into a nursing director position? How is that going to occur? Placing that income cap on there is just not manageable at all, because it will fundamentally disrupt people being able to act up and keeping continuity of health services. People will just say, 'If I have to go onto an individual contract I am not going to be taking up that role.' So we have significant concerns about the impact that will have on workforce planning.

Mr Turner: Three thousand senior medical officers and approximately 900 visiting medical officers will be transitioned to individual employment contracts by April of 2014, with an implementation date of 1 July next year.

Ms PALASZCZUK: I note that you said you have not been given any guarantees that no-one will be worse off under the new arrangements.

Mr Turner: Correct.

Ms PALASZCZUK: That is correct?

Mr Turner: Absolutely. It is consistent with the information that has been published by the director-general of the department of health. It is the intention of the department of health that there will be no inadvertent reduction in take-home pay. The words are quite clear that there is no intention but it might happen. Coupled with the modelling that is currently proposed for an implementation date within the next nine months—it just has not been finished, so we do not have that information yet.

Ms PALASZCZUK: Is there is lot of uncertainty at the moment with the senior doctors about these proposals?

Mr Turner: Considering the quite dramatic changes that are proposed, coupled with the pace at which it is happening, it is obvious that there is a huge degree of uncertainty. What we are hearing as their peak representative body is that people will just move interstate or into private practice. This is obviously information that we have heard from our members.

Ms PALASZCZUK: So you could actually see a mass exodus of doctors from our public hospital system?

Mr Turner: We are concerned. Consistent with our statement today and with information we have communicated to the minister, we are concerned about workforce across the state, because of the decentralised nature of medical services.

Mr DILLAWAY: On Wednesday at the departmental public briefing it was indicated that there is no obligation for the SMOs and VMOs to in fact go on to individual contracts and that if they choose not to they can remain under an industrial instrument.

Mr Turner: The arrangements in place at the moment—the medical officers certified agreement—will continue in operation until 30 June 2015. This is for senior medical officers. But a significant proposal of medical officers' income is generated from right of private practice. There will be no right of private practice offered if the medical officer remains on the MOCA, which will continue until 30 June 2015. This is an active disincentive for people not to remain on a MOCA. So while that choice is there, you will find that there will be such pressure applied, either financial or in other ways, that it will result in people either signing on or leaving.

CHAIR: I think what you are talking about is market force, aren't you?

Mr Turner: Yes, absolutely right. But the reality is that if Queensland Health is not offering a competitive market rate people will just leave to go interstate or to private.

CHAIR: I think we both agree on that. Beth, can you outline how many sets of terms and conditions there are for nurses in the award and in the agreement?

Ms Mohle: I will hand that over to Mark Dougherty, our industrial officer. I will just let the committee know that in recent years we have undergone a significant award amalgamation process, so we do have a very streamlined, modern nursing and midwifery award in Queensland Health. I will hand over to Mark, who can outline a bit more about that.

Mr Dougherty: I would not be able to quantify for the committee the exact number but, as Beth has indicated, we have combined a range of terms and conditions. Historically, different nurses working in different practice settings—community nurses used to be on Public Service conditions; public hospital nurses were on different conditions. We have been able to, through considerable effort, rationalise those into one industrial instrument. But, as the committee will appreciate, a nurse is not a nurse. So a nurse working in a community setting has a Monday-Friday type of job—there may be some evening work and maybe limited weekend work—whereas the nurse in the public hospitals is a 24/7 nurse. If you go into some of our psychiatric institutions you will find different arrangements there, again based on historical differences.

What we do have are facilitative provisions that allow for integration where nurses work across and clinical services are integrated. There are provisions in the award that allow those integrations. The committee needs to realise that we are talking about 30,000 nurses and midwives. Some midwives indeed work on salary averaging, so they just take an average salary over the year, because of the nature of their midwifery practice.

CHAIR: I do not know whether the member for Toowoomba North will follow up with a question, because I would like you to be a bit more specific.

Mr WATTS: I have a specific question that is relevant to my electorate of Toowoomba North, which has Baillie Henderson in it, and the hospital in Toowoomba South, just over the electorate border. I am interested in a mental health nurse working at Baillie Henderson that also potentially works at the hospital and the differences there might be in the current situation and how that might be reflected under the proposals in the bill.

Mr Dougherty: That is a good example of where that integrated provision would apply. The award provides that where you spend more than 50 per cent of your time those are the award provisions that apply. There is a historical difference between the Baillie Henderson terms and conditions versus the Toowoomba Base terms and conditions. There was an arrangement whereby, regardless of where you worked in mental health in Toowoomba, the Baillie Henderson provisions applied. But for some reason management in Toowoomba some years ago decided to change that and move nurses onto different conditions.

Mr WATTS: Some years ago, you said?

Mr Dougherty: Yes. The 1990s, I think it was. We have actually struggled ever since to get them back on the same sets of terms and conditions, but local management has opposed it. We actually had corporate office Queensland Health agreement on it and it was overridden by local management. That was just a few years ago.

Mr WATTS: A few years ago. So with the proposal that is before us now in terms of the bill, what will be the practice?

Mr Dougherty: It is a bit hard to anticipate, because the bill clearly envisages a range of matters being stripped away and it depends on how far that stripping exercise would go in those facilities. I think Baillie Henderson is a very good example of the dangers of this legislation. As you would know, Baillie is going to go through a major restructure. It is going to be downsized significantly. We are working cooperatively with local management in consultation to manage that

process over the next year or so. But over the top of all of that is going to be a stripping back of their terms and conditions including, potentially, their redundancy entitlements if there are going to be redundancies, which we would anticipate. That is just going to create considerable uncertainty and distress, I would suggest.

Mr WATTS: Just to clarify one issue, on Wednesday it was outlined clearly that the redundancy provisions are a minimum and that the redundancy provisions that were put in place by the Newman government are actually the most generous the Public Service has ever had. So I am not as concerned about the redundancy conditions as you might be.

Ms Mohle: I can tell you that our delegates in Toowoomba are very concerned about it. I am in the middle of doing a round of meetings of delegates around the state. I have just returned from Hervey Bay this morning. The main issue that was raised in the Toowoomba meeting of delegates is exactly that issue.

Mr WATTS: I absolutely understand that they are concerned about it—

Ms Mohle: Very concerned.

Mr WATTS:—which is why I asked the question on Wednesday, to get clarification to remove that fear. This is a minimum and the provisions that exist currently are the best that the Queensland Public Service has ever offered.

Ms Mohle: I think Mark's point about the work we are doing with local management about managing that significant change process up there is a really important one. Since EB6 we have been involved in a cooperative industrial relations approach with Queensland Health known as interest based problem solving. That is going to be totally put at risk because of this adversarial approach and the stripping back that is actually occurring. So that is the concern we have: what it does to the way in which you conduct workplace relations, not only at the central level but also at the workplace level. In health care it is predicated on good relationships. You will not actually have improvements in health care unless you have good relationships, not only with the employees. We have well over 90 per cent membership in Queensland Health in terms of our density. It is critical that we keep that. I can tell you from the feedback I got from members just last night in Hervey Bay that they are most concerned about what is happening already in relation to relationships at their workplace, and their fear is that this will just undermine them even further.

CHAIR: Mark, my question to you was: can you outline how many sets of terms and conditions in the nurses award and in the agreement. I did not get a number from you. Do you not know?

Mr Dougherty: I do not have a precise number.

Ms Mohle: We can provide that information to the inquiry. If you want to provide a direct question, we can provide even a summary.

CHAIR: I will put it on the record. Can you outline how many sets of terms and conditions there are for nurses in the award and the agreement? So you can provide that to us?

Ms Mohle: We can provide a summary and we can provide that information.

CHAIR: Thank you very much for that.

Ms PALASZCZUK: Beth, earlier you mentioned that you were concerned about the compromised position of professional development. Could you just explain to the committee what impact that is likely to have on the workforce in terms of upgrading their skills?

Ms Mohle: Certainly it is critical that we have professional development leave and the allowance. As I said, it has only been in since 2006. It is vital to the restructuring and the reengineering that is happening within health care, particularly with the development of new facilities such as the new Queensland Children's Hospital. We will need many, many more paediatric specialty nurses, for example. So having the ability for nurses to upgrade their skills and to have this at their own control—so they have control over their own professional development and the skills they want to develop but also that Queensland Health requires them to develop, given the changes that are happening in the health service. It is critical that they have the ability to do that and that that is in their control. It has probably been one of the most popular developments that we have negotiated on behalf of members that I can recall in recent years. I know that medical officers had it for some considerable amount of time prior to nurses, but it is something that, as a profession, nurses and midwives in Queensland value very greatly. Not only is it of benefit to them; it also benefits the whole system.

CHAIR: Well, all professions. There is nothing stopping anybody from having professional development.

Ms Mohle: But there was not previously an entitlement to the leave or to actually have any money towards that. So in the past, nurses and midwives have had significant difficulty accessing SARAS leave, for example.

CHAIR: For professionals, I am just having some difficulty with that. As a lawyer I do my professional development. I take it in my own time et cetera. Could you please expand? Isn't that the whole idea of a professional? That is what a professional does. They continue to develop. It is lifelong learning.

Ms Mohle: They certainly are doing more than that in their own time. It is a requirement of registration that they do three days per year. Our members do very much more above and beyond that, but this is something that is actually a benefit that has been had by medical officers and others for many years within Queensland Health. As I said, our members do much more than three days professional development. There are also the mandatory requirements that they have to do in terms of CPR and medications and the like that are on top of that as well. So that is inherent in the job.

CHAIR: I understand the issue.

Ms PALASZCZUK: In relation to the winding back of entitlements and the significant reduction in allowable matters to be included in an enterprise agreement, do you believe that this is in some way preparing for the mass outsourcing of many areas of public health care?

Ms Mohle: That is a concern that we have given the privatisation agenda that is already underway with Sunshine Coast University Hospital and expressions of interest in the Queensland Children's Hospital. So that is something that we are very concerned about. We have already seen a diminution of entitlements. If you look at what has happened at Yaralla Place, which is a state government nursing home in Maryborough, that has been outsourced. It has been sold off to PresCare. What that has meant for nurses and midwives who were employed there—they have all been made redundant, the 80 or so staff—is a drop in wages of $12,000 on the base wage for an RN and about $8,000 on the base salary for an AIN and a lot of other significant entitlements that are cut above that, and PresCare is a good employer in aged care as well. It is not as good as Blue Care—that is probably the best employer in the aged-care sector—but PresCare is up there in terms of conditions of employment but they are far below what Queensland Health employees have, and it is an agenda of forcing down wages and conditions in our view.

Ms PALASZCZUK: I have one final question for the AMA. You mentioned 3,000 senior medical officers and 900 VMOs and the concern is that because of the decentralised nature of our state some of these doctors may look at interstate. What sort of impact do you think, say, a five per cent reduction of these professionals would have on our public healthcare system? I am very concerned that with this transfer to individual contracts we are going to see people leaving. Is that going to really stretch the ability for doctors to respond in our public healthcare system?

Mr Turner: The Australian Medical Association Queensland is very concerned about what these changes will mean with regards to workforce—workforce both here in the metropolitan south-east corner but also in regional Queensland. Coupled with the fact that there are no provisions in these anticipated contracts around working hours, around fatigue management and other sorts of weekend work, you are going to say—if you are a doctor, a senior medical officer or a visiting medical officer—that the terms and conditions offered elsewhere, either interstate or in the private sector, are much more generous and so you will see a mass resignation of SMOs and VMOs as a result of this translation or transition. Coupled with the pace with which this is happening, there is so much information. We have 4,000 medical officers across the state. Queensland Health is expecting each individual negotiation to take four hours each. That is a huge amount of time with these medical officers. They do not have that time. The administration currently does not have the ability to negotiate that. So it is going to lead to a bottleneck. There are problems that are going to arise because of the vast nature of the negotiation. As I said at the very beginning, there is information that the department of health still does not have about how this is going to work, yet it expects all doctors to be signed up by April.

Ms PALASZCZUK: Could you finally just—

CHAIR: I might follow up just while we are on that train of thought. It still ultimately, like the rest of Queenslanders, comes down to the marketplace negotiation, doesn't it? For instance, it is a bit of a scaremongering tactic to suggest that they are all going to leave the system, isn't it?

Mr Turner: Doctors are different in the sense that, like other emergency services, there need to be arrangements around fatigue. They are gone. With the award, they are going. In terms of hours of work, again, you are going to lead to serious issues around the provision of medical services as a result of these doctors being stretched to capacity. So if doctors are presented with a situation where those awards and enterprise agreements are going to be removed, then you will see that doctors will not necessarily be able to provide the same level of medical services, and that could impact upon workforce and quality of outcomes.

Ms PALASZCZUK: Just on that particular issue, if I may, you mention fatigue issues. Could you please expand to the committee, because I know this has been raised in the media before? I am really concerned about the fatigue issues and the impact that that will have on our doctors and the delivery of services.

Mr Turner: This, I think, is an important distinction with what current arrangements are in existence as opposed to what is proposed. The current agreement—senior medical officers are under the MOCA, the medical officers certified agreement—provides a 10-hour break in between shifts. It is gone.

Ms Mohle: Same for nurses.

Ms PALASZCZUK: So same for nurses—okay; 10 hours—and what does it become?

Mr Turner: Nothing, owing to operational requirements.

Mr WATTS: I have one question and then a follow up. The individual contract trigger, if people wish to negotiate, is $129,300. I am just curious: how many SMOs and VMOs would be below that figure?

Mr Turner: None.

Mr WATTS: So in terms of all of the loss of terms and conditions that you are talking about—bearing in mind these are base terms and conditions—if they entered into an individual negotiation they could actually negotiate for terms and condition increases; yes?

Mr Turner: The nature of the negotiations is going to be quite regimented in the sense that the template contract will be agreed upon and then there will be this other information about remuneration, but owing to the pace and costings it still has not been concluded.

Mr WATTS: But if I might, for example in my area and in regional Queensland one of the issues always is attracting people. So I would speculate that the health and hospital board may well in fact come up with terms and conditions that are more favourable and actually encourage people rather than strip them away, because what we need is doctors who are willing to come and live and work in regional areas. Would you not say that that is a possibility in a negotiation?

CHAIR: I would suspect a probability, but please tell us of your vast experience.

Mr Turner: Thank you, Chair. I have just returned from Central Queensland—Emerald, Biloela, Rockhampton and Gladstone—and you will find that the majority of staff in those hospitals are in fact locums. So you will find that they are not employees at all; they are independent contractors who are paid a huge amount on a daily rate—and I will not go into the specifics of it—as an enticement to work in regional Queensland and so they actually do not fall in the wages line item for the hospital because of the inducement that is necessary to get doctors to work in regional Queensland.

Mr WATTS: I guess that is my point—that is, in a negotiation to try to attract doctors to not be locums but to actually become permanent employees and live in that area, there would be potential significant flexibility gains and significant income gains to attract them to those areas.

Mr Turner: As I say, there is no certainty around the negotiation for two reasons. One, there is not any certainty that the rate of pay will be translated with these new contracts one to one. We are ultimately of the opinion that they will not be in the same position now, coupled with the fact that we do not know because the agency or the organisation that has been engaged to provide this information has not finished their costings or their modelling. So I cannot answer your question owing to the pace of these negotiations.

CHAIR: That concludes the committee's questions. Thank you for your attendance today.

MARTIN, Mr John, Research and Policy Officer, Queensland Council of Unions

SWAN, Mr Ben, Secretary, Australian Workers Union

CHAIR: I welcome the representatives from the Australian Workers Union and the Queensland Council of Unions. Good morning and thank you for coming along today. Do you object to being filmed or recorded by Hansard and the media?

Mr Swan: I do not object.

Mr Martin: No objection.

CHAIR: I will take that as a consent. Can you confirm that you have read the guide for appearing as a witness?

Mr Martin: That is correct.

Mr Swan: I have read them.

CHAIR: I ask you to make a short opening statement, if you wish. The committee will then have some questions for you. Thank you.

Mr Martin: Thank you, Chair. I think from the outset I can rely upon a number of the submissions and statements that have been made today, so I do not intend to go over too much old ground. What I had intended to do, having had the opportunity to sit through this session and also the departmental briefing, is perhaps add some clarity to responses that you have received. First of all, I will start with the award modernisation process, and how it differs from the Fair Work Act and the process there is the necessity for it in the first place. In the case of the Fair Work Act, as has been rightly pointed out, it was a carryover from Work Choices, which was a hostile takeover of state jurisdictions, and a beast known as NAPSAs, which was Notional Agreement Preserving State Awards, were created. There were some 3,000, I think, awards of that nature that came from the state jurisdiction and were transferred to the federal jurisdiction. The process needed to occur—I do not think anyone believed it was going to happen, but it actually did—and it was reduced to 200 modern awards. You are not dealing with that set of circumstances here, so the necessity for modernisation does not exist. Moreover, the existing state act—the Industrial Relations Act—has had an award modernisation process in it since its creation in 1999. That has been under the supervision of the Industrial Relations Commission and the parties to awards have been very diligent in the upkeep of awards. So if I could start from there.

There is one matter that you raised, Chair, with respect to annual leave. I do not think that we object to the cashing out of annual leave and the means sought, but just for the point of clarity—and I think the LGA confirmed that this morning—the facility does exist for an employer to direct an employee to take annual leave. I recall an accounting lecturer saying to me that whilst I thought annual leave was a condition of employment it is actually an auditing process whereby you get people out of their job, which is essential to do. Particularly ones with financial responsibility, it is good to get them out of the chair for a number of weeks per year. But in any case—

CHAIR: I think that is the design for annual leave, but when you get an employee who simply does not take it, according to the LGA, to the point where it is $3-odd million, the loss of the benefit of the annual leave has gone, hasn't it? If you still have some in tow, it has lost its purpose, I would have thought.

Mr Martin: The point that I was trying to make is that the specific right exists in the legislation for an employer to direct an employee to take annual leave, but it has probably exhausted the—

CHAIR: As you say, you are not objecting to it and it seems to be harmonious with it, doesn't it?

Mr Martin: The other comment that you made, Chair, was that bargaining will work when the time frames are set. I think you have heard today from the UFU, and having been involved in that process personally, about the sorts of time frames that you talking about within government institutions. What my friend from the UFU did not add is also approval process—that government, everything that is done within government—

CHAIR: Approval—meaning?

Mr Martin: Meaning that when you are negotiating with a government instrumentality there are a number of layers of approval that have to be reached, and that is what takes the time. Moreover, I would have to say that the conduct of negotiations that have occurred to date have—and there are three exceptions to that where agreement was reached—consisted of government representatives putting the position on the table and saying, 'That's it and unless you accept this,' which is clearly unpalatable to a majority of members of the union, 'then there's no agreement.'

CHAIR: If I could just return to that, at the same time there have probably been about 3,000 books written about negotiation and everybody of course comes out for a media conference to say, 'We're doing the best. We're fair.' I do not mean any disrespect, but negotiation involves negotiation.

Mr Martin: I guess we can only really assess the speed at which negotiations occurred with respect to the Newman government and previous governments and with employers elsewhere, and you would have to say by any objective measure the level of disagreement is extraordinary. It is quite notable the number of agreements, and that is what has been the spike in the Industrial Commission's workload—that is, that everything has gone to arbitration—and the advice that government has got is, 'Don't agree on anything. Take everything to arbitration,' and this has been the outcome.

CHAIR: But at the same time in any negotiation, ultimately—if it is a claim for personal injuries, a contract—you negotiate or you go to court. Isn't that the thrust of it?

Mr Martin: Yes, but there is usually some capacity for agreement, which appears to be absent.

CHAIR: Yes. If you are reasonable people you get an agreement. If you do not get reasonable people—

Mr Martin: Exactly, and there has been no demonstration of reasonableness by this government, which is precisely what this—

CHAIR: Well, the government could very well say the same—

Mr Martin:—precisely what this legislation is about—

CHAIR: The government could very well say the same thing about the unions, couldn't they?

Mr Martin: Precisely what this legislation is about is imposing—

Mr BYRNE: Can we just get through the opening statements first?

Mr Martin:—your views on your workforce, because it is clear you cannot negotiate with them. Every step of the way, this government has tried to get their way with their own workforce. You put the core agreement out for a ballot. Seventy per cent of your own workforce voted against it. That was one of the delays. Whoever was doing the numbers on that particular count did not do a terribly good job. So on every possible case, there has been an obstructive attitude adopted by this government.

CHAIR: Thank you so much for that. Member for Rockhampton—

Mr BYRNE: I am just trying to get through the opening statement, if you do not mind.

CHAIR: I thought he said he was not making an opening statement.

Mr Martin: No, no, I am just trying to address some of the matters that were previously—

CHAIR: Sorry, this is your opening statement?

Mr BYRNE: That is right.

Mr Martin: If I am permitted without interruption we might get through this a bit quicker. And my point is—

CHAIR: Sorry, you have certainly got at least 10 minutes left.

Mr Martin: The other matter that was raised was with respect to the total remuneration costs and that was raised by you, Chair—the $129,300. That includes a superannuation contribution. That differs somewhat from the Fair Work Act and I think that has been expressed. Why that is an added complication is that superannuation contributions will vary according to co-contributions. So there could be a complexity that has not been considered. I think that is probably worth you taking into consideration, because if an employee makes a co-contribution, they will get a higher superannuation contribution made by their employer.

The member for Broadwater raised the issue with the department concerning protected industrial action. I think the question went along the lines of, 'It has been suggested that protected industrial action no longer exists.' The answer that was given by the departmental officers was, 'Yes, it does.' However, I think you have heard in subsequent answers and subsequent submissions that, in reality, it does not. Whilst it exists in the legislation, the reality is that the definition of what is relevant industrial action, which will punt you into conciliation, is combined with the protected action ballot order and the time frames associated with that. That would mean that there is no likelihood of any protected industrial action. What does that do? That strips away a right

to collective bargaining and a right to organise. That has been previously submitted by the Queensland Nurses Union as being contrary to a series of ILO conventions. The member for Bulimba—

CHAIR: No, in your opening statement cannot refer to previous questions—if, in fact, it is your opening statement. I will go into questions.

Mr Martin: Why is that?

CHAIR: Because I have just ruled.

Mr Martin: You have ruled that I cannot—

CHAIR: I have just ruled on it. Okay?

Mr Martin: What is the ruling, please, Chair? Can you please tell me the ruling?

CHAIR: Member for Bulimba.

Miss BARTON: Is Ben Swan going to give an opening statement?

CHAIR: Sorry. We will have your opening statement and then we will go to questions.

Mr Swan: Thank you. I do not intend to traverse a lot of what has been covered by various of my colleagues in the union movement. I think it is fairly well understood that there are some very serious concerns about the design and construct of the legislation. My comments will be limited to what I think are some of the more pertinent areas and that sits around judicial independence and how it is through this legislation that the processes that have been applied and been well established in this state for well over 100 years—indeed, if you look at the Commonwealth system for over 100 years and very near Federation—are now being truncated to the point where the 'rights' that are scheduled under the proposed bill are rights in name only and not in effect. I take the point that my friend has made and that others have made concerning issues around enterprise bargaining, for instance, and the fact that the composite effect of what is being proposed is that the system of bargaining as we know it now no longer exists. In fact, it is in name only. It is not certainly not in effect or substance.

That is a significant issue for the people who I represent. A third of my membership in Queensland sits within the public sector—so a combination of people who work in state government departments but also in local government. These are the people who do not do the most glamorous jobs. They are often the lowest paid workers in terms of the classification structure, although our coverage is exceedingly broad and we represent a fairly good mix of people throughout the public sector. But by and large, the bulk of our membership, particularly if we take Queensland Health, for instance, sit at an OO2 or an OO3 level. They are often typified, in terms of membership profile, as women who work in precarious forms of employment and who have to manage all the things that women in a modern economy have to manage, particularly around family responsibilities. The only meaningful option that a lot of those workers, and indeed a lot of those members of the AWU, have to engage in a process of obtaining better wages and conditions, or at least protecting wages and conditions, is through the enterprise bargaining system. A lot of focus has shifted away from the award system itself. That is not to say that the award system is defunct or that it serves no purpose; it actually serves a very real purpose.

We saw the importance of maintaining the integrity of the award system through the Howard years. I just want to correct something, Chair, that you raised earlier, I think, with the Queensland Nurses Union or with the QTU. The advent of award modernisation or simplification did not start with the federal Labor government post 2007; it was actually a process that commenced in 1998.

CHAIR: I think that point has been made.

Mr Swan: Okay.

CHAIR: Thank you.

Mr Swan: I just wished to clarify that. I only say that because I have been involved over my yearly 20-year career in industrial relations in various capacities through the Australian Workers Union both in this state and nationally. I have been involved in some fairly high-level discussions and negotiations sitting around award review matters. So I have a reasonably good comprehension of the history and a fairly good comprehension of the designs and the methodologies that have gone into arriving at the particular points of conclusion.

CHAIR: Just on that point, basically, what I was saying is that the modernisation is not dissimilar or is the same as what was started under Fair Work with Julia Gillard.

Mr Swan: The proposed process of modernisation in the state equating to what was undertaken at a federal level through the Fair Work Act? Then I would disagree that it is concordant for the reasons that I have identified in the written submissions.

CHAIR: Indeed.

Mr Swan: It is simply not.

CHAIR: All right. Sorry, I did not mean to interrupt you.

Mr Swan: No, that is okay. I am fairly fluid through this particular process. The point is that, for members of my union, the protections that are afforded under the award system are critically important, but the enhancements that we obtain through the enterprise bargaining process are also equally important. I think in terms of some of the more punctuated areas within this bill, that the structure and design within the bill will have the effect of obfuscating and delaying and putting roadblocks in the place of the progression and the finalisation of enterprise bargaining outcomes for people who can least afford that. I am not sitting here representing people, for instance, over that threshold—the high-income threshold; I am talking about people who earn $38,000 to $48,000 a year and who struggle to make ends meet. They cannot afford that delay. They cannot afford the obstacles to having effective bargaining. The only means of them obtaining any wage and condition justice is to have access and resort, on some occasions, to what is recognised as a human right in the form of withdrawing their labour.

We have had some fairly big stoushes with all governments over the course of our history. I was personally involved in the last Health EBA negotiations to the point where this thing persisted for nine months. There were 308 logs of claims. Numerous unions were involved. Things got bogged down. Tempers got frayed. I think we ended up in 4,500 individual pieces of work bans throughout the state. It took the active intervention of people who could actually make decisions to get a result and we knocked over a resolution in a day and a half. I take the point that Mr Martin made that oftentimes in the public sector EBA negotiations we are simply staring at actors who have absolutely no capacity to make decisions or to carry instructions forward because of the approval processes within the internal mechanisms of government.

CHAIR: But does it not equally apply for the government to say that they are staring at people who cannot make decisions?

Mr Swan: No, no.

CHAIR: That you have to go back to your own—

Mr Swan: Not when I am sitting in the room, as I was. I am it. I make the decisions and equally—

CHAIR: You have the imprimatur from your members before you go in?

Mr Swan: Absolutely.

CHAIR: So if there is any change you still have the imprimatur to be able to change your—

Mr Swan: There are various different models that we apply. Oftentimes in the larger sets of negotiations, where you are dealing with multiple of thousands of members, it is not possible to engage in the process of a report back after every meeting.

CHAIR: I agree with you. I am just interested in you saying that.

Mr Swan: There are various models that get employed around that. I think in this day and age the process of communication is a little bit easier than it may have been at the start of my career in IR, where everything was analogue and it was not digital. Everything was paper based; it was not electronic based. Nevertheless there are still some significant obstacles that get put in the way. I do not think that this bill will do anything to ameliorate the effects of those obstacles. Whatever those present obstacles are, I actually think they will aggravate them. But in doing so they will deny people some pretty fundamental rights and they also hamper the ability of the industrial commission to effectively and quickly and fairly deal with outcomes. I think we need to put that front and centre of the equation.

I come from experience. I worked in the industrial commission for many years as an associate. I have been a practitioner in the industrial commission as an advocate. So I have a fairly healthy understanding of the roles, the history, the rights, the obligations and the responsibilities since the advent of bargaining. My commencement in my career in industrial relations happened to coincide fairly shortly after the introduction of the reform bills in Queensland and federally. So I would like to think that I speak with a degree of authority when it comes to—

CHAIR: I understand your credentials. We just need to get on to questions, that is all, because we will run out of time.

Mr DILLAWAY: Mr Martin, I just want to draw your attention to clause 42 in the bill in regard to an employee's remuneration. It does not include superannuation contributions made by the employee but facilitated or paid on the employer—

Miss BARTON: Page 167.

Mr DILLAWAY: You just touched on that. I thought I would address that straightaway for you. If somebody is putting additional money into superannuation, that is not—

Mr Martin: No, no, sorry, member for Bulimba. I understand what you are saying. It is not the employee's contribution, but if the employee is making a co-contribution, that increases the level of the employer's contribution. So that goes from 9.75 to 12.25, or something of that nature, yes.

Mr DILLAWAY: Right. I understand. You touched on your concerns and that modernisation is not necessary. I just want to draw your attention—and maybe get a very quick comment from you—we have seen here in Queensland through the bungled Health payroll implementation the complexities of having so many conditions attached to Queensland Health that saw that implementation blow out to $1.2 billion. Do you not believe that, with a modernised award, that would potentially have alleviated some of the costs to the Queensland taxpayer?

Mr Martin: Firstly, I will say that I had no personal involvement, for which I am grateful, with that occurrence. But from what I understand—and this is all second-hand—it would have happened, anyway. The main reason for the payroll crash was an absence of trialling. What a lot of people have subsequently found out is the way in which you would have done that to avoid the disasters that occurred is that you would have picked the smallest health region, or district, or whatever it was called at that point in time and trialled it there in the first instance.

I am not sure that the award modernisation would have prevented what actually occurred. I did note with interest the front page of the *Courier-Mail* in which a number of allowances have been, I guess, held out for some sort of critique, but I would also say that from my experience employers are often penny wise and pound stupid when it comes to payments of that nature. There has been, we have heard, for the entire time that Mr Swan has been associated with industrial relations, reforms and capacities for employers to even out payments and it is often done. And we will return to superannuation: the reason that it is often not done is because if an allowance is rolled into the base rate it will become superannuable. There are whole range of reasons as to why complexities exist and I think it would be naive to believe that it is purely as a result of outdated awards. The capacity has existed for some time to do something about it.

Mr DILLAWAY: You were highlighting before the length of some of the negotiations in the past. I want you to outline how long it took for the 2009 ambulance agreement to be finalised from beginning to end.

Mr Martin: Was that the arbitration?

Mr DILLAWAY: The whole process.

Mr Martin: The 2009 arbitration was, from memory, more than a year. I know that much. That is what I am led to believe. There will be representatives of United Voice who may be better able to—

Mr DILLAWAY: I will ask them.

Mr Martin: But, yes, it was a lengthy period of time.

Miss BARTON: I just had a question first for John Martin and then a separate question for Ben Swan, if I may. I read in the *Courier-Mail* that John Battams—who is your president; is that correct?

Mr Martin: That's correct, yes.

Miss BARTON: He said that workers' redundancy entitlements were being capped at 16 weeks and that this was part of the government's so-called plan to reduce public sector employment. Do you accept that those comments were made?

Mr Martin: They sound accurate, yes.

Miss BARTON: Earlier, when you very kindly repeated back to me the question that I asked and the answers that I received, you made clear that you had attended the public briefing on Wednesday from the department.

Mr Martin: Yes.

Miss BARTON: Would you therefore accept, given that the department has highlighted that there is a sliding scale that goes up to 52 weeks in terms of the redundancy entitlement—

Mr Martin: That is contained in the directive.

Miss BARTON: Would you accept that there is a sliding scale that includes the potential for 52 weeks?

Mr Martin: There is a sliding scale that is two weeks per year of service up to a maximum of 52 that is contained in a directive.

Miss BARTON: You would accept therefore the comments that John Battams has made about there being a blanket cap of 16 weeks as being wrong?

Mr Martin: No, and I will explain why, if permitted. The biggest cause of concern for the union movement and for employees of the Queensland government is the exclusion of redundancy packages from any industrial instrument other than what is expressed as the 16 weeks. What is happening as a result of this legislation, and this is one of our complaints with it in general, is that you are saying you can talk about this, you can agree to this, but nothing else. What it is saying is that the only provision that can be contained in the industrial instrument is 16 weeks. That means that should a union and its members wish to seek that the more generous provisions that are contained in the directive are included in a legally enforceable document, they are prevented from so doing. What this bill intends to do is leave that larger, or the more generous, provision as being at the sole discretion of the employer, which is in this case the Queensland government.

Miss BARTON: With all due respect, Mr Martin, that was not how John Battams phrased his comments and I would argue that his comments were scaremongering and were incredibly irresponsible.

Mr Martin: Okay, you can make that comment.

Miss BARTON: With all due respect, the way the comments were phrased and framed were that there was a singular cap of 16 weeks, and I believe that that is an incredibly irresponsible comment to make, given that the department has clearly highlighted that we have the most generous scheme that Queensland has ever had, but I thank you for taking my questions. I did also have a question for Mr Swan. It is my understanding that officials from your union had instructed members of your union at the Royal Brisbane Hospital that they were not to clean up clinical spills and as a result that has meant that clinical staff are picking up the slack. I was wondering why it was that your union had made that directive and instruction.

Mr Swan: When are you saying this instruction was made? I want to correct something for the record. A union never instructs its members to do anything. Members authorise the union to convey their wish to employers. That is what democracy is within union structures. I do not sit here as a union secretary at level 12/333 Adelaide Street issuing little broadcasts out to pockets of membership.

Miss BARTON: I am not saying that you personally did it.

Mr Swan: No, but none of my officials instruct members to do anything. We do not do that as a democratic organisation.

Miss BARTON: I was simply seeking to clarify whether the reports that I had heard, the directives—

Mr Swan: Well, answer the questions about where—so what units; when, in what context? Are we talking about it in the context of enterprise bargaining negotiations or are we talking about it generally?

Miss BARTON: The information I had been given was that clinical staff at the Royal Brisbane were cleaning up—

Mr Swan: I cannot comment on your information if it is incomplete.

Miss BARTON: That is simply why I am asking the question, so that I can flesh out the detail. I am trying to at least give you the opportunity to respond.

Mr Swan: You have got my response.

Mr BYRNE: The *Courier-Mail* was mentioned earlier on by John. You cover the cleaners and wardies and so forth. I was a bit disappointed in what was in the *Courier-Mail*, as most sensible people would have been. Can you actually explain for the consumption of the committee what is in dirty linen allowances and those sorts of things that are being swept up in all this.

Mr Swan: It is not a committee allowance, Bill, which I think a lot of my members would be pretty chuffed at obtaining for sitting on their posteriors. Cleaning laundry in a hospital is not like cleaning laundry at home. You are talking about things that are infected with pus, vomit, blood, faeces, urine and all the other things that go on with that. You are talking about linen that on occasion includes discarded needles, some of which may have been exposed to persons with particular infections. This is not giggles sort of scenarios in a hospital environment. These are the people who are doing the most unglamorous work in hospitals who earn, compared to other professionals or other people working in hospitals, nowhere near what they deserve, in my opinion. Taking a $1.50 allowance and converting it to a bonus, as if it is something to be congratulated for, let me tell you—I put the challenge out to every member here, please come out with me to one of the hospitals and you can spend a day cleaning linen, you can spend a day wading through other people's waste in live sewers. And try going home of a night after you have been up to your hips in live sewage and cuddle up to your misses, because I know what the answer to that proposition will be. Let us just put a few things into perspective when it comes around to this because it is almost as if the accusation is that these workers are stealing the money—stealing the money! How dare they! Go out and work for it. We had to fight in arbitration cases to win that. And that is when we took the independent umpire out. You go and do your inspections and you show them what the conditions are like. But put yourself in that shoe, that is my challenge to you.

Mr WATTS: If I might ask a question. I have been in that situation at Nambour Hospital where I was quadriplegic and I had people come and change the linen and wipe down the bed whilst it was covered in faeces. So I understand exactly what is entailed in that job in great detail. I also understand the humiliation that I felt in that situation. The fact that you think I do not understand I find personally offensive. I just wanted to get that on the record. The second part to my question is do you not think that if that is the job that people are employed in that that should be included in their base payment as opposed to an additional allowance?

Mr Swan: Well, look, if the proposition is that you want to front load allowances into base rates, fair enough, we will pick that up on the superannuation side of the equation as well. I think people in this government need to take a bit of a reality check. IR is a creature that has evolved in this country for over a century. It is a very specialised field of employment contract administrative constitutional law. You cannot unpick things without flow-on effects at some other level. There are arrangements and understandings that have evolved for very, very particular reasons, but the law of unintended consequences will prevail if you start introducing concepts like front loading things without understanding what the flow-on effects are going to be. Look, I am fairly agnostic, as it comes to it. You want to front load things into a base rate? Great, fantastic. My members pick up what will become the 12 per cent superannuation on the compound rate. It is your choice. You are the ones charting the direction here, not me.

CHAIR: I think we are a committee. That concludes the committee's questions. Thank you for your attendance.

BADKE, Ms Kylie, Senior Industrial Officer, United Voice

HARDMAN, Mr Des, Delegate, United Voice

SCOTT, Mr Alex, Secretary, Together Queensland

TUROMSZA, Ms Barbara, Delegate, United Voice

CHAIR: I welcome representatives from United Voice and Together Queensland. Thank you for coming along today. Can I begin by asking you do you object to being filmed or recorded by Hansard or the media and can you confirm that you have read the guide 'Appearing as a witness'? Can you please introduce yourselves, speak clearly for Hansard and then make a short opening statement if you wish. The committee will then have some questions for you.

Ms Badke: United Voice, on behalf of our 31,000 members, thanks the Legal Affairs and Community Safety Committee for the opportunity to provide comment and raise our concerns about this bill. With me today I have two union delegates. Barbara Turomsza is a school cleaner at Mount Gravatt State High School. Des Hardman is a radiographer at Logan Hospital. Both would like the opportunity to be heard by you and will speak for approximately two to three minutes each. I will then provide the official opening statement on behalf of United Voice.

CHAIR: If I might just indicate the time that we have got, because we want to allocate time for questions. I did say a short opening statement. We are here really to ask questions.

Ms Badke: If you can bear with us, I think what our delegates do have to say is important and we would appreciate that opportunity.

CHAIR: Continue.

Ms Badke: Thank you.

Ms Turomsza: Hello. My name is Barbara Turomsza. I am a school cleaner delegate for the United Voice. I am here because I worry about the removal of the workload management provisions and job security. If the workload management provision is removed it will impact on our children's health. School cleaners are vital in keeping schools and kids healthy and safe. Without thorough cleaning, our schools are the perfect breeding ground for germs and disease. If the calculation of cleaning time is removed from our agreement we will have to clean more rooms with fewer resources in the same time frame. Efficiency will go down and infection will go up.

In terms of job security, employment is very important to all workers, especially school cleaners. The uncertainty around whether our job may be outsourced is very stressful. It puts pressure on our families, especially our budgets. The threat that you may lose your job at any given time makes you second-guess purchasing goods such as a washing machine or refrigerator or getting a loan to buy a car. At the back of your mind you are concerned about being able to pay that debt. If job security is removed from the award our stability goes. That is all I have to say, thank you.

Mr Hardman: I am here today because I have a number of concerns about the proposed amendments contained in the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill. I am concerned about the rights and liberties of individuals being potentially lessened and/or removed. I am also concerned about the constitutionality of this legislation and our independent umpire being impaired in making independent decisions based on laws and rules.

I certainly believe that this is going to take away the ability of employers and employees in the Public Service to have negotiated outcomes that suit both the employer and employee and to bring people to the table to negotiate preferred outcomes for everybody. This process gives certainty and quality to the workforce. As an example, the health practitioners agreement, which covers people like radiographers, physiotherapists and pharmacists, came about not only to protect employees but also to ensure good outcomes for the health service and a quality health service.

The right for us to be able to sit and down negotiate and, if it comes to it, to take protected industrial action is very important. Protected industrial action means something can be done in a safe and considered fashion. Removing laws or giving a minister of a department too much power to stop things like protected industrial action from occurring may lead to workers taking other types of action that are not protected and are not organised, safe and well designed. Ultimately, as a health practitioner, as a radiographer, and a working Queenslander and taxpayer in this state these amendments do not represent to me what I would envisage a fair and just industrial relations system to be.

Ms Badke: It is the position of the United Voice that this bill is nothing more than a resurrection of the repugnant Work Choices regime rolled out by the Howard government. It comes shortly after Tony Abbott's assurances that Work Choices was dead, buried and cremated. United Voice takes this opportunity to remind the committee that Australians, including Queenslanders, resoundingly rejected the Work Choices regime. United Voice puts you on notice—proceed at your peril. These amendments are part of a long list of ill-conceived, poorly drafted and unbalanced changes this government has sought to make and has made to the laws of this state.

As the government enacts its agenda it is ensuring nothing stands in the way of its implementation. We see the howling down of dissent, vitriol towards those who dare oppose and the de-democratisation of debate. Meanwhile, services for Queenslanders are being eroded, cut, outsourced and privatised. We are seeing spin, hoodwinking and outright deceit, but United Voiced members are not buying a pound of it.

This bill serves as nothing more than an employer waging an attack on its employees—these public servant who dedicate their working lives to serving the people of Queensland. The changes are designed to remove protections contained—

CHAIR: If I might just—

Ms Badke: If you could bear with me.

CHAIR: How many pages have you got? I have heard it all before.

Ms Badke: I will take no longer than five minutes.

CHAIR: I have heard it all before, but if you want to go on you can.

Ms Badke: We represent a very distinct, diverse working group of people and I think that you should afford us—

CHAIR: You have five minutes.

Ms Badke: Thank you very much. These changes are designed to remove protections contained in awards and collective agreements and move employees onto individual contracts. By isolating and seeding division, this government seeks to disempower its workforce.

Significant changes will be made to the process of making certified agreements. When parties come together to negotiate certified agreements they will no longer be permitted to negotiate about matters essential to the employment relationship. For example, in the negotiation for the agreement applying to teacher aides, the parties agreed to maximise the number of hours provided to existing permanent employees. These are not only employee protections but enhance productivity and employee job satisfactory. It is entirely reasonable for industrial parties to be able to reach agreement on these types of employment conditions. This bill will make provisions like this one nonallowable.

Consultation with employees will be removed and replaced with managerial prerogative. This means that you fail to protect those with little individual bargaining power. You will significantly undermine the capacity for people to balance their paid work and family responsibilities.

One of the most important ways consultation affects our members is in relation to rostering. We have a high number of members with family responsibilities. The bill proposes to make provisions about flexible rostering arrangements nonallowable. We have 12,000 female members who will have no protection in negotiating their roster and will have no guarantees they will be given sufficient notice of changes to their working hours. If an award cannot have provision in it for flexibility about rostering, employees will have no guarantees that they will have access to part-time arrangements after their return from parental leave.

It also appears that modern industrial instruments will have no mechanism for employees to dispute an employer's decision to not grant them flexibility in rostering because it is non-allowable content. This means dispute provisions will not apply. Therefore, an employee returning from parental leave who cannot agree with their employer about their hours of work will have no remedy available to them. We have concern about individual flexibility arrangements. Under the current terms there are no safeguards. This government is not taking steps to ensure that the terms of an individual flexibility arrangement will result in an employee being better off overall.

As a disaffected stakeholder, it is difficult for us to distinguish whether it is by design or through incompetence that this government is failing to consider the needs of the most vulnerable sections of its workforce and their families. This government will take female participation back to the dark ages.

We are extremely concerned that parties cannot negotiate redundancy provisions in excess of the QES. This is a significant departure from the longstanding entitlements of public sector workers. Ambulance officers fear that if important fatigue management and rostering provisions are removed from agreements it will only be a matter of time before this will lead to injury or even death of an officer, patient or member of the public.

Many of our members in the health sector may become high-income employees because of the low threshold. The threshold does not mirror the Fair Work Act. Advanced clinicians could also be captured as the threshold includes superannuation. These employees, regardless of whether or not they agree to an individual contract, could simply, by regulation, become high-income employees to whom none of the protections of an award or agreement would apply.

This new regime will set specific timetables for the completion of vital steps into the process of establishing and settling agreements. The specified times bear no relationship to any realistic precedent and appear to be a completely arbitrary set of numbers, determined by a boffin with no reason or experience of the process.

In keeping with the bill's theme of unreasonable and unrealistic time frames, the award modernisation process will be imposed upon employees in an extremely short time frame with virtually no transition. An arbitration for ambulance officers is currently before the full bench of the commission. Once the matter has been determined, it will become a premodernisation industrial instrument under the bill. New modern awards, however, will not apply to the ambulance determination. This means that there will be a period where the determination will operate without an award and ambulance officers will lose the basis for some of their terms and conditions. Transitional arrangements have not been adequately addressed in this bill. Our position is that there is a risk workers under a modern award will be left worse off.

United Voice is gravely concerned about the intended ministerial interference in the judicial powers of the Queensland Industrial Relations Commission. Once the independence of the judiciary is usurped by government, democracy is no longer an appropriate definition for this government.

In closing, history tells us that Queensland, with its unicameral parliament, is vulnerable to the excesses of power. On behalf of our members, United Voice expresses its great concern at the path this government is leading us down. Without checks or balances, this parliament is governing for a political elite, a business elite and a wealthy elite. We implore this committee to appropriately consider the far-ranging implications of this bill. Say no to a system that is worse than Work Choices. Thank you for the opportunity.

CHAIR: I did not realise so many small business were in the elite. Thank you for making that clear to me. Mr Alex Scott, please take as long as you want.

Mr Scott: I assume I am limited to five minutes. Thank you to the committee for allowing me to speak today. I know you have had a number of submissions already in relation to the technical nature of this legislation. As someone who has spent 23 years in the industrial system in Queensland, I particularly want to focus on the implications this has for our hospital system and for our doctors.

Over my period of time with our union I have been privileged to work very closely with senior medical officers who I find to be some of the most talented, the most dedicated people and some of the most professional people I have ever met. I am always glad to know that when I put my family in hospital that they will be treated by the best people who have their lives in their hands and they make every decision they can to save the lives of my family and make sure the Queenslanders they treat have the best possible care.

Queensland Health does not have a proud history of its internal bureaucracy. It does not have a proud history in relation to the bullying that goes on. Its culture is poisonous. That culture has continued to get worse in the last 12 months as billions of dollars in future budgets have been stripped away and thousands of clinicians have lost their jobs.

I am deeply concerned that this legislation fundamentally changes the balance of power within the health system. Strong, good clinicians—senior medical officers and similar levels within clinical work—are going to be placed on one-sided contracts that are unenforceable from their point of view and give a complete capacity for the employer to change their mind at any time. This is a fundamental balance of power change within the health system.

So far the government has sought to vilify health workers, whether they be cleaning the laundry or my members—the senior medical officers who have been using the private practice arrangements as developed and approved by this government. But somehow, through the media, the minister seemed to say that private practice arrangements are a greater financial fiasco than the Health payroll system. That is complete rubbish.

The private practice arrangements are fundamentally important in terms of attracting and retaining the best doctors we can in Australia. These are great people, but they have choices. They can work elsewhere. This committee needs to understand, if the legislation goes through and the draft contracts, as we understand them, go through—and I would implore you to get briefings on the nature of those contracts—what we will see is a complete power balance change within the hospital system and Queenslanders will die unnecessarily at the hands of this parliament. At the moment there is a fundamental difference between the work done by senior medical officers who are dedicated individuals trying to save lives and do the best for patients and senior managers who are under strict instructions to balance the budget.

At the end of day, when my children are in the hospital ward, I want the person making the decision to care about them not the budget. This contract is about reforming the certainty of employment for senior medical officers. I think that will dramatically change the ability of senior medical officers to stand up to hospital managers, to stand up to those people in Charlotte Street and say, 'No, this is wrong.' We have already seen a number of senior medical officers move sideways under the current regime. What the contract arrangements would allow is for those people to be dismissed if they stand up and say what the government does not want to hear or say what the health managers do not want to hear.

This government has historically used its power in parliament to override collective bargaining agreements. This legislation would allow local managers to override the contracts that are in place. If you sign a contract in the private sector, you sign a contract that gives you certainty. If you are a senior medical officer with a gun to your head over your income and you sign a contract, the employer can change that contract whenever they like.

But the most evil part of this legislation is the complete deregulation of hours for senior medical officers. For years, through collective bargaining, doctors have been warning managers that, no matter how talented and no matter how dedicated these doctors are, if you work shift after shift after shift, if you work excessive hours, you will become sleep deprived and you will make the same mistakes as if you were under the influence of alcohol. The process of moving doctors away from collective bargaining, where they have a voice and a guarantee about inappropriate shifts not being worked, to the contracts that we believe are being proposed by the health system will remove any guarantees senior doctors have in relation to saying, 'Unreasonable hours, no. I am too tired to see this patient. I need to go home and rest.'

At the moment the department tries to get around that, but there is a significant financial penalty. That is why we have fatigue leave clauses, to force hospital managers to manage the staff to fix the patients. The annualised process being suggested under these contracts will mean people do not lose money but work excessive hours, and the parliament will be giving to local hospital managers the ability to manage the hours of doctors. We think that will be an absolute disaster, because we know historically that prior to collective bargaining hospital managers worked junior and senior doctors for far too long. Mistakes were made; people died. This will happen in your electorate unless you stop these contracts.

Unless you find a system that will guarantee that senior doctors—some of the best, smartest and most dedicated people in our society—have a real voice, you will give back the power to the people who run the Bundaberg Hospital, to the people who ran the Health payroll debacle, to the people who now run our hospitals for the sake of the budget, not for the patients. These are the people you want to give the power to to determine how long a doctor should work. I say to you that doctors are smart, great people. Let them decide when they are too tired to work. Let them decide what is in the patient's best interests. Do not change the power balance within a hospital to give more power to hospital managers, to give more power to the people who care about the budget.

Take a hard look at our health system. It is in crisis because of budget cuts. You may want to make doctors be silenced through a contract system, but whatever you do make sure you do not allow a contract system to come in that gives unfettered power to the employer, to allow for deregulation of hours of work, because deregulation of doctors' hours will mean they work shift after shift because it is easier for hospital managers and there will be no financial penalty. Have no

doubt, Queenslanders will die, the children of your constituents will die, if you let this legislation go through. This is not about industrial relations. This is about the health system and this is about giving doctors a real say.

CHAIR: Does anybody have a question? Is there anything we can gain—

Mr BYRNE: I have a couple of questions. Obviously the rest of the committee are feeling a little disillusioned; I am not.

CHAIR: Well, I do not know. I think the payroll system happened under your government and the Bundaberg fiasco happened under your government. But, by all means, go ahead.

Mr BYRNE: You guys only have to put up with this for half an hour; I do this every day of the week! I would just like to talk quickly about the consultation mechanism. How much engagement has either of the unions had in the preparation of this material? Has there been any consultation with unions whatsoever or anyone else in preparing this legislation?

Ms Badke: No.

Mr Scott: We were allowed to attend the briefing yesterday for the committee in relation to the bill. But the first knowledge we had of the bill was when it was tabled in parliament. I cannot speak for what other consultation might have occurred with others.

Mr BYRNE: I note that both Together and United Voice cover a wide range of employees including medical services and allied health professionals. Do you think the drastic changes to what entitlements are being allowed to be included in awards and enterprise agreements are preparation again for outsourcing or more broadscale outsourcing of public health services?

Mr Scott: I think from Together's point of view, particularly in relation to senior medical officers who are going to be placed on contract, the real question is not about their entitlements; the real question is about the health system. This is not a debate about industrial relations no matter how much the government wants to paint this as some sort of harmonisation with Fair Work Australia. This is about changing the balance of power within the hospital system and providing more power to hospital managers and the people running the budget and removing the ability of senior clinical workers, whether they are senior medical officers, whether they are health practitioners or whether they are nurses—the people who stand up and fight for their patients and fight for their discipline and do it every day because they could work elsewhere but they are dedicated to helping Queenslanders. I know they will leave Queensland if this goes through. What this will mean is a significant reduction in the quality of health care provided to Queenslanders, and that will mean deaths.

Mr Hardman: Could I also answer your question? As a RANZCR radiographer and also being at the bargaining table recently, I know that we are definitely in the crosshairs of Queensland Health for privatisation. After seeing what allowances and other remunerations and conditions the industrial relations people were trying to take from us in moving from our current agreement into another one, we certainly are of the opinion that there is an obvious attempt to devalue us and to make us more attractive to outsourcing our services. That is the opinion widely shared of a lot of radiographers and other health practitioners.

Of course we are extremely concerned because we are proud of what we do and proud of the services and the quality of services that we offer to Queenslanders. We know that the agreement that we have, the HP agreement, was something that came about because we needed to attract better allied health professionals and health practitioners to Queensland. Why would you want to dump something that was brought in to make the system better and to attract workers? Why would you want to get rid of it and go back to the Dark Ages of pre-2007 when we had our first certified health practitioners agreement? There is only one answer to that question that we can see.

Ms Badke: If I may also make a comment, within the health practitioners agreement there is an ability to consult around the clinical workforce mix. So, for example, if an experienced clinician leaves the workforce, they are usually replaced with a like position. What we have seen in recent months is that as experienced clinicians leave you might replace that role with a graduate. It is important in a health environment to ensure that there is an appropriate clinical skills mix and, if staff are not having input into the construction of their teams, there is an ongoing risk to patient safety there.

CHAIR: Do you know now many non-clinicians there are to every clinician in a public hospital?

Ms Badke: Pardon?

CHAIR: Do you know how many non-clinicians there are to every clinician—every nurse and doctor—in a public hospital?

Ms Badke: I would not know that off the top of my head.

CHAIR: It is about double of a private hospital. Do you have any comment about that?

Ms Badke: Sorry, clinicians to admin staff?

CHAIR: Non-clinicians—administration et cetera. The number of non-clinicians to every clinician in a public hospital is about double that of a private hospital.

Mr Hardman: So what is your point?

CHAIR: The point is that, in respect of your job and, Barbara, your job, it is a matter of being competitive in the marketplace. It is a matter of being efficient in the marketplace.

Mr Hardman: Yes, and you have a system that is extremely efficient in that it is dealing with people who are really sick. In the private health system people are there because they have a sore knee or a sore toe or are there to have a shoulder operation. Predominantly that is what the people are there for in that system. When you are really sick, when you are dying with cancer, you are not going to go necessarily to a nice private hospital in the hills with beds and things like that, because accessing that type of specialist treatment is best and the facilities that are designed to do that are in hospitals. That takes resources. It takes human resources to make sure that those patients get the exact treatment that they need, the quality of treatment that they need and the safe treatment that they need.

CHAIR: Thank you for that.

Mr Scott: If I may answer that question as well, I think the question is fundamentally flawed in its concept. I think as parliamentarians and as a committee you should be looking at the best health system, not the cheapest health system. To suggest that our health system—

CHAIR: You are making the assumption, of course, that three non-clinicians to one clinician is a cheaper service. They might work harder; I do not know.

Mr Scott: But in terms of what we should be seeking for our Queensland hospitals, we should be seeking the best for our Queensland hospitals.

CHAIR: And that is what Queenslanders want.

Mr Scott: That is what Queenslanders want. They do not want the cheapest health system; they want the best health system.

CHAIR: Correct.

Mr Scott: If you have a head injury, you go to a public health system.

CHAIR: Correct.

Mr Scott: If you are wanting to make comparisons between public and private, you should be looking at the quality of the care, not the cost. That is what we are concerned about with this legislation: those people who care about the cost of the service and not the patient care will get more power. The clinicians who have more administrative staff can spend more time working on the things that matter. In terms of that process, I do not think the suggestion that the only way to compare private hospitals versus public hospitals should—

CHAIR: I was not making a comparison other than by saying, as an observation, that there are double the number of non-clinicians in public hospitals than in the private system.

Mr Scott: But you are also saying that there is a nature of contestability between public hospitals and private hospitals. When you are looking at contestability, you should be looking at contestability for the best service, not contestability for the cheapest price. If you want to drive down costs you can, but more patients will die.

Mr WATTS: I am curious about the individual contracts and the capacity for regional Queensland to be able to tailor individual conditions to attract people. My concern is—and I understand there are many concerns—regional Queensland and the quality of its health system and being able to attract people to it. So I am particularly interested in understanding your views of individual contracts that give a health and hospital board the ability to tailor an individualised set of circumstances to suit someone to go and live there as opposed to, say, a locum, as was discussed earlier.

Mr Scott: I think the problem with the legislation as it is is that it is giving Health a blank cheque as to how they handle the contract system. We have been briefed on some of those processes. At the end of the day, we would agree that there needs to be appropriate recruitment

and retention policies to attract people to regional Queensland, because it is hard to get good quality people to work there compared to Brisbane. I think that is one of the great things that we have done through collective bargaining, and that is to be able to ensure a significant improvement in recruitment and retention packages.

Secondly, doctors do not care about the money as much as they care about the quality of work. If they are able to have the ability to stand up and fight and demand from hospital managers good clinical outcomes, that is going to be a fundamentally important part. If they are told what to do on the basis of budget, we will see an exodus of doctors—and I spoke to a number of them about this on Wednesday.

In terms of the contract process, we believe the contract process will be a sham process in terms of the ability of the contracts to be set centrally. So in terms of that process we do not know how much delegations there will be. But what we do know is that, when Health are given the capacity to do things, they do it from central office, they do it badly and the regions suffer. What you are providing in this legislation is no knowledge of how it will be implemented. If there were some guarantees in relation to how it would be dealt with that the parliament could have oversight of, you might have more confidence about it. But what we know from what we have seen in terms of draft contracts—and we were not allowed to take them away with us; we are not allowed to show them to our members in terms of this process—is that those contracts are going to be very limited in their ability to be varied.

Mr WATTS: I have a follow-up question, and I know time is short. In the briefing you had—I am just curious—an individual health and hospital board will be able to design individual contracts to attract people to its region.

Mr Scott: I think within very limited circumstances. As I say, we were not able to take the material away with us, so we cannot give detailed answers. But I would certainly implore this committee to have public hearings into the nature of contracts being suggested, rather than just providing a blank cheque to the department who ran the Health payroll—which I agree was under a previous government. But the health system is getting worse, not better; the mismanagement is getting worse, not better; the budgetary processes are getting worse, not better, and you are handing a blank cheque to the people who are destroying the health system.

Mr Hardman: Can I also just say—

CHAIR: Sorry, no. That concludes the committee's questions. Thank you for your attendance this morning. I thank all witnesses and advisers for their attendance and particularly the United Firefighters Union, which gave us some information that we can work with. I thank the members of the public for their interest in the work of the committee. I declare the committee's public hearing for the examination of the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 closed.

Committee adjourned at 12.30 pm