

**Industrial Relations (Transparency  
and Accountability of Industrial  
Organisations) and Other Acts  
Amendment Bill 2013**

**Report No. 31**

**Legal Affairs and Community Safety Committee**

**June 2013**

## Legal Affairs and Community Safety Committee

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### Acknowledgements

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## Abbreviations

Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013
CCIQ	Chamber of Commerce and Industry Queensland
Committee	Legal Affairs and Community Safety Committee
Fair Work Act	<i>Fair Work Act 2009 (Cth)</i>
ECA	Electrical Contractors Association
ECQ	Electoral Commission Queensland
FAC	Finance and Administration Committee
FAC Inquiry	Inquiry into the Operation of Queensland's Workers' Compensation Scheme
Industrial Relations Act	Industrial Relations Act 1999
LGAQ	Local Government Association of Queensland
Public Service Act	<i>Public Service Act 2008</i>
PSC	Queensland Public Service Commission
QIEU	Queensland Independent Education Union
QIRC	Queensland Industrial Relations Commission
QTU	Queensland Teachers' Union

## **Chair's foreword**

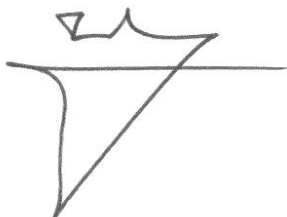
This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Industrial Relations (Transparency and Accountability of Industrial Organisations and Other Acts Amendment Bill 2013 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Committee has identified a number of areas where it considers the Bill could be improved and has set out its recommendations throughout this report.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Department of Justice and Attorney-General.

I commend this Report to the House.

A handwritten signature in black ink, consisting of a stylized, angular shape that resembles a crown or a crest above a horizontal line, followed by a vertical stroke that curves back to the left.

Mr Ian Berry MP

**Chair**

June 2013



## Recommendations

### Recommendation 1

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The Committee recommends the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013 be passed.

### Recommendation 2

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The Committee recommends the Bill be amended to ensure there is no requirement for industrial organisations to prepare initial registers of interests of officers or initial disclosure statements for the period 1 July 2012 to 30 June 2013.

### Recommendation 3

19

The Committee recommends the Bill be amended to ensure the requirement to prepare registers of interests for officers should be limited to only those officers who are elected and are paid more than \$10,000 per year.

### Recommendation 4

19

The Committee recommends the Bill be amended to limit the requirement for preparation of registers of interests to officers (as amended by recommendation 3) and recognised spouses only. There should be no requirement for registers to be prepared for any children or other dependent persons.

### Recommendation 5

19

The Committee recommends the Bill be amended to remove the requirement for the registers of interests for officers to be made publicly available. Instead, the Committee recommends the registers need only be made available to the members of the organisation and provided to the Queensland Industrial Relations Commission.

### Recommendation 6

23

The Committee recommends that the Bill be amended to ensure:

- an official is only a 'highly paid official' if the official's earnings exceed a High Income Threshold to be set out in Regulations; and
- the obligation on organisations to disclose the details of 'highly paid officials' be:
  - o for organisations that have less than 10 'highly paid officials' in a financial year – all highly paid officials; or
  - o for organisations that have more than 10 'highly paid officials' in a financial year, the ten most highly paid officials.

### Recommendation 7

23

The Committee recommends the Bill be amended to ensure that the requirement to disclose information on 'highly paid officials' (as amended) is limited to disclosure to the members of the organisation and to the Queensland Industrial Relations Commission.

### Recommendation 8

25

The Committee recommends the provisions requiring organisations to include details of procurement spending over \$5,000 in financial disclosure statements be removed from the Bill.

**Recommendation 9** **32**

The Committee recommends the threshold dollar amount required to trigger an expenditure ballot under section 553D be reviewed.

In determining a suitable figure, the Attorney-General and Minister for Justice should have regard to the following:

- the anticipated costs for organisations to hold a ballot;
- the potential for organisations to hold multiple ballots within the same financial year; and
- the costs of likely expenditure to be incurred on political objects.

**Recommendation 10** **34**

The Committee recommends the Attorney-General and Minister for Justice review the requirement in section 553D(4)(b) for at least 50% of the members on the roll of voters for the ballot to have voted before the spending can be authorised.

**Recommendation 11** **36**

The Committee recommends the Bill be amended to:

- provide for contestability in the conduct of expenditure ballots and allow for approved organisations other than the Electoral Commission Queensland to conduct expenditure ballots;
- authorise the Queensland Industrial Relations Commission (or another appropriate independent body) to decide whether third party organisations are eligible to conduct expenditure ballots; and
- set out detailed eligibility criteria (either in the Act or in Regulations) which must be met by third party organisations in order to be eligible to conduct expenditure ballots.

The eligibility criteria should address the conditions that a person must meet and the factors that the Queensland Industrial Relations Commission (or other appropriate independent third party) must take into account to determine whether a person is a fit and proper person to conduct an expenditure ballot.

**Recommendation 12** **58**

The Committee recommends the Attorney-General and Minister for Justice accept the recommendations of the Finance and Administration Committee in relation to the definition of 'worker'.

As such, the Committee recommends that the definition of 'worker' in the *Workers' Compensation and Rehabilitation Act 2003* remain unchanged and the relevant provisions in the Bill relating to the amendment of that Act be removed.



## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

### 1.2 Referral

The Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013 (Bill) was introduced into the Legislative Assembly and referred to the Committee on 30 April 2013.

By resolution of the Legislative Assembly the Committee was required to report back to the Legislative Assembly with its findings by 30 May 2013. Following the public hearing on 20 May 2013, the Committee wrote to the Committee of the Legislative Assembly (CLA) seeking an extension of the Report date to ensure the Committee was provided with enough time to fully consider the Bill.

The CLA resolved, pursuant to SO 135A and 136, to extend the reporting date for the Committee to 3 June 2013.

### 1.3 Inquiry process

On 1 May 2013, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions. The Committee wrote to all registered employee organisations and employer organisations in Queensland.

The Committee received written advice from the Department on 9 May, 20 May and 28 May 2013 and received a total of 24 submissions (see **Appendix A**). The submissions are published on the Committee's website.<sup>2</sup>

The Committee held a public hearing on 20 May 2013, where it received a briefing from the Department and further oral submissions from a number of invited witnesses (see **Appendix B**).

A copy of the transcript of the public hearing is also available on the Committee's website.<sup>3</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> [www.parliament.qld.gov.au/work-of-committees/committees/LACSC](http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC)

<sup>3</sup> [www.parliament.qld.gov.au/work-of-committees/committees/LACSC](http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC)

#### **1.4 Policy objectives of the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013**

The objectives of the Bill as set out in the Explanatory Notes are to:

- improve the financial accountability and transparency of industrial organisations and their office holders and provide a proper deterrent for officers abusing their position;
- support the employee's choice whether or not to join an industrial organisation;
- re-establish managerial prerogative regarding departmental policies;
- clarify the definition of a contracting provision in section 691C of the *Industrial Relations Act 1999* to remove ambiguity;
- improve procedural arrangements for union right of entry into an employer's premises;
- further facilitate the efficient recovery of public monies overpaid to employees of the Department of Health and of Hospital and Health Services;
- designate a senior appeals officer with the responsibility for developing practice directions for the management of appeals dealt with under the *Public Service Act 2008*; and
- clarify the definition of a worker under the Workers' Compensation and Rehabilitation Act 2003.<sup>4</sup>

In his Introductory Speech, the Honourable Mr Jarrod Bleijie MP, Attorney-General and Minister for Justice (Attorney-General) stated that the Bill is '*in the interest of accountability and transparency of industrial organisations and their elected officials.*'<sup>5</sup>

The Attorney-General affirmed that industrial organisations occupy a unique and privileged position in the industrial relations system and stated:

*The officials of industrial organisations are elected by members of the organisations who deserve to have confidence in the stewardship and financial management of their organisation and its leadership.*

*Concerns about the governance and financial accountability of industrial organisations have increasingly become a focus of community concern. The most notorious of these being the investigation into the Health Service Union, the HSU, which identified over 100 breaches of the organisation's own rules and federal laws. The investigation raised concerns about alleged financial mismanagement; improper use of funds; improper use of position to gain personal advantage; and failure to exercise powers, discharge duties in good faith and in the best interests of the organisation.*<sup>6</sup>

The Bill will bring about new open and transparent industrial relations laws, and will compel Queensland's 34 unions and 32 employer associations to adhere to strict new reporting and auditing requirements.

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<sup>4</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 1.

<sup>5</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, page 1305.

<sup>6</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, page 1305.

The Bill therefore aims to achieve its policy objectives by:

- amending the existing duties which apply in Chapter 12 of the *Industrial Relations Act 1999* to apply to all officers, and introduce a new duty to act in good faith and for a proper purpose;
- requiring industrial organisations to maintain publicly available disclosure registers;
- requiring that expenditure greater than \$10,000 on political objects be approved by a ballot of members;
- amending the existing annual reporting and filing obligations of industrial organisations to include financial disclosure statements detailing all expenditure directed to political purposes as well as all procurement and contract related expenditures greater than \$5,000;
- requiring that all information provided in an organisation's annual financial disclosure statement be subject to scrutiny by a registered company auditor and be publicly available via the organisation's website;
- requiring that all industrial organisations have financial management policies and that officers undertake governance and financial accountability training;
- introducing new increased penalties of up to \$340,010 or five years imprisonment for dishonesty;
- rendering union preferential and encouragement and policy incorporation provisions in an industrial instrument covering employees of government entities to be of no effect;
- clarifying the definition of a *contracting provision* in section 691C of the *Industrial Relations Act 1999* to remove ambiguity;
- amending existing right of entry provisions to be consistent with certain procedural requirements contained in the *Fair Work Act 2009* (Cth);
- enabling health employers to recover overpayments from final payments of health employees who cease employment;
- creating a single appeals officer for the management of appeals; and
- amending the *Workers' Compensation and Rehabilitation Act 2003* so that a worker is a person who works under a contract and the person is an employee for the purpose of assessment for PAYG taxation.

For the reasons set out in Part 2 of this Report, the Committee considers the above policy objectives are sound, but that the Bill could better achieve those objectives if the proposed amendments by the Committee were adopted by the Government.

## 1.5 Consultation on the Bill

### Amendments to the Industrial Relations Act 1999

As set out in the Explanatory Notes, there was no public consultation prior to the tabling of the Bill on the proposed changes to the accountability and transparency of industrial organisations.

The Committee was advised by the Department on 9 May 2013 that since tabling, two departmental briefings were held with the Queensland Council of Unions.<sup>7</sup> The Committee understands from evidence taken at the public hearing that further meetings between the Attorney-General and

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<sup>7</sup> Letter from the Department of Justice and Attorney-General, 9 May 2013, pages 3-4.

employer and employee organisations were progressing along with the Department engaging in further discussions with the Electoral Commission Queensland (ECQ).

The Committee notes also that internal to Government, there was consultation with:

- the Registrar of the Queensland Industrial Relations Commission (QIRC) about the amendments to the obligations of industrial organisations and the administration of complaints and investigations;
- the Queensland Public Service Commission (PSC) Chief Executive and Queensland Health in relation to the amendments to union encouragement provisions; and
- Queensland Health in relation to the recovery of overpayments to health employees.<sup>8</sup>

### **Amendments to the Public Service Act 2008**

In relation to the amendments to the *Public Service Act 2008*, the Explanatory Notes provide that consultation occurred with the Vice President of the QIRC and the Chief Executive of the PSC.<sup>9</sup>

### **Amendments to the Workers' Compensation and Rehabilitation Act 2003**

In relation to consultation concerning the changes to the *Workers' Compensation and Rehabilitation Act 2003*, the Explanatory Notes provide:

*There has been no specific consultation with external stakeholders and the community on the amendment of the definition of worker under the WCR Act.*

*However employer associations and employers have advocated that the current definition of worker is not satisfactory. The amendment is in response to these concerns.<sup>10</sup>*

The Committee notes the definition of worker was also considered by the Finance and Administration Committee whose inquiry spanned over the previous 11 months.<sup>11</sup>

## **1.6 Should the Bill be passed?**

Standing order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

The Committee has examined the Bill, including the policy objectives and has given thorough consideration to the information provided by both the Department and submitters, including the written submissions from stakeholders and the oral evidence taken at the public hearing.

The Committee considers the policy objectives outlined in the Bill are vitally important and steps must be taken to improve the accountability, integrity and transparency for all industrial organisations in Queensland.

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<sup>8</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 7.

<sup>9</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 8.

<sup>10</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 8.

<sup>11</sup> Finance and Administration Committee, Report No.28, *Inquiry into the Operation of Queensland's Workers' Compensation Scheme*, May 2013.

In discussing these proposals, the Attorney-General stated on 612 ABC:

*... if we can be convinced that change is required then what we've seen with the bill before the parliament may not be the end bill that results and that's particularly about our committee process. That's what the committee process is for.<sup>12</sup>*

This Report highlights a number of areas where the Committee considers the Bill ought to be amended before it is passed.

**Recommendation 1**

The Committee recommends the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013 be passed.

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<sup>12</sup> Transcript - Radio Interview with Steve Austin, 612 ABC, 16 May 2013.

## **2. Examination of the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013**

This section discusses the key issues raised during the Committee's examination of the Bill.

As noted above, the Bill deals with a number of diverse matters including amendments to the *Industrial Relations Act 1999*, the *Public Service Act 2008*, and the *Workers' Compensation and Rehabilitation Act 2003*.

The Committee has examined the policy objectives contained in the Bill under the broad headings below which do not necessarily follow the order in which they appear in the Bill.

### **2.1 Improving the accountability and transparency of industrial organisations**

#### **2.1.1 Overview**

In relation to the amendments proposed in the Bill concerning the accountability and transparency of industrial organisations, the Explanatory Notes provide the following background:

*Industrial organisations occupy a unique and privileged position in the industrial relations system. The officials of industrial organisations are elected by members of the organisation who deserve to have confidence in the stewardship and financial management of their organisation and its leadership. Concerns about the governance and financial accountability of industrial organisations have increasingly become a focus of community concern.<sup>13</sup>*

To address these concerns, the Bill introduces a number of changes, each of which are discussed in more detail below:

- *more stringent financial reporting obligations;*
- *requirements for public disclosures by maintaining up-to-date registers;*
- *the balloting of members to approve expenditure on political objects of \$10,000 or greater in a financial year;*
- *mandatory governance and financial accountability training for officers of industrial organisations;*
- *a strengthened audit and complaint investigation process; and*
- *an increased penalty for dishonesty.<sup>14</sup>*

The key impetus for the introduction of these amendments to improve the transparency and accountability of industrial organisations is to bring the Industrial Relations Act in line with the *Fair Work (Registered Organisations) Amendment Act 2012 (Cth)* as, currently, the Industrial Relations Act does not contain such provisions.<sup>15</sup>

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<sup>13</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, pages 1-2.

<sup>14</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 2.

<sup>15</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 8.

### 2.1.2 Improving transparency and accountability generally

The overall aim of the Bill is to provide:

*... greater transparency and disclosure on the financial management of industrial organisations so that members can better scrutinise the activities and expenditure of the organisation and its officers.<sup>16</sup>*

A number of submissions supported the overall objectives of the Bill ‘to improve the accountability and transparency of industrial organisations registered in the state industrial relations system’.<sup>17</sup>

Similarly, there was support<sup>18</sup> for the intent of the Attorney-General that ‘elected officials of industrial organisations registered in Queensland will be required to meet the same standards of accountability and transparency demanded of elected public officials and local government officials in Queensland.’<sup>19</sup>

#### General objection to the increased obligations

There were however a number of objections to the need for increased obligations from both employer and employee organisations.

##### Employee Organisations

As an example, the Queensland Independent Education Union (QIEU) commented on the relationship between the provisions proposed in the Bill and the current provisions in the Commonwealth legislation. QIEU submitted:

*As a matter of general principle QIEU does not object to the Bill insofar as it has provisions paralleling those in the Fair Work (Registered Organisations) Amendment Act 2012 (Commonwealth)(“FW(RO)A”). QIEU has no objection to similar provisions being reflected to those provisions being reflected in State legislation as they are consistent with an appropriate level of accountability and good governance and thus are consistent with the history, structure, rules and culture of QIEU. However QIEU ... notes that in many respects the Bill imposes obligations greater than those in FW(RO)A, and/or with lesser, proper protections, and involving more severe consequences.<sup>20</sup>*

##### Employer Organisations

The Chamber of Commerce and Industry Queensland (CCIQ) was also critical of the overall intention of the Bill:

*... CCIQ believes concerns about the governance and financial accountability of industrial organisations to be overstated. This Bill appears to be a knee-jerk reaction to the Health Service Union scandal in New South Wales and the poor governance of the United Retailers Federation. It is a mistake to foist upon all good practicing industrial associations additional regulation to address two instances of poor governance.<sup>21</sup>*

<sup>16</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 8.

<sup>17</sup> Australian Dental Association, Submission No. 4, page 1; Electrical Contractors Association, Submission No. 13, page 1.

<sup>18</sup> Australian Dental Association, Submission No. 4, page 1.

<sup>19</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, page 1303.

<sup>20</sup> Queensland Independent Education Union, Submission No. 6, page 2.

<sup>21</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 3.

The Electrical Contractors Association (ECA) was also concerned about a number of aspects of the Bill:

*ECA welcomes legislative measures that will address inappropriate conduct by the officials of registered organisations. However, we are concerned that this Bill will impose an unnecessary and disproportionate administrative burden on the vast majority of industrial organisations that are doing the right thing.*<sup>22</sup>

Both the Local Government Association of Queensland (LGAQ) and the CCIQ opposed the Bill on the basis that the provisions in the Bill would inhibit the organisations from effectively conducting their core business. The LGAQ, in strong opposition to many aspects of the Bill, submitted:

*At a more specific level, the LGAQ considers that some of the proposed reporting requirements such as the reporting of items over \$5000 and the necessity to use Electoral Commission balloting are simply excessively onerous and resource-intensive and will detract from the Association's capacity to conduct its business efficiently and effectively.*<sup>23</sup>

The submission from the CCIQ also included information concerning the estimated financial cost of preparing the various disclosure requirements as proposed under the Bill:

*CCIQ is concerned that the cost of regulatory compliance with the onerous procedural and reporting requirements proposed in the Bill will impact on our financial viability. Using our well established and commended 'Red Tape Case Study' methodology, CCIQ has estimated that the cost of compliance for our organisation **would exceed \$150,000 per year.***<sup>24</sup>

### **Committee Comment**

As highlighted in Part 1 of the report, the Committee considers the policy objectives outlined in the Bill are vitally important and steps must be taken to improve the accountability, integrity and transparency for all industrial organisations in Queensland. The Committee does not accept that the Bill represents an attack on democracy in Queensland or unfairly targets any particular group or groups over any others.

The Committee accepts however, that there are some provisions of the Bill which could be amended to arrive at a more workable solution for industrial organisations and yet still achieve the Government's desired policy objectives. The Committee addresses the individual components of the transparency and accountability provisions in more detail over the following pages and makes several recommendations which it considers achieves a balance in achieving the policy objectives without being too onerous on the organisations to which the Bill applies.

### **Application of the provisions to Corporations**

Submissions highlighted the fact that some registered industrial organisations which will be caught by the provisions in the Bill are also corporations under the *Corporations Act 2001 (Cth)* and subject to the obligations contained in that Act. The Australian Dental Association submitted:

*[The] intent of the Bill is already achieved for organisations registered under the Corporations Act 2001 (Cth). This Act imposes extensive legal obligations upon directors in relation to their powers, discharge of duties, disclosure, and accountability and financial and*

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<sup>22</sup> Electrical Contractors Association, Submission No. 13, page 1.

<sup>23</sup> Local Government Association of Queensland, Submission No. 17, page 2.

<sup>24</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 6.



*other reporting such that they are at least on a par, if not more onerous than those of elected public officials, as is intended by the Bill.*<sup>25</sup>

In its submission, the Australian Dental Association listed the common law and statutory duties under the *Corporation Act 2001* that apply to directors of non-listed public companies.<sup>26</sup> In light of these existing accountability and transparency provisions afforded at common law and by the *Corporations Act 2001*, the Australian Dental Association suggested:

*... employer organisations that are also corporations be able under the proposed legislative amendment to apply to the registrar for an exemption from the following proposals of the new law:*

- *public disclosures by way of maintaining up-to-date and publicly available disclosure registers;*
- *annual reporting and filing obligations of industrial organisations to include financial disclosure statements detailing all expenditure directed to political objects as well as all procurement and contract related expenditures greater than \$5000;*
- *financial management policies (including in relation to credit card issuance and use, contracting activities and gifts and donations) as well, as governance and financial accountability training.*<sup>27</sup>

The LGAQ also raised issues with the application of the Bill to corporations. The LGAQ submitted:

*The financial recording and reporting requirements imposed by the Bill in themselves raise no concerns for the Association as its audit reports by the Queensland Audit Office clearly show no instances of misuse of funds, no glossing over or cover-up of financial errors or mismanagement – put simply, the Association has always managed its finances in a transparent and responsible manner.*

*Its compliance requirements as an ASIC registered corporation impose a substantial governance standard upon the Association which is in turn complemented and expanded upon through its auditing by the Queensland Audit Office. The Association sees no tangible benefit for its members in now imposing additional financial management responsibilities upon it and contends that the additional resources required to fulfil any additional responsibilities will only distract resources from working on member issues and direct them towards more internal activities. This additional red-tape flies in the face of all the statements from the Government and inconsistent with its positive actions to date to reduce the onerous red tape reporting requirements on business.*<sup>28</sup>

The LGAQ went on to recommend that 'given the existing level of financial governance and the existing disclosure requirements for its officers, it is recommended the current exemption provisions of the Industrial Relations Act be amended to allow for the LGAQ to be exempted from these elements of the Act.'<sup>29</sup>

The Committee notes that under section 590 of the Industrial Relations Act, an employer organisation that is a corporation may apply to the registrar for an exemption from the whole or part of certain accounting obligations. The Department in its response to submissions confirmed that

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<sup>25</sup> Australian Dental Association, Submission No. 4, page 1.

<sup>26</sup> Australian Dental Association, Submission No. 4, page 1.

<sup>27</sup> Australian Dental Association, Submission No. 4, page 2.

<sup>28</sup> Local Government Association of Queensland, Submission No. 17, page 5.

<sup>29</sup> Local Government Association of Queensland, Submission No. 17, page 5.

exemptions may be provided on the basis that another law imposed similar accounting and audit obligations on the organisation.

The Committee also notes the LGAQ's stance that the Bill should not apply to it for the obvious reason that its members are local government authorities having differing rights and obligations.

However, since the proposed amendments in the Bill concerning the financial reporting of industrial organisations go further than other laws including reporting to the Australian Security and Investments Commission, employer organisations with corporate status will not be exempt from complying with the following requirements of the Bill:

- *Register of interest of officers (s550A to 550N)*
- *Finances and accountability which includes policies and training (s551 to 553B)*
- *Spending for political purposes (s553C to 553S)*
- *Financial registers of gifts, political spending and loans and grants (s557 A to 557G)*
- *Financial disclosure statement which includes the initial financial disclosure statement covering remuneration and benefits for highly paid officials, gifts and benefits given and received, spending for political purposes and procurement spending (s557H to 557O); and*
- *Annual and mid-year financial disclosure statement (s557P to 557ZB).*<sup>30</sup>

### **Committee Comment**

The Committee accepts there may be a level of duplication for corporations complying with reporting requirements, however considers that save as to the recommendations for amendments in this Report (which should apply to all registered industrial organisations) there should not be any blanket exemptions for corporations.

The reporting obligations are in addition to those which corporations are currently subjected to, and that should be the case if the corporation wishes to remain a registered industrial organisation.

#### **2.1.3 Requirement to maintain financial registers and publish disclosure statements**

As stated by the Attorney-General in his Introductory Speech, the Bill will require industrial organisations to make public disclosures by maintaining up-to-date and publicly available disclosure registers.

The on-going registers which must be prepared are:

- an individual register of material personal interests declarations of elected officials (which will be made public) and their relatives (which will be filed with the Industrial Registrar but will not be made publicly available);<sup>31</sup>
- a register of gifts, hospitality and benefits over \$500 received and given by officials and employees;<sup>32</sup>

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<sup>30</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 6.

<sup>31</sup> See proposed new sections 550B–E of the *Industrial Relations Act 1999* in relation to “Initial registers of interests of officers” and 550F–H of the *Industrial Relations Act 1999* in relation to subsequent “Registers of interests of officers”. Clause 26 of the Bill proposes to insert new section 550F (Registers must be kept) of the *Industrial Relations Act 1999*.

<sup>32</sup> Clause 30 of the Bill proposes to insert new section 557A (Register of gifts, hospitality and other benefits given and received must be kept) of the *Industrial Relations Act 1999* which provides for this register.

- a register of political spending totalling more than \$10,000 in a financial year and the outcome of the expenditure ballot (discussed in greater detail below);<sup>33</sup> and
- a register of loans, grants and donations totalling greater than \$1,000 in a financial year (incorporated from the current requirement in the Act to keep a record of such expenditure).<sup>34</sup>

As part of the implementation of the requirement to maintain the above registers, the Bill proposes that an initial individual register of material personal interests must also be completed for the period 1 July 2012 – 30 June 2013.<sup>35</sup>

In addition to the requirement to maintain the above financial registers, the Bill also amends the existing annual reporting and filing obligations of industrial organisations to include more detailed financial disclosure statements.

The Bill also proposes industrial organisations be obliged to provide the following financial disclosure statements:

- (a) an initial financial disclosure statement, within 1 month after the commencement of the relevant section, for the initial year, being the period from 1 July 2012 to 30 June 2013, that includes:<sup>36</sup>
  - o the remuneration and benefits for highly paid officials;
  - o gifts, hospitality and other benefits given and received to a value to be prescribed by regulation;
  - o spending for political purposes; and
  - o procurement spending totalling over \$5,000 for 1 or more procurements from a supplier;
- (b) a mid-year financial disclosure statement for each year within 7 months after the start of the year that includes:
  - o the remuneration (i) expected to be paid for the year, and (ii) actually paid in the first 6 months of the year, for each official that is expected to be a highly paid official for the year;
  - o any non-cash benefit (i) expected to be given to the official for the year, and (ii) actually given in the first 6 months of the year; and
  - o any amount paid to officials in their capacity as board members;<sup>37</sup> and
- (c) annual financial disclosure statements for each year after the initial year that includes:
  - o the accounts of the organisation;<sup>38</sup>
  - o the remuneration and benefits for highly paid officials;<sup>39</sup>

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While the provision does not specify the threshold but refers to a value prescribed under a regulation, the threshold of \$500 is referred to in the Introductory Speech so it is anticipated that the regulations that will be need to be introduced to support the legislation contemplated by this Bill will include the \$500 threshold.

<sup>33</sup> See Clause 30 of the Bill which proposes to insert new section 557B (Register of political spending) of the *Industrial Relations Act 1999* and clause 29 of the Bill which proposes to insert new section 553L (Publication of result of expenditure ballot) of the *Industrial Relations Act 1999*.

<sup>34</sup> See Clause 30 of the Bill which proposes to insert new section 557C (Register of loans, grants and donations) of the *Industrial Relations Act 1999*.

<sup>35</sup> See Clause 26 of the Bill – new sections 550B and 550C (Initial Registers must be prepared).

<sup>36</sup> See proposed new sections 557J-O of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>37</sup> See proposed new section 557Y of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>38</sup> See proposed new section 557R of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>39</sup> See proposed new section 557S of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

- o links to the financial registers that the organisation is required to keep under the new provisions (register of material personal interests; gifts, hospitality and benefits; political spending totalling more than \$10,000 (expenditure ballots); and loans, grants and donations);<sup>40</sup>
- o all spending for political purposes (not just for expenditure ballots);<sup>41</sup> and
- o procurement spending totalling over \$5,000 for 1 or more procurements from a supplier;<sup>42</sup>
- o the financial policies required under the new provisions;<sup>43</sup> and
- o particulars of the financial management training of officers required under the new provisions.<sup>44</sup>

All three of the financial disclosure statements are required to be published on the organisation's website or the QIRC's website if the organisation does not have a website.<sup>45</sup>

The Bill also requires industrial organisations to identify political party affiliations in all political advertising material.<sup>46</sup>

While various accountability measures are found in industrial relations legislation in many Australian jurisdictions, it does not appear that any other jurisdictions have introduced amendments to enhance financial accountability of officers of industrial organisations of the type proposed in the Bill.<sup>47</sup>

### **Objections to the new requirements**

The requirement to maintain such registers and prepare the financial disclosure statements has drawn significant criticism in many of the submissions.<sup>48</sup> The main concerns about the proposed new requirements for public disclosures are summarised below:

- the application of the proposed provisions is far too wide in terms of the persons in respect of whom the obligations are imposed;
- it is still unclear what financial and non-financial particulars are required to be disclosed as the regulations prescribing these details are yet to be issued;
- it is inappropriate that the part-time and honorary persons (albeit elected) who have such limited capacity to influence decision making (and persons related to them) should be subjected to the proposed disclosure of interests regime;
- it is foreseeable that these provisions may discourage persons whose roles are honorary from seeking office;

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<sup>40</sup> See proposed new section 557T of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>41</sup> See proposed new section 557U of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>42</sup> See proposed new section 557V of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>43</sup> See proposed new section 557W of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>44</sup> See proposed new sections 557X of the *Industrial Relations Act 1999* (Clause 30 of the Bill).

<sup>45</sup> See proposed new sections 557O, 557Z and 655A and the proposed amendments to section 570 of the *Industrial Relations Act 1999* (Clauses 30, 40 and 56 of the Bill).

<sup>46</sup> See proposed new section 579B of the *Industrial Relations Act 1999* (Clause 50 of the Bill).

<sup>47</sup> Based on research prepared by the Queensland Parliamentary Library for the Committee dated 14 May 2013.

<sup>48</sup> For example: Queensland Independent Education Union, Submission No. 6, pages 3 and 4; Queensland Nurses' Union, Submission No. 7, page 8; Australian Council of Trade Unions, Submission No. 9, page 1; Queensland Council of Unions, Submission No. 11, page 6; United Voice, Submission No. 12, page 2; Queensland Teachers' Union, Submission No. 14, pages 3–4; and Electrical Contractors Association, Submission No. 13, page 2.

- the accountability and transparency should be to the constituency which the relevant persons represent, not to the entire public most of whom would have no legitimate interest in the interests of officers of that organisation. In other words, the disclosure of such information should be limited to members of the organisation;
- the retrospective nature of the provisions will cause significant issues because there is the potential for persons no longer officers of an organisation to be the subject of the obligations imposed on the organisation;
- the proposals do not impose similar levels of accountability to those of elected Members of Parliament. There are no penalties imposed on Members of Parliament for breaches of their obligations in relation to statements of interests other than that such a breach "*constitutes contempt of the Assembly*";<sup>49</sup>
- the registers will be of no interest to anyone but will be create significant administrative burden to prepare;<sup>50</sup> and
- the proposals represent an excessive intrusion into the privacy of individuals.<sup>51</sup>

The Committee examines some of these issues in further detail below.

### **Initial register of interests and initial financial disclosure statement**

The Bill requires industrial organisations to prepare an initial register of interests for each of its officers within one month after the commencement of the relevant section.<sup>52</sup> While the Bill does not specify the proposed date for commencement, it is noted that the Introductory Speech states that this register will be required to be published by 30 July 2013.<sup>53</sup>

The Committee assumes from the Attorney-General's speech that the Government is anticipating that the relevant sections will commence on 30 June 2013.

Proposed new section 550C of the Bill provides that the contents of the initial register of interests of an officer of any organisation must state the financial and non-financial particulars of the officer and each person related to the officer as prescribed under a regulation. Section 550A of the Industrial Relations Act defined 'related' to an officer of an organisation if the person is the officer's spouse, the officer's dependent child, or another person who is dependent on the officer and whose affairs are so closely connected with the affairs of the officer that a benefit derived by the person, or a substantial part of it, could pass to the officer.

The disclosures required in the initial register of interests relate to the 'initial year' being the period from 1 July 2012 to 30 June 2013. Under proposed section 550D, each officer has 21 days in which to notify the organisation of each of the particulars required to be kept in the initial register, otherwise they may be fined up to \$2,200.

The requirement that an industrial organisation prepare and publish to the public a statement of various registers for the financial year commencing 1 July 2012 within a period of 1 month from commencement of the proposed legislation could be a potential breach of the *Legislative Standards Act 1992*, s4(3)(g) (adversely affects rights and liberties, or imposes obligations, retrospectively) in

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<sup>49</sup> Queensland Independent Education Union, Submission No. 6, page 4.

<sup>50</sup> Queensland Council of Unions, Submission No.11, page 6.

<sup>51</sup> Queensland Teachers' Union, Submission No. 14, pages 3 and 4.

<sup>52</sup> See proposed new section 550B of the *Industrial Relations Act 1999* (Clause 26 of the Bill).

<sup>53</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, page 1303.

that the obligations could be onerous for industrial organisations as the obligation relates to matters that the organisation was not required to specifically record or disclose.

In this regard, the Explanatory Notes state:

*As the matters required for disclosure will be those that are routinely kept individuals and by industrial organisations the disclosure of this information is not considered onerous. The retrospective disclosure of these matters is necessary to serve the public interest of members of industrial organisations.<sup>54</sup>*

The LGAQ vehemently opposed any retrospectivity in relation to any form of record keeping or reporting for the very obvious reasons of resourcing and impracticality and limited benefit.<sup>55</sup> The LGAQ stated:

*It is noted that some of the provisions require organisations to develop registers and reports backdated to July 2012. This is strongly opposed simply due to the level of resources required to go back and seek information that was recorded in a manner that was suitable for reporting as intended at that time. The data may be difficult to locate in a format that would be useful for the contents of the new reporting regime and there would be a genuine question mark over its accuracy. LGAQ simply would find it difficult to justify the allocation of the necessary level of resources to be confident its reports were accurate for a period of time that is now passed when there is so much demand for activity on current issues.*

*Given this Government's strong commitment to assisting businesses/companies to being efficient and improving productivity, LGAQ respectfully suggests that requiring a company to invest resources in preparing reports for periods of time that have passed is completely at odds with this commitment.<sup>56</sup>*

Criticism was also drawn in relation to the requirement to publish retrospective information in the initial disclosure statement, particularly in relation to the highly paid officials. The Queensland Teachers' Union (QTU) opposed both the retrospective nature of the proposals of the Bill and the short timeframe for preparation:

*The QTU's objections in relation to the creation of an initial financial disclosure statement are essentially those previously raised in relation to the creation of an initial register of officer interests. The requirements of the legislation are effectively to make the legislation retrospective and to require the receipt of information and its publication within an incredibly short timeframe. Given the magnitude of the task involved in relation to both financial disclosure statements and register of interest (as currently proposed), the one month timeline for production, and soon thereafter publication, of the registers is impossible.<sup>57</sup>*

The QIEU informed the Committee:

*In the case of QIEU, the Council elections were held in July 2012, and terms of office ended and began on 26 October 2012. As a result there are persons who were members of the Council for the first few months of the period 1 July 2012 to 30 June 2013 who are no longer so.*

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<sup>54</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 6.

<sup>55</sup> Local Government Association of Queensland, Submission No. 17, page 2.

<sup>56</sup> Local Government Association of Queensland, Submission No. 17, pages 5-6.

<sup>57</sup> Queensland Teachers' Union, Submission No. 14, page 8.

*These persons had no knowledge when they were elected that such provisions would be introduced and indeed no longer hold office. QIEU submits it is inappropriate that the obligations should relate to this year in view of that outcome particularly given that the obligations extend to the interests of persons related to the (former) officer. This offends the long established principle that legislation having retrospective effect is only justified in rare circumstances.<sup>58</sup>*

Master Builders submitted:

*... should the Government believe that these new provisions prevail then they should NOT be retrospective. That is the new provisions should apply from 1 July 2014.*

*Current employees and/or prospective employees need to be aware of these provisions in advance so that they may make appropriate personal decisions.*

*No-one should be forced to disclose their personal remuneration without the appropriate notice period to allow for personal judgment and decision.<sup>59</sup>*

### Committee comment

The Committee is concerned about the short timeframe provided for preparing both the initial register of interests of officers and the initial disclosure statements. The Committee cannot envisage that it will be logistically possible for the initial register of interests of officers and each person related to the officer to be prepared within one month of the commencement of the relevant provision especially given that the details of what is required to be disclosed under the register is required to be prescribed by regulation which may take some time to become available.

Further, the Committee is not satisfied that the potential breach of the fundamental legislative principals is outweighed by the public interest of members of industrial organisations to publish the retrospective information in the disclosure statements.

The Committee does not consider the Bill adequately balances the competing interests of an individual's right to privacy and guarding against conflicts of interest. The Committee considers the requirement to prepare retrospective registers will unnecessarily increase the regulatory burden on industrial organisations and should be removed from the Bill.

### Recommendation 2

The Committee recommends the Bill be amended to ensure there is no requirement for industrial organisations to prepare initial registers of interests of officers or initial disclosure statements for the period 1 July 2012 to 30 June 2013.

### Contents of the Registers and the Disclosure Statements

Many submissions were critical of the contents to be maintained in the financial registers and published in the disclosure statements on an ongoing basis.

The Australian Council of Trade Unions submitted generally:

*A register of gifts is a matter more appropriately governed by a union's financial policies and procedures. We encourage such policies and procedures to be put in place through each union's democratic representative structure, as did the independent panel the ACTU appointed to report on best practice union governance. We consider it entirely*

<sup>58</sup> Queensland Independent Education Union, Submission No. 6, page 4.

<sup>59</sup> Master Builders, Submission No. 10 (Supplementary), page 3.

*inappropriate that the detail of such requirements be centrally controlled to the degree proposed, particularly where the extent of disclosure is susceptible to regular change through amended regulations.*

*The register of political spending contemplated by proposed section 557B places a further unwarranted degree of red tape on unions by adding to the requirements proposed to be imposed pursuant to clause 29.*

*The register of loans, grants and donations described in proposed section 557C is again a pointless exercise in red tape. While the monetary threshold for registration is the same as that required under the corresponding federal laws (wherein many Queensland based unions are recognised in their own right or have a federal counterpart subject to federal reporting requirements), the points of detail in relation the disclosure requirements are sufficiently different so as to require different documents to be produced.*

*Further, how any of these disclosures are within the legitimate interest of any person other than a member of the organisation (or in some instances, the regulator) is not evident. Clearly the requirements impose a far higher standard than that imposed on the corporate sector, particularly by requiring such disclosures to be made to the public at large.<sup>60</sup>*

### **Committee Comment**

The Committee does not agree that the above registers can be classified as simply unwarranted red tape and considers that on the whole the registers in the Bill and requirements for publishing disclosure statements will enhance the financial reporting obligations for industrial organisations and lead to more accountable and transparent practices taking place.

The Committee has had the benefit of engaging with key stakeholders and receiving submissions on how all the provisions may operate in practice and proposes amendments to the following matters:

- the register of material personal interests declarations;
- the disclosure of remuneration for highly paid officials;
- the disclosure of procurement spending; and
- the register of political spending register and outcome of expenditure ballots.

### **Individual register of material personal interests declarations**

Limited information was provided in the Attorney-General's Introductory Speech and the Department's initial briefing on the details of the register of material personal interests declarations.

The Attorney-General stated that elected officials of industrial organisations registered in Queensland will be required to meet the same standards of accountability and transparency demanded of elected public officials and local government officials in Queensland.<sup>61</sup>

Clause 26 of the Bill requires the public disclosure of the material personal interests of 'officers' of industrial organisations either on the organisation's website, or if the organisation does not have a website, on the website of the QIRC.

The Department confirmed that the definition of 'officer' of an industrial organisation has not changed and is provided at section 409 of the Industrial Relations Act and is "a person who holds office ... ". As such the definition may include remunerated and voluntary members of an industrial

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<sup>60</sup> Australian Council of Trade Unions, Submission No. 9, page 4.

<sup>61</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, page 1302.



organisation and may potentially capture a large number of persons involved in the activities of an industrial organisation.<sup>62</sup> The spouse or dependent of an official is also required to maintain the register of interests however there is no requirement for it to be made public.

Submitters sought to limit the disclosure requirements to officers of industrial organisations who are remunerated above a certain level; and require disclosure to members of the industrial organisation on request only rather than public disclosure.

It was also submitted that the requirement to disclose personal information would act as a disincentive to people taking up roles in industrial organisations.

The CCIQ submitted:

*The register of material personal interest declarations of elected officials and their relatives will actively seek to discourage business leaders to nominate for election to the CCIQ Governance and Policy Boards as well as the Chairs of the eight Regional Policy Councils. This will in turn seek to undermine the quality of actual governance for CCIQ. CCIQ has approximately 12 elected office bearers/board members to whom this would apply. At least 7 of these officials are regional representatives. All elected officials are small and medium business owners who in addition to their responsibilities as elected officials also continue to run/manage their own businesses. The majority of the elected officials hold positions on local chambers of commerce (which constitutes a voluntary additional requirement on their time).*<sup>63</sup>

The CCIQ recommended the Bill be amended to capture only those individuals that are elected and directly remunerated over \$30,000.<sup>64</sup>

The QTU submitted in relation to its organisation that:

*A register of "officers" would involve a register of up to 427 members as demonstrated above, plus related persons. The requirement for the maintenance of a register of interests of all officers is excessive, and in terms of timelines for preparation, entirely impracticable. For a government committed to the removal of red tape, this is a spectacular failure which results from a failure to understand the definition of an "officer" contained in the current legislation. It is also an intolerable intrusion, in its current terms, into the privacy of citizens. The legislation should identify those for whom a register might appropriately be maintained, rather than just relying on an existing apparently misunderstood term, "officer". The creation of any requirement to maintain a register of interests cannot reasonably be based on that term.*

...

*The absence of even a draft regulation concerning the particulars required in the register under proposed sections 550C(1) and 550G(1) undermines the capacity of industrial organisations to make full submissions in relation to the proposed legislation. Unions have been informed that the regulations are being drafted but will only be available at the time that the legislation is passed – an entirely unsatisfactory approach to the consideration and passage of the legislation.*<sup>65</sup>

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<sup>62</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 2.

<sup>63</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 6.

<sup>64</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 6.

<sup>65</sup> Queensland Teachers' Union, Submission No. 14, pages 3-4.

The Committee agrees with the QTU that it is unacceptable for the regulations which are to contain the requirements for the register to not be available at this time. In relation to the general publication of the register, the QTU submitted:

*The requirement for publication of the register of interests of officers to the general public (not including the interests of related parties contained within the register) is subject of an even more fundamental objection. According to a briefing provided to unions, these provisions are modelled on the provisions relating to state parliamentarians. In that case, given the Parliament of Queensland legislates with effect on all Queenslanders, public disclosure of the interests of parliamentarians is appropriate. In the case of industrial organisations, as with the parliamentarians, the principle should be that any register should be published to and available to the electorate. In the case of industrial organisations, the electorate is the membership of that organisation, not the general public. Even so, if the concept of an “officer” continues to be used, it is difficult to see what reason there is for the publication of the interests of an officer with a purely regional “office” to the entire membership of an organisation.<sup>66</sup>*

Master Builders also took issue with the requirement for voluntary members to publish their register of interests. Master Builders stated:

*Of all the proposed provisions we find this the most troubling.*

*Master Builders has 25 elected officers, state councillors, who act on a voluntary basis.*

*Whilst having similar responsibilities as Directors they accept positions as State Councillors to put something back into the industry from which they have drawn a living.*

*Our State Councillors are paid \$500 per annum meeting attendance fees covering reimbursements of attendance costs.*

*To suggest that they should be required to publicly disclose their and their families pecuniary interests, both personal and business is excessive as they are not paid in any practical sense as for example politicians are.*

*We have already had 6 State Councillors indicate their intention to resign as State Councillors.*

*Further, Master Builders is not at all confident that we would be able to find any member willing to replace them where the “reward” is the public disclosure of the business and personal interests.*

*This in turn would mean that Master Builders would not comply with the requirements of our Constitution, nor our registration as an Employer Association under the Act – what happens then?*

*For Master Builders and I suspect many other registered organisations, we believe a reasonable solution is to replace the word “elected” with “elected and paid more than \$10,000”.*

*In this way the vast majority of members caught by this provision will no longer be bound by it – which in turn would be welcomed.<sup>67</sup>*

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<sup>66</sup> Queensland Teachers’ Union, Submission No. 14, page 4

<sup>67</sup> Master Builders, Submission No. 10 (Supplementary), pages 3-4.

Finally, the Master Plumbers Association of Queensland (MPAQ) submitted that 'the requirement to disclose the interests of officers' relatives is unnecessary and irrelevant to the business of industrial organisations.' The MPAQ went further to state that any disclosure of this nature should be to the QIRC (or a similar body), or in the alternative to members of the organisation only upon request, but not required to be made public.<sup>68</sup>

### **Committee Comment**

The Committee has considered the issues raised in submissions and accepts that the provisions relating to the register of material interests, as drafted, do not necessarily reach the right balance between achieving transparency and accountability of officials and respecting the privacy of individuals.

The provisions, as drafted, currently capture more persons than the Committee considers are required to meet the policy objectives. The Committee therefore considers that the target group of persons to which this register applies should be limited in accordance with the following recommendations.

#### **Recommendation 3**

The Committee recommends the Bill be amended to ensure the requirement to prepare registers of interests for officers should be limited to only those officers who are elected and are paid more than \$10,000 per year.

#### **Recommendation 4**

The Committee recommends the Bill be amended to limit the requirement for preparation of registers of interests to officers (as amended by recommendation 3) and recognised spouses only. There should be no requirement for registers to be prepared for any children or other dependent persons.

The Committee also believes that it should not be necessary to require the open publication of the registers in order to meet the policy objectives. It should be enough to allow the registers to be open for inspection by members of the organisation and provided to the QIRC.

#### **Recommendation 5**

The Committee recommends the Bill be amended to remove the requirement for the registers of interests for officers to be made publicly available. Instead, the Committee recommends the registers need only be made available to the members of the organisation and provided to the Queensland Industrial Relations Commission.

### **Disclosure of remuneration for highly paid officials**

One of the aspects of the Bill which has come under the most fire in submissions is the requirement for disclosure statements to be prepared setting out the remuneration for the 10 most highly paid officials of each organisation.

The Bill requires industrial organisations to publicly disclose the remuneration of highly paid officials in the initial financial disclosure statement, the mid-year financial disclosure statement and in the

<sup>68</sup> Master Plumbers Association of Queensland, Submission No.22, page 2.

annual financial disclosure statement either on the organisation's website, or if the organisation does not have a website, on the website of the QIRC.

An organisation's highly paid officials are defined under the Bill to be the ten most highly paid officials and if an organisation has less than ten highly paid officials, all officials of the organisation are included. For the purposes of financial disclosure statement, an official is defined to include each officer or employee of an organisation.<sup>69</sup> The Department confirmed in its response to submissions<sup>70</sup> that with the broad definition of official, this will have the effect of potentially including employees in lower paid and part-time roles in small industrial organisations.

#### Issues raised in submissions

The QIEU set out the following concerns about the proposal stating it is unjustifiably wide in its application:

*Firstly, QIEU submits that it is not appropriate that employees be included unless that employee is also an officer as defined in Section 412. As referred to above in other contexts employees who are not officers by virtue of the definition of Section 412 have no relevant power and that the disclosure of their remuneration is an inappropriate interference with their privacy given that persons with no relevant decision making authority should in QIEU's submission not be subject to these provisions.*

*Secondly, QIEU submits that it is inappropriate, particularly in the case of small unions for employees to be included as in those cases persons in positions such as receptionist or secretary could fall within the definition of 'highly paid official'.*

*The effect of Section 557K, 557O and 655A is that the remuneration and other benefits or payments referred to in 557K must be published on a website. It is submitted (as above) this should be a members-only website, not a publicly accessible website.*

*QIEU submits that, particularly in relation to employees who are not officers and particularly in respect of small unions, the intrusion on the privacy which these provisions would result in is inappropriate when balanced against any public interest that might be achieved.<sup>71</sup>*

Master Builders queried what the public benefit was of publishing the remuneration of the organisation's 10 highest paid officials and employees, submitting:

*Master Builders does not support the public release/disclosure of salaries we see no public interest in doing so.*

*Under our Constitution the Executive (our Board of Directors) set the remuneration of the Executive Director.*

*The Executive Director in turn sets the salaries of staff which are approved by the Executive.*

*The 8 Executive Members are elected by the members and are empowered under our Constitution, which is approved by Queensland's Industrial Register, with all duties and responsibilities to ensure compliance with all corporate governance standards.*

*We see absolutely no Public benefit to further public disclosure.*

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<sup>69</sup> See proposed section 557I (Clause 30 of the Bill).

<sup>70</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 3.

<sup>71</sup> Queensland Independent Education Union, Submission No. 6, page 5.

*In a practical sense no matter what the salary levels are, as with membership fees, one member out of 8,500 is sure to consider the salaries too high, as they do membership fees.<sup>72</sup>*

In relation to the disclosure of the salaries of the 10 highest employees, the CCIQ stated:

*... the requirement to disclose the salaries of the 10 highest employees of an organisation undermines the ability to recruit talented individuals. This provision actively creates a divide between employees all working for the one organisation.<sup>73</sup>*

Suggested alternatives to the contents proposed for the financial registers were provided by the ECA:

*The ECA would also propose an alternative reporting mechanism in relation to the remuneration paid to an organisation's highest paid employees. If accountability and transparency are the objectives, it would be more pertinent to institute a requirement that limits reporting to the salaries of those positions that report directly to the head of the organisation, be that the CEO, General Manager or State Secretary. Alternatively, another set of criteria for reporting may be selected, such as a minimum salary level above which reporting would be required. We suggest aligning this minimum salary level with the high income threshold that restricts unfair dismissal claims under Part 3-2 of the Fair Work Act 2009, currently indexed at \$123,300.*

*This will likely capture the vast majority of employees at the executive level who have decision making powers and who should be subject to a level of accountability for their actions. In setting the reporting requirements for high paid employees through this Bill, it may also be useful to consider that federally registered organisations are only required to report on their top five employees and two from sub branches. Clearly, this is less onerous than what is being proposed in the Bill under discussion.<sup>74</sup>*

The Master Plumbers Association of Queensland also found issue with the provisions proposing similar suggestions:

*In its current form, the Bill requires disclosure of employee remuneration, which in our view would undermine the ability of the Association to recruit staff and would actively create a divide between employees of the Association.*

*The provisions would also increase the risk of other organisations trying to poach staff based on their known salary level and would compromise recruitment of Council members, acting as a disincentive for people to participate in these roles.*

*The Association submits that the requirement to disclose the remuneration of highly paid officials should be removed. If this is not possible, the Association submits that:*

- 1. The requirement should be restricted to officers only; or*
- 2. If this is not possible; the requirement should be limited to officers and/or employees with salaries above a set level, for example, above the high income threshold that restricts unfair dismissal claims of \$123,300; or*
- 3. If this is not possible, the requirement should be amended to reflect the reporting requirements set out in the Fair Work (Registered Organisations) Act 2003.*

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<sup>72</sup> Master Builders, Submission No. 10 (Supplementary), page 2.

<sup>73</sup> Chamber of Commerce and Industry Queensland, Submission No, 15, page 6.

<sup>74</sup> Electrical Contractors Association, Submission No. 13, page 2.

*The Association also strongly submits that, if any disclosure of this nature is required, that the disclosure is required to be made to the Queensland Industrial Relations Commission (or a similar body) but is not required to be made public.<sup>75</sup>*

Finally, the United Firefighters Union of Australia, Union of Employees Queensland (UFUQ) as one of the smaller affected organisations, submitted:

*The UFUQ is an industrial organisation that provides trade union coverage to Permanent and Auxiliary Firefighters in the State of Queensland. As such our membership, whilst always very high in density, is drawn from a fixed number of employees of the State of Queensland.*

*The fixed number of members means that the UFUQ has a very simple, flat structure of officials and employees. We are a small union, with just one paid elected official and up to 7 employees, including part time staff working less than three days a week.*

*As such, the Bill as proposed would require UFUQ to report the personal information of our administrative support staff and their wages. This would even capture casual office administrative employees used to assist the office from time to time.*

*UFUQ does not consider that a requirement to report the personal details and wages of casual administrative staff assists in achieving any of the policy objectives of the Bill as stated in the Explanatory Notes at page one.*

*UFUQ therefore submit that the Bill is amended to remove the requirement for industrial organisations to report a register of the remuneration of their employees.*

*In the alternative, if the object is to record "highly paid" officials or employees, then at the very least a threshold minimum annual salary might be prescribed. These considerations would limit the need to report what would otherwise be expected to be private details of employees who, by any objective measure are not "highly paid".<sup>76</sup>*

### **Committee comment**

In considering whether the requirements for disclosure statements relating to the highly paid officials require amendment, the Committee has turned its focus to the intent of the policy objectives – i.e. increasing disclosure and reporting requirements to ensure members of organisations are aware how their funds are being spent and promoting good governance.

The Attorney-General stated in his Introductory Speech:

*This bill assures members of industrial organisations that this government is committed to protecting their rights and interests by applying these new laws to all industrial organisations—both unions and employer groups. Through greater accountability and transparency, elected officials of industrial organisations registered in Queensland will be required to meet the same standards of accountability and transparency demanded of elected public officials and local government officials in Queensland.<sup>77</sup>*

The Committee sees merit in requiring industrial organisations to disclose to their members the details of the organisation's highly paid officials. However, the relevant provisions as currently drafted in the Bill are too broad and need to be scaled back. Requiring smaller industrial organisations to publish the salaries of administrative support staff, on relatively low wages, on the

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<sup>75</sup> Master Plumbers Association, Submission No. 22, pages 1-2.

<sup>76</sup> United Firefighters Union of Australia Union of Employees Queensland, Submission No. 2.

<sup>77</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction Speech, 30 April 2013, page 1303.

organisation's website appears to be an unintended consequence of the drafting and needs to be rectified.

The Committee considers it makes sense that a threshold should be included over which an official is determined to actually be 'highly paid'. Equally, there should be no requirement to disclose information of any lower paid officials to any other person. As an example, if an organisation only has four employees whose earnings are over the threshold, then that organisation should only be required to disclose details of those four employees.

In determining what threshold should apply, the Committee considers that the high income threshold determined under the *Fair Work Act 2009* (Cth) (Fair Work Act) that restricts unfair dismissal claims is an appropriate indicator as to what the amount should be. The Committee notes that figure is currently set at \$123,300 and is indexed annually on 1 July.<sup>78</sup>

The Committee considers the Bill does not need to specify the threshold in the Act, but should allow for the threshold to be set by Regulation (commencing with the current Fair Work Act threshold amount) and updated or indexed as required by the Government through the subordinate legislative process.

#### **Recommendation 6**

The Committee recommends that the Bill be amended to ensure:

- an official is only a 'highly paid official' if the official's earnings exceed a High Income Threshold to be set out in Regulations; and
- the obligation on organisations to disclose the details of 'highly paid officials' be:
  - o for organisations that have less than 10 'highly paid officials' in a financial year – all highly paid officials; or
  - o for organisations that have more than 10 'highly paid officials' in a financial year, the ten most highly paid officials.

Similar to the Committee's recommendation on publishing the register of interests of Members, the Committee considers there should be no requirement to publish the information on highly paid officials to the broader community in order to meet the Bill's policy objectives.

The Committee considers that in order to achieve the desired policy objectives, it should be sufficient to make the information on highly paid officials available to the members of the organisation and to the QIRC.

#### **Recommendation 7**

The Committee recommends the Bill be amended to ensure that the requirement to disclose information on 'highly paid officials' (as amended) is limited to disclosure to the members of the organisation and to the Queensland Industrial Relations Commission.

<sup>78</sup>

<http://www.fairwork.gov.au/media-centre/latest-news/2012/06/pages/20120613-new-high-income-threshold.aspx>

### Disclosure of procurement spending

The current form of the Bill, if enacted, would trigger the requirement to record all spending on procurement items over \$5,000. This would include purchases for copying paper for the year, purchasing of printers and many other small end items. A number of written and oral submissions highlighted the unworkability of the limit on procurement spending.

Firstly, it was submitted, the low limit triggers so many reportable transactions that it would render the day to day running of many organisations ineffective.

Secondly, it was argued there was no practical value to lengthy statements of relatively small procurement transactions. i.e. it was argued there was no mischief the provision would prevent and accordingly no purpose for the additional requirement.

Mr Cuthbert, Executive Director, Master Builders Association highlighted the issues with placing a limit on procurement spending:

*In terms of the requirement for procurement spending over \$5,000, that is red tape gone insane. With \$16 million spent each year, we would probably have a list of 600 or 700. I want to pose the question to the committee, to the department and to the government: what are you going to do with it? So now you have a list of 600 names with 'Acme Pty Ltd, \$6,200'. I have always had the view that no government should introduce new legislation unless it has focused and committed compliance mechanisms in place. In other words, you are wasting your time. You would be putting great pressure on organisations to provide a list that will just sit in a bottom drawer in someone's office. If we have to do it, we will invent a computer program do it. We will agree to the gifts register. But for what benefit?<sup>79</sup>*

The QTU highlighted its concerns about the impact of the proposed \$5,000 procurement threshold for public disclosure as follows:

*In relation to proposed section 557M (procurement spending), the QTU notes that the threshold for reporting the expenditure at \$5,000 represents 0.026 per cent of the annual turnover of the Queensland Teachers' Union. If required to report on the basis of these provisions, the proposed provision is ridiculously onerous and requires significant review of past financial records.<sup>80</sup>*

The LGAQ also provided additional information to the Committee on how this requirement would affect its operations:

*At an initial estimate, the LGAQ believes that it would in any one year exceed the \$5000 limit for purchases from any one company on more than 3000 occasions with about two-thirds of these being as a result of cumulative payments over the course of a year. Having to accurately capture the information and record it in a way that would meet the reporting requirements pursuant to this section would require significant resources over the course of a year.*

*Moreover, as stated previously, the Queensland Audit Office has complete access to every element of the Association's financial records and this recording would simply impose further workloads on the Association with no perceived benefit for its members.<sup>81</sup>*

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<sup>79</sup> Transcript - Public hearing, 20 May 2013, page 40.

<sup>80</sup> Queensland Teachers' Union, Submission No. 14, page 8.

<sup>81</sup> Local Government Association of Queensland, Submission No. 17, page 7.



The Master Plumbers Association of Queensland similarly submitted:

*The Association submits that the proposal to report on procurement and contract related expenditures greater than \$5,000 would create an enormous administrative burden that would be prohibitive to the future of the Association due to the pure number of expenses that would fall into this category.*

*Given that information on expenditure is already disclosed in financial reports and at Annual General Meetings, the Association submits that this requirement has no useful purpose and that it should be removed (or, in the alternative, the threshold raised considerably) to reduce the adverse impact on organisations.<sup>82</sup>*

### Committee Comment

The Committee has again focused on the intent of the policy objectives being pursued by the Bill i.e. increasing disclosure and reporting requirements to ensure members of organisations are aware how their funds are being spent and promoting good governance.

Based on the submissions from affected stakeholders on how this requirement would operate in practice, the Committee considers that the regulatory burden placed on organisations to comply with the requirements, would outweigh the benefits gained. After careful consideration the Committee believes setting a requirement to report on procurement spending as set out in the Bill would not enhance accountability and transparency of industrial organisations and may unintentionally lead to more red tape than anticipated.

Accordingly, the Committee makes the following recommendation.

#### Recommendation 8

The Committee recommends the provisions requiring organisations to include details of procurement spending over \$5,000 in financial disclosure statements be removed from the Bill.

### 2.1.4 Expenditure Ballots

The Bill includes a requirement that industrial organisations arrange for their members to authorise any spending for a 'political purpose for the same political object'<sup>83</sup> that exceeds \$10,000 in a financial year, whether as an individual amount or when the spending in that particular financial year on political purposes when added together is more than \$10,000.<sup>84</sup> The ballot is referred to in the Bill as an 'expenditure ballot'.

The Bill provides that an expenditure ballot may only be conducted by the ECQ at the expense of the industrial organisation.<sup>85</sup>

The spending is authorised by an expenditure ballot only in the circumstance where (1) at least 50% of the members on the roll of voters for the ballot have voted; and (2) more than 50% of the valid votes cast, authorise the spending.<sup>86</sup>

<sup>82</sup> Master Plumbers Association Queensland, Submission No. 22, page 3.

<sup>83</sup> As defined in proposed new section 553C(1) and (2) of the *Industrial Relations Act 1999* (see Clause 29 of the Bill).

<sup>84</sup> Clause 29 of the Bill proposes to insert new sections 553D – 553S of the *Industrial Relations Act 1999*.

<sup>85</sup> See proposed new section 553G of the *Industrial Relations Act 1999* (Clause 29 of the Bill).

<sup>86</sup> See proposed new section 553D of the *Industrial Relations Act 1999* (Clause 29 of the Bill).

The Committee understands that while the proposed provisions for undertaking a ballot to approve an organisation's spending for political purposes of amounts of \$10,000 or more are unique to Queensland in this financial accountability context, the requirements for how the ballot is to be conducted are modelled on the 'protected industrial action' ballots under Chapter 3, Part 3-3, Division 8 of the Commonwealth Fair Work Act.<sup>87</sup>

### **General objections to the requirement to hold an expenditure ballot**

Based on the submissions, these provisions of the Bill are arguably the most controversial of all the proposed provisions. Various arguments were raised in the submissions as to why these provisions are largely unworkable.

The Department noted that concerns were raised primarily in relation to the impact of the proposed changes on freedom of speech and the capacity of industrial organisations to perform the role that is expected of them by their membership.<sup>88</sup> Submissions also suggested that current provisions under the *Electoral Act 1992 (Qld)* and the *Electoral Act 1918 (Cth)* require reporting of political expenditure and that the membership of industrial organisations have a number of means, including through general meetings and financial reports, to express their views and support the activities of organisations.

The Queensland Council of Unions stated generally in relation to the expenditure ballots:

*The requirement to conduct a ballot for all expenditure over \$10,000 denies unions any capacity to mount a meaningful campaign that is contrary to a Government's policy. The ballot is intended to decrease a union's capacity to react in a timely fashion and allow Government a head start to undertake unpopular decisions such as privatisation or breaking election promises (such as public servants have nothing to fear) or other commitments (such as no front line services will be touched in job losses).<sup>89</sup>*

The ECA similarly submitted:

*The changes outlined in the Bill have the potential to severely hinder the capacity of employer groups to act on this delegation and lobby for changes to government policy. ECA and MEA would use as an example our intense advocacy lobbying and expenditure to lead the country in making changes to the Federal Government's now defunct Home Insulation Program. This was a program that, as a consequence of bad policy, resulted in house fires and deaths in the community. ECA and MEA would strongly object to a process that delays or inhibits the ability of our organisation to respond quickly, appropriately and proportionately to such serious risks caused by a government policy.<sup>90</sup>*

The Queensland Council for Civil Liberties submitted that ballots of this nature were simply unnecessary as there was no longer compulsory unionism in Australia:

*There are already democratic structures at work in Unions of employers and employees pursuant to which members can control the expenditure by the Union of their dues. Now that union membership is no longer compulsory members who object to the political activities of the Union can simply leave.<sup>91</sup>*

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<sup>87</sup> Based on research prepared by the Queensland Parliamentary Library for the Committee dated 14 May 2013.

<sup>88</sup> Letter from the Department of Justice and Attorney-General dated 20 May 2013, page 4.

<sup>89</sup> Queensland Council of Unions, Submission No. 11, page 6.

<sup>90</sup> Electrical Contractors Association, Submission No. 13, page 3.

<sup>91</sup> Queensland Council for Civil Liberties, Submission No. 19, page 2.

The CCIQ commented on the ongoing workability of the provisions, and raised the issue of survey fatigue:

*This requirement is unworkable and blunts CCIQ from the way in which we conduct our advocacy. ... The time involved in conducting a ballot and the 14 days allowed for within the Bill for the ECQ to report on results of the ballot would also affect the responsiveness of CCIQ to comment on political issues and policy decisions that impact on Queensland businesses.<sup>92</sup>*

...

*Our concern additionally is for survey fatigue: CCIQ members are quite frequently members of other industry organisations for example a number of our members are also members of FIAQ or AgForce Qld. This presents a significant burden across the whole business community which can be considered red tape cost/tax burden on the whole economy.<sup>93</sup>*

Further concerns were discussed at the public hearing about:

- the threshold amount of \$10,000 which triggers the requirement to hold a ballot;
- the additional red tape and administrative cost and burden imposed on conducting ballots;
- the requirement for 50% of returns to be reached for the ballot to be valid; and
- the requirement for the ECQ to be the sole body to conduct the ballots.<sup>94</sup>

### **Committee Comment**

The Committee considers that the implementation of expenditure ballots by industrial organisations will be valuable in improving the financial accountability and transparency in their operations.

As stated by the Attorney-General in his recent media interview:

*... we're talking about political communication here, ... this legislation means that the union executive have to go to their members – to the grass roots heart and soul hard working Queensland workers who actually pay their membership fees and they have actually a direct say in how money's expended by their union. ... you can't express more freely communication than that – than giving your members a direct say in how their money is spent.<sup>95</sup>*

Put simply, the expenditure ballots will provide every member of the industrial organisation with the ability to have their say about how the organisation spends its money on political purposes. The Committee does concede however that the provisions, as drafted, could prove to be unworkable if they were to proceed in their current form.

The Committee has examined the further concerns in detail below.

### **Appropriate expenditure ballot threshold**

At the public hearing, the Committee queried the Departmental representatives as to how the \$10,000 threshold was arrived at:

<sup>92</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 5.

<sup>93</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 15.

<sup>94</sup> Transcript - Public hearing, 20 May 2013

<sup>95</sup> Steve Austin interview with Jarrod Bleijie, Queensland Attorney-General, 16 May 2013.

**CHAIR:** .... *The law is about balance and you have nominated the amount of \$10,000. Of course, you have the ballot, the Electoral Commission et cetera. How has that balance been reached here? How has \$10,000 been decided as being the appropriate amount?*

**Dr Blackwood:** *The decision on the amount that would require a ballot was a decision decided by government and I cannot assist you any further on that.*

With no basis for the threshold provided by the Department for the Committee to work with, Members queried a number of the witnesses regarding whether they would still have an objection to the expenditure ballot if the \$10,000 amount of the threshold was increased.

Most witnesses responded to the effect that the expenditure ballot requirement *per se* was objectionable and that there was no threshold figure that would be acceptable.

For example, Mr John Battams, the President of the Queensland Council of Unions stated:

*We are not interested in talking about thresholds; it is the concept that we oppose. We believe that the whole thing about having to go back to a referendum each and every time that you want to spend whatever dollars does not add up in terms of a democratic organisation. We are not interested in talking about whether it should be \$10,000, \$20,000 or \$30,000; we believe the concept is inherently wrong.<sup>96</sup>*

Similarly, Mr Graham Moloney, the General Secretary of the QTU responded:

*... we would not see a threshold amount, because the submission that we have made is that any constraints on political expenditure are best handled through the Electoral Act, or the Commonwealth Electoral Act and the reporting requirements there. That way at least it is consistent across all participants in political activity rather than being something for unions of employees and employers and something for anybody else involved in the process.<sup>97</sup>*

However, while opposed to the concept of a \$10,000 threshold due to it being unworkable in practice, Mr Greg Hallam, the Chief Executive Officer of the LGAQ conceded that a threshold of \$100,000 may be more workable:

*On the first issue, \$10,000, as I said, would see us running plebiscites every month, maybe every fortnight. We, as I said, made 100 submissions to government and probably three quarters of those were actually where government has requested us to represent our sphere of government. In other words, tell us about flying foxes, tell us about waste, tell us about child care, tell us about roads, tell us about planning, tell us about water and sewerage. It would make that unworkable for us. Often times the government gives us a week or a fortnight to make submissions in relation to those matters. It would simply be impossible to do it. So we would think the threshold would probably have to be around \$100,000.<sup>98</sup>*

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<sup>96</sup> Transcript - Public hearing, 20 May 2013, page 18.

<sup>97</sup> Transcript - Public hearing, 20 May 2013, page 24.

<sup>98</sup> Transcript - Public hearing, 20 May 2013, page 28.

What does \$10,000 cover?

In order to consider whether the threshold of \$10,000 was appropriate, the Committee considered what services could be provided under that amount.

At the public hearing Mr Battams of the Queensland Council of Unions raised the issue of costs in the context of the conducting an industrial matter:

*Clearly, with an industrial matter, as soon as you want to promote a particular point of view in the public domain and want to spend more than \$10,000—and it costs you more than \$10,000 to get half a page in the Courier-Mail—then it is picked up by this legislation.<sup>99</sup>*

In relation to advertising rates, the Committee sought its own advice which showed that the costs for newspaper advertisements varied depending on the size of the advert, where it is placed and whether it was colour or black and white. The Committee's inquiries found that an estimate for a half page, colour advertisement on page 4 of the Saturday Courier Mail came in at **\$20,933.64** including GST.

An example of website banner costs on the Courier Mail website is as follows:

<b>Home page</b>	Top banner + rectangle on the side	\$10,000 per day
<b>Breaking news</b>	Top banner + rectangle	\$1,500 per day
<b>Queensland News</b>	Top banner + rectangle	\$5,000 per day
<b>Other ads</b>	Various	Cost per thousand page downloads=\$40 Eg. To purchase 80,000 page downloads= \$2,000

Finally, primetime advertising for a 60 second advertisement on television ranged from **\$2,500** to **\$10,500** depending on the time and the program in which the advertisement was to appear. The cost of a 15 second advertisement was approximately 60% of the cost for the full minute.

The costs of conducting a ballot

The Bill provides that an expenditure ballot must only be conducted by the ECQ at the cost of the relevant industrial organisation. The ECQ is empowered to recover the amount of the costs not paid on demand as a debt payable.<sup>100</sup>

The question therefore arises as to what is the cost to organisations in conducting a ballot if they wish to expend an amount over \$10,000 on a political object.

At the public hearing the Department was questioned as to what the likely costs would be for the ECQ to conduct an expenditure ballot. The following exchange occurred between Members and the Department representatives:

**Mr WELLINGTON:** *Just following on the question about the cost of balloting, just to clarify, the advice you are providing this committee, with the best advice from the government, is that you have no real idea as to how much it is going to cost to have the balloting? Is that what you are saying—that the range is so great that the Electoral Commission is not able to*

<sup>99</sup> Transcript - Public hearing, 20 May 2013, page 16.

<sup>100</sup> Proposed Section 553G (Clause 29).

*give any indication or advice? We do not know whether we are talking about the cost of the ballot being in the vicinity of thousands or hundreds? Is that what you are telling us?*

**Dr Blackwood:** *It will vary for each industrial organisation. That is right. That is what we are telling you. We have had discussions with the ECQ about costs and we cannot take that any further at this stage.*

**Mr WELLINGTON:** *I just find that unbelievable that there is no formula that you or the Electoral Commission are able to provide to this committee. To me, I would have thought that there must be at least some formula or some way. It may be the case that the advice that our committee should be receiving is that perhaps it is going to cost more than the \$10,000 to conduct a ballot. Surely, there must be some mechanism that you can decide that, for these minor organisations, it is in the hundreds. Surely, there must be some information that you need to go back to the Electoral Commission to provide to our committee? Are you intending to make those inquiries?*

**Dr Blackwood:** *We have made inquiries with the ECQ and they are going to send us over the costing tool, which will give us some idea of the costs of an election. Then, obviously, you would have to look at each industrial organisation and what 50 plus one want or 50 per cent of their electoral—<sup>101</sup>*

...

**CHAIR:** *I will follow up in relation to the questions asked by the member for Nicklin. If you have the ECQ data in relation to cost, can you share that with us?*

*Mr James: Yes.*<sup>102</sup>

Unfortunately, at the time of writing this report, the only advice the Department has provided to the Committee about the ECQ's projected costs or billing method is as follows:

*In relation to a costing model to recover costs for the conduct of ballots, please note the following:-*

- *Activity based costing model will be implemented by the ECQ to recover costs.*
- *Direct costs and overheads will be given a base rate. These rates will remain constant for each ballot conducted. Rates will be reassessed each financial year...*<sup>103</sup>

The Committee does not consider this response to be terribly helpful.

Estimates on costs of ballots were provided by stakeholders in submissions and at the public hearing. The CCIQ estimated an ongoing annual cost to its organisation of \$43,500 and estimated approximately \$1.5 million to business based on its 4,000 members taking 15 minutes to complete a ballot survey at an average rate of \$100 per hour for an estimated 15 ballots per financial year.<sup>104</sup>

The QTU submitted the ballot would be onerous on its members:

*For an expenditure ballot of this kind, the QTU, with nearly 44,000 members, would anticipate a cost well in excess of \$50,000 for the purposes of expenditure as little as \$10,000. This is compounded by the requirement for an annual ballot for any on-going*

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<sup>101</sup> Transcript - Public hearing, 20 May 2013, pages 5-6.

<sup>102</sup> Transcript - Public hearing, 20 May 2013, page 6.

<sup>103</sup> Department of Justice and Attorney-General response to supplementary questions asked by the Committee – email dated 28 May 2013.

<sup>104</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 14.

*campaign which falls within the scope of an expenditure ballot in relation to political purposes. This further emphasises the onerous nature of these provisions.*<sup>105</sup>

The ECA did not provide a cost estimate but stated:

*With ECA's growing membership, there will be significant costs involved in encouraging time and resource poor business owners to participate in formal polling to approve expenditure on political objects.*<sup>106</sup>

At the public hearing, the Committee asked the QTU how many events per financial year may trigger the requirement for an expenditure ballot if the Bill were enacted in its current form.<sup>107</sup> The QTU's supplementary submission indicates that in the previous 5 months at least 7 events may trigger the requirement for the expenditure ballot with 3 upcoming events also potentially falling within scope.<sup>108</sup>

In relation to a costs estimate the QTU provided at the public hearing that '...an estimate of the cost of \$50,000 to conduct such a ballot in the context of my organisation would be a conservative estimate'.<sup>109</sup>

Conservatively speaking that is over \$500,000 expenditure per financial year for just the costs of polling members about how to spend their money in relation to political objects. Arguably, an organisation may need to consider informally polling their members about whether they wish to be formally polled (in accordance with the Act) on certain matters as the cost of the expenditure ballot may indeed exceed the cost of the event they wished to run in the first place.

Mr Burke, General Secretary of the QIEU believed this was possible:

*... the cost of actually running a ballot may far exceed the sums that are involved, and \$2 a member would be the sum that we would venture in terms of what that would actually cost, and that may be a very conservative amount.*<sup>110</sup>

Mr Hallam, Chief Executive Officer of the LGAQ stated:

*On the first issue ... would see us running plebiscites every month, maybe every fortnight. We, as I said, made 100 submissions to government and probably three quarters of those where government has requested us to represent our sphere of government.*

....

*It would make that unworkable for us.*<sup>111</sup>

....

*We do a twice-yearly survey of our membership. We use an external party to do it. It is a phone questionnaire. They get a questionnaire in the mail and the company rings people up. It costs us \$50,000 to survey 1,000 people.*<sup>112</sup>

<sup>105</sup> Queensland Teachers' Union, Submission No. 14, pages 6-7.

<sup>106</sup> Electrical Contractors Association, Submission No. 13, page 3.

<sup>107</sup> Transcript - Public hearing, 20 May 2013, page 21.

<sup>108</sup> Queensland Teachers' Union, Submission No. 14a, pages 1-2.

<sup>109</sup> Transcript - Public hearing, 20 May 2013, page 21.

<sup>110</sup> Transcript - Public hearing, 20 May 2013, page 22.

<sup>111</sup> Transcript - Public hearing, 20 May 2013, page 28.

<sup>112</sup> Transcript - Public hearing, 20 May 2013, page 32.

### Committee comment

Although witnesses at the hearing generally stated that they were fundamentally opposed to the concept of an expenditure ballot in general, the Committee considers that the ballot is workable with some adjustments.

Having regard to the information provided in submissions and at the public hearing on the likely costs of conducting a ballot; the costs of political advertising and the frequency of when a ballot would likely occur, the Committee considers that the threshold amount should be reviewed.

Noting that the details of spending on all political activities must be recorded and reported on under the provisions contained in the Bill, the Committee considers that an increase of the threshold will enable the policy objectives of the Bill to still be met without imposing onerous costs on organisations in having to conduct overly frequent ballots.

### Recommendation 9

The Committee recommends the threshold dollar amount required to trigger an expenditure ballot under section 553D be reviewed.

In determining a suitable figure, the Attorney-General and Minister for Justice should have regard to the following:

- the anticipated costs for organisations to hold a ballot;
- the potential for organisations to hold multiple ballots within the same financial year; and
- the costs of likely expenditure to be incurred on political objects.

### 50% quorum required for the ballot to be valid

The issue of obtaining a quorum of 50% in an expenditure ballot was raised consistently in submissions as being problematic.

The QTU submitted:

*The requirement for a minimum return of 50 per cent from 50 per cent of members on the roll is a very high return for a voluntary ballot. If the section is retained, subsection 4 (b) of proposed section 553 (D) should be deleted.*<sup>113</sup>

The CCIQ provided details based on its experience to date in conducting votes of its members:

*CCIQ's practical experience indicates that it is impossible to achieve a 50% turn out of a membership vote. A large majority of our membership is based in regional and remote areas across all regions of the state; additionally our members are owners/managers of SMEs facing significant time and cost constraints. It is important to highlight that CCIQ exists to serve our members and not the vice versa that would be created by this provision.*<sup>114</sup>

Similarly the ECA provided that:

*Achieving the 50% participation level from a widely dispersed membership presents a substantial challenge.*<sup>115</sup>

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<sup>113</sup> Queensland Teachers' Union, Submission No. 14, page 6.

<sup>114</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 5.

<sup>115</sup> Electrical Contractors Association, Submission No. 13, page 3.



This issue was discussed further by the Committee during the public hearing. A number of witnesses supported their initial concerns about the unworkability of the 50% quorum by providing evidence of the current turnout at their general meetings.

Mr Stephen Tait, the Chief Executive Officer of the CCIQ indicated that the turnout at the annual meeting of his organisation is less than 5%. He further stated:

*It would be highly unlikely for us to receive anywhere near a 50 per cent turnout on any of our ballots therefore it would render anything that we would like to do completely impossible.*<sup>116</sup>

In this context, Mr John Martin, Industrial Officer from the Queensland Council of Unions made the following relevant comments:

*I do note the submission of the Master Builders Association with respect to the difficulty in getting busy people to attend meetings. Builders are busy people. They do not want to attend boring meetings; they want to be out building buildings. That does not necessarily equate to opposition. That means that members of unions, whether they be employers or employees, are busy people and they may not have the time to attend every meeting.*<sup>117</sup>

In the context of the overall workability of the proposals, Mr Battams from the Queensland Council of Unions summarised the situation as follows:

*... if, for example, the proposed law was in fact law, what I was about to spend my day on today would not be possible because today we are having a press conference at 11 o'clock to explain what we have said in here, we have a 30-second social media ad being launched today and we have spent quite a bit of money, over the last little while, making sure the people of Queensland are aware of what is happening with this bill. What this bill would do would make all of that activity not possible until, for example, the unions funding this had, in fact, had a referendum of all of their members, got 50 per cent to vote and 50 per cent plus one to actually vote in favour. That would not be physically possible in the timelines outlined. That is why we say this bill strikes at the heart of freedom of speech and democracy.*<sup>118</sup>

### Committee Comment

Having regard to the objects of the Bill and the aim to give all members of industrial organisations the ability to have their say on expenditure on political objects, the Committee is cognizant that the amount for a quorum must not be set too low as the evidence from submission points towards. To do so, would defeat the purpose of the Bill and continue to allow a very small minority to control the actions of the large majority.

The Committee considers a greater onus should be placed on industrial organisations to engage with their members better and encourage participation in all activities which they wish to pursue.

It has been submitted however, that the requirement in section 553D(4)(b) for a 50% turnout to the ballot is too high and would be unworkable for registered industrial organisations.

<sup>116</sup> Transcript - Public hearing, 20 May 2013, page 32.

<sup>117</sup> Transcript - Public hearing, 20 May 2013, page 18.

<sup>118</sup> Transcript - Public hearing, 20 May 2013, page 11.

The Committee therefore recommends that further investigation into this aspect of the expenditure ballot should take place prior to it being implemented.

**Recommendation 10**

The Committee recommends the Attorney-General and Minister for Justice review the requirement in section 553D(4)(b) for at least 50% of the members on the roll of voters for the ballot to have voted before the spending can be authorised.

**ECQ as the only authorized body to conduct expenditure ballots**

As stated above, the Bill provides that the ECQ is the only authorised body to conduct expenditure ballots. The QTU submitted in relation to the ECQ that inordinate delays could be incurred before ballots were finalised:

*A further unjust consequence of the proposals, which may well go to their fundamental purpose, is the delay inherent in the conduct of an expenditure ballot conducted by the Electoral Commission of Queensland. From experience with a protected action ballot in 2012, the process would take approximately nine weeks in the case of an organisation the size of the QTU. For any emergent issue, which would require “expenditure for political purpose”, the legislation would seek to impose a delay of more than two months before an organisation was able to respond and expend funds. It is difficult to see how this could not be conceived as a breach of the implied doctrine of freedom of political communication and association.<sup>119</sup>*

The QTU submission also pointed out that there were no performance measure for the timeliness of the ECQ in conducting ballots which could lead to significant delays for industrial organisations.<sup>120</sup>

The ECA also raised the issue of delays as follows:

*By the time the requisite number of members have cast their vote, the political object in question could no longer be of any relevance, with the opportunity for lobbying well and truly lost. The inevitable result is that there will be far fewer campaigns in Queensland from employer groups, leading to disgruntled industry members and far less informed policy making.<sup>121</sup>*

The LGAQ also highlighted issues with using the ECQ:

*The requirement to use the Electoral Commission to conduct any required expenditure ballot seems to be an unnecessary waste of resources. Apart from the probability that timelines would be extended tenfold at a minimum, the sheer cost of the Commission conducting a ballot would far exceed that of alternative ballot options.<sup>122</sup>*

Of most concern however was the issue of the ECQ’s capacity to conduct the ballots at times when general elections were scheduled to occur. It is a very real consideration that industrial organisations would be aiming to spend money on political objects around the same time as a general election is being held. The LGAQ stated in this regard:

*There is also the need to consider the capacity of the Commission to conduct ballots at times when its resources are already committed e.g. during State, Federal or local government*

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<sup>119</sup> Queensland Teachers’ Union, Submission No. 14, page 7.

<sup>120</sup> Queensland Teachers’ Union, Submission No. 14, page 7.

<sup>121</sup> Electrical Contractors Association, Submission No. 13, page 3.

<sup>122</sup> Local Government Association of Queensland, Submission No. 17, page 6.

*elections. A preferred alternative would be a requirement for an organisation to conduct a ballot that complied with certain predetermined criteria and be responsible for being able to demonstrate compliance if required by the QIRC and/or Electoral Commission.<sup>123</sup>*

### Committee Comment

The Committee carefully considered the restrictions in the current Bill providing the ECQ as the only organisation permitted to conduct these ballots.

At the public hearing the Committee asked the Department whether consideration had been given to ballots being held by an independent third party as opposed to the ECQ on a contestable basis. The Department representative responded as follows:

**Dr Blackwood:** *The decision was made to have all of those ballots conducted by the ECQ. If you look at the Industrial Relations Act there are other provisions in relation to elections of organisations of their officers et cetera, but in this case it was decided that it be through the ECQ.<sup>124</sup>*

In relation to the ECQ's ability to conduct ballots in the most cost effective manner, such as by email, witnesses at the public hearing provided:

**Mr Moloney [ETU]:** *That was a matter that Dr Blackwood raised, where he seemed to suggest that it could be postal, attendance or electronic, but I am still not aware of the Electoral Commission of Queensland having the capacity to run electronic ballots.*

**Mr Burke [QIEU]:** *Might I comment on that, too? We have had experience of conducting enterprise bargaining ballots where we have asked the Electoral Commission to conduct attendance ballots and there has been extremely limited capacity given their resource level to actually conduct that. So at best 15 per cent of the ballot was conducted by attendance, the rest of it had to be by postal and there is no electronic availability as far as we know.<sup>125</sup>*

The Committee sought further clarification from the Department after the public hearing as to the ECQ's capacity to conduct ballots by email, however at the time of writing no evidence has been provided to the Committee by the Department on this issue.

### Committee comment

The following issues are of real concern to the Committee in relation to the requirement for the ECQ to be sole body to conduct expenditure ballots:

- the capacity of the ECQ to cope with ballots during peak periods such as elections;
- the cost of conducting expenditure ballots;
- the time frame for delivery of ballot results; and
- the ECQ's lack of capacity to conduct electronic balloting.

The benefits of contestability in relation to conducting ballots was therefore considered to be an important issue in relation to the workability of the expenditure ballot provisions. The Committee identified numerous potential advantages in amending the Bill in this regard:

- contestability is in line with government policy and initiatives to encourage best service at an affordable cost in a free market economy;

<sup>123</sup> Local Government Association of Queensland, Submission No. 17, page 6.

<sup>124</sup> Transcript - Public hearing, 20 May 2013, page 6.

<sup>125</sup> Transcript - Public hearing, 20 May 2013, page 26.

- it may alleviate pressure on ECQ around election periods;<sup>126</sup>
- it may potentially drive costs down, making freedom of political expression more affordable in practice for members of industrial organisations (who would ultimately bear the cost if increased balloting costs);
- there may be improved timeliness – turnaround times for balloting have been consistently raised as an issue by organisations;<sup>127</sup> and
- industrial organisations may have the benefit of electronic balloting (offered by private companies and not currently offered by ECQ);<sup>128</sup>

The Committee considers that this matter should be considered in greater detail by the Attorney-General in order to provide for contestability in the conduct of the expenditure ballots. The Committee refers the Attorney-General to the relevant provisions in the Fair Work Act for guidance on providing third parties the ability to conduct ballots.

Accordingly, the Committee makes the following recommendation.

#### **Recommendation 11**

The Committee recommends the Bill be amended to:

- provide for contestability in the conduct of expenditure ballots and allow for approved organisations other than the Electoral Commission Queensland to conduct expenditure ballots;
- authorise the Queensland Industrial Relations Commission (or another appropriate independent body) to decide whether third party organisations are eligible to conduct expenditure ballots; and
- set out detailed eligibility criteria (either in the Act or in Regulations) which must be met by third party organisations in order to be eligible to conduct expenditure ballots.

The eligibility criteria should address the conditions that a person must meet and the factors that the Queensland Industrial Relations Commission (or other appropriate independent third party) must take into account to determine whether a person is a fit and proper person to conduct an expenditure ballot.

Submissions also raised the issue of the broad application of the words “political purpose”, “political object” and “political cause or belief”. The Committee discusses this aspect further in Part 3 of the Report – at Fundamental Legislative Principles.

#### **2.1.5 Mandatory governance and financial accountability training for officers of industrial organisations**

New provisions have been included in the Bill which require all industrial organisations to have governance and financial management policies as prescribed by regulation about a number of specified matters related to the financial management of the industrial organisations, including:

- decision-making about, and reporting of, the organisation’s financial matters;
- authorisations and delegations relating to the organisation’s spending;

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<sup>126</sup> Local Government Association of Queensland, Submission No. 17, page 6.

<sup>127</sup> Transcript - Public hearing, 20 May 2013, pages 4 and 18; Local Government Association of Queensland Ltd, Submission No. 17, page 6.

<sup>128</sup> See for example: <http://www.austelect.com/personnel/>; <http://www.ecq.qld.gov.au/>

- the organisation's credit cards issuance and use;
- the organisation's contracting activities;
- travel and accommodation;
- spending on, and receipt of, entertainment and hospitality;
- gifts, including giving and receiving; and
- how complaints about financial matters are dealt.<sup>129</sup>

The Bill also provides that financial management officers of industrial organisations must undertake governance and financial management accountability training within 3 months of commencement in that role or from the day that such training is approved and at least once every two years after that.<sup>130</sup>

The Bill also provides that the Registrar of the QIRC is to publish information about approved financial management training on the QIRC website.<sup>131</sup>

The requirement that financial management officers undergo training was supported by Queensland Council of Unions<sup>132</sup> and QTU.<sup>133</sup> QTU did however consider that the timeframe for completing the training – 3 months – may be unrealistic.<sup>134</sup>

QTU also supported proposed section 553A (policies), 'except in relation to section [553A(1)(i)] which allows for the imposition of other requirements by way of regulation.'<sup>135</sup>

CCIQ identified these amendments would affect employer organisations. Specifically, CCIQ estimated the ongoing annual cost to business to be \$33,900.<sup>136</sup>

The Queensland Council of Unions commented:

*The Bill does contain some useful provision that the union movement can support. Financial training as proposed by section 553B makes sense as union officials are elected to a position and the very nature of democracy means that there are no predetermined qualifications other than perhaps being a member of the organisation. It would follow that an official could be elected without the requisite financial management skills and mandatory training in this field may eliminate any possibility of an official being elected and then not being able to manage the finances of the organisation.*<sup>137</sup>

<sup>129</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, pages 4 and 12. See also proposed new section 553A the *Industrial Relations Act 1999* (Clause 29 of the Bill).

<sup>130</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, pages 4 and 12. See also proposed new section 553B the *Industrial Relations Act 1999* (Clause 29 of the Bill).

<sup>131</sup> See proposed new section 553B(3) the *Industrial Relations Act 1999* (Clause 29 of the Bill).

<sup>132</sup> Queensland Council of Unions, Submission No. 11, page 5.

<sup>133</sup> Queensland Teachers' Union, Submission No. 14, page 7.

<sup>134</sup> Queensland Teachers' Union, Submission No. 14, page 7.

<sup>135</sup> Queensland Teachers' Union, Submission No. 14, page 7.

<sup>136</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 15.

<sup>137</sup> Queensland Council of Unions, Submission No. 11, page 5.

### Committee comment

The Committee notes that these amendments received general support. The Committee considers these provisions will improve the accountability and transparency of industrial organisations. The Committee supports the amendments.

#### 2.1.6 Strengthened audit and complaint investigation process

The Bill amends existing obligations for audited financial reports to reflect the more stringent financial reporting requirements as well as strengthening the complaints and investigation process.

#### Audit

In addition to the existing obligations for audited financial reports, the Bill requires a registered company auditor to state whether:

- the organisation has prepared a financial disclosure statement and mid-year financial disclosure statement;
- the organisation has the financial policies required under section 553A(1); and
- spending for political purposes, if any, contravened the requirements under section 553D (particular spending for political purposes must be authorised by ballot).<sup>138</sup>

Other obligations in the Industrial Relations Act are also amended to reflect the requirement of the organisation to prepare an annual financial disclosure statement. For example, in addition to presenting the audit report for the financial year at a general meeting, the organisation will also be required to provide the financial disclosure statement.<sup>139</sup> In addition, the Bill will impose a new obligation regarding publication; the audited financial report and financial disclosure statement is required to be published on the organisation's website, or if the organisation does not have a website, on the QIRC's website.<sup>140</sup> On that issue, the Committee has made a recommendation elsewhere in this Report which will impact the documents to be made available.

A number of submissions received raised concerns about the enhanced auditing requirements. For example, CCIQ and QTU raised concerns about the cost of additional compliance.<sup>141</sup> Another submitter suggested these requirements were incongruous with the disclosure requirements of public companies.<sup>142</sup>

From another perspective, Australian Dental Association and LGAQ considered exemption from increased auditing and financial oversight should be available to some organisations,<sup>143</sup> which the Committee discussed earlier in this Report. Currently, the Industrial Relations Act contains a mechanism where organisations can apply to be exempted from some provisions. However, as was

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<sup>138</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 32.

<sup>139</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 36. See also clauses 37-40.

<sup>140</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clauses 40 and 56.

<sup>141</sup> Chamber of Commerce and Industry Queensland, Submission No. 15, page 6; Queensland Teachers' Union of Employees, Submission No. 14, page 8.

<sup>142</sup> Queensland Nurses' Union, Submission No. 7, page 8.

<sup>143</sup> Australian Dental Association, Queensland Branch, Submission No. 4, page 2; Local Government Association of Queensland, Submission No. 17, page 3.

explained by the Department, that exemption is only available where another law imposes similar accounting and audit obligations.<sup>144</sup>

The Committee also notes that clause 53 of the Bill will amend section 591 of the Industrial Relations Act to expressly state that no exemption is available in relation to the appointment of registered company auditor from inspecting and examining the organisation's annual financial disclosure statement and mid-year financial disclosure statement.

In its submission, LGAQ sought exemption from the financial reporting requirements on the basis of its 'corporation status, unique ownership by public bodies, extensive existing local government accountability and governance requirements and direct audit and financial oversight by the Queensland Auditor-General.'<sup>145</sup> The Committee considered the issue of 'corporation status' earlier in this Report. Although the Committee is sympathetic to the position of LGAQ, it does not endorse the suggestion by LGAQ that it should be exempt on the basis that it is also subject to audit and financial oversight by the Queensland Auditor-General. This is because the Queensland Auditor-General can technically undertake the requirements imposed under section 560 of the Industrial Relations Act (as amended by this Bill).<sup>146</sup>

However, the Committee also acknowledges that it has not had the opportunity to consult further with the parties regarding this aspect, and therefore is not aware if the Queensland Auditor-General has the general powers, or capacity, to undertake this work. On this basis, the Committee considers that consultation between the Department, LGAQ and Auditor-General occurs in order to consider any impediments or issues.

### Complaints and investigation

The Bill strengthens the complaints and investigation process. This is achieved by amending existing obligations and introducing new processes. For example, the Bill will extend the basis upon which the Industrial Registrar can investigate an organisation for compliance, as well as extending the powers of the Registrar to obtain information from third parties.<sup>147</sup>

Other provisions are new. The Bill will enable complaints to the Industrial Registrar to be directed to the Director-General of the Department, who may refer to the Department's industrial inspectorate for investigation. In addition, the Bill ensures that information can be shared with relevant law enforcement authorities if criminal behaviour is detected in an industrial organisation. The Bill also provides that the Attorney-General may also direct the Director-General to investigate industrial organisations. If the organisation is found to be dysfunctional the Director-General may appoint an interim administrator.<sup>148</sup>

The Committee considers these provisions will generally improve the accountability and transparency of industrial organisations. The Committee supports the amendments.

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<sup>144</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 6.

<sup>145</sup> Local Government Association of Queensland, Submission No. 17, page 3.

<sup>146</sup> Pursuant to section 558 of the *Industrial Relations Act 1999* and section 1284 of the *Corporations Act 2001* (Cth).

<sup>147</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clauses 43 and 45

<sup>148</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introductory Speech, 30 April 2013, page 1303.

### 2.1.7 Increased penalties for dishonesty and other breaches of duty

Currently, under section 527 of the Industrial Relations Act there is a duty of honesty imposed on officers with a maximum penalty of \$4,400. Clause 21 of the Bill proposes to replace this provision with a new section titled 'Duty of honesty, good faith and proper purpose'. Under the proposed new section, an officer must act (a) honestly, (b) in good faith in the best interests of the organisation; and (c) for a proper purpose. The maximum penalty for a breach of this duty has been increased to \$340,010 or 5 years imprisonment.<sup>149</sup> The Department advised that this proposed section was '*aligned to section 184 of the Corporations Act 2001 (Cth)*.'<sup>150</sup>

The Bill also increases the penalty for the breach of an officer's duty of reasonable care and diligence from \$4,400 to \$340,010 or 5 years imprisonment.<sup>151</sup>

Similarly, the Bill increases the penalty from \$4,400 to \$340,010 or 5 years imprisonment in the same manner for the situation where an officer does not disclose a conflict of interest involving an industrial organisation's financial management.<sup>152</sup>

The Explanatory Notes explain that the rationale for these increases in penalty is '*to provide a realistic deterrent*'.<sup>153</sup> It is also noted that these duties are extended from applying to an officer of an organisation performing or exercising financial management powers to an officer more generally.<sup>154</sup>

The Committee received four submissions on this issue. The question of alignment to the *Corporations Act 2001 (Cth)* was also raised at the public hearing on the Bill on 20 May 2013.<sup>155</sup>

Queensland Nurses' Union considered the Bill '*imposes an unparalleled level of liability on volunteer office holders in the non-profit sector*'.<sup>156</sup> The Australian Council of Trade Unions also criticised these amendments stating '*it is oppressive to subject unions to the standard now proposed – where the benefit of hindsight is jail time*'.<sup>157</sup>

In its submission, QIEU submitted that section 527 (duty of honesty, good faith and proper purpose) '*should either be a civil penalty provision, or require proof of intentional dishonesty*'. This suggestion was made based on a comparison of other legislative provisions, including the *Corporations Act 2001 (Cth)*.<sup>158</sup> In relation to the latter, QIEU identified what it considered to be 'extraordinary' differences between proposed section 527 and section 184 in the *Corporations Act 2001 (Cth)*.<sup>159</sup>

On the issue of penalty, Master Plumbers' Association of Queensland submitted 'the proposed penalty should be reconsidered because it is extreme and is likely to be disproportionate to the offence in some cases'.<sup>160</sup>

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<sup>149</sup> See proposed new section 527 of the *Industrial Relations Act 1999* (Clause 21 of the Bill).

<sup>150</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 6.

<sup>151</sup> See proposed amendment to section 528 of the *Industrial Relations Act 1999* (Clause 22 of the Bill).

<sup>152</sup> See proposed amendment to section 529 of the *Industrial Relations Act 1999* (Clause 23 of the Bill).

<sup>153</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 11

<sup>154</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 20; Letter from the Department of Justice and Attorney-General, 20 May 2013, page 6.

<sup>155</sup> Transcript of Proceedings, 20 May 2013, pages 22-23.

<sup>156</sup> Queensland Nurses' Union, Submission No. 7, page 6.

<sup>157</sup> Australian Council of Trade Unions, Submission No. 9, pages 2-3.

<sup>158</sup> Queensland Independent Education Union, Submission No. 6, page 3.

<sup>159</sup> Transcript of Proceedings, 20 May 2013, pages 22-23.

<sup>160</sup> Master Plumbers' Association of Queensland, Submission No. 22, page 3.



## Committee comment

The Committee has considered these concerns however considers that the extension of existing duties to apply to all officers of industrial organisations and the creation of a new duty to act in good faith and for a proper purpose will achieve the Government's objective to improve accountability and provide a proper deterrent for officers. The Committee supports the amendments.

## 2.2 Freedom of Association and other changes affecting industrial agreements

Currently, under section 110 of the Industrial Relations Act, industrial agreements can include a provision which may encourage a person to join or maintain membership of an industrial association (encouragement provision). The Bill will remove this section giving '*an individual worker the right to choose to join or not join an industrial organisation*', thus preserving the right of 'freedom of association'.<sup>161</sup> The Bill also makes other changes to the Industrial Relations Act which will affect the provisions of industrial agreements. These changes are included in clause 57, which amends section 691C of the Industrial Relations Act (particular provisions are of no effect). As amended, section 691C will:

- expressly provide that provisions in industrial instruments that incorporate policies or have an 'encouragement provision' are of no effect; and
- clarify the definition of 'contracting provision'.

### Freedom of Association and union encouragement provisions

The Explanatory Notes comment on the concept of 'freedom of association' under the heading '*Support of an employee's choice to join or not join an industrial organisation*':

*Freedom of association gives an individual worker the right to choose to join or not join an industrial organisation however many industrial instruments currently require the Queensland Government to actively encourage union membership and provide preferential treatment to union members. These instruments also place a requirement on the Queensland Government to make Queensland government resources available to unions for this purpose. The Queensland Government recognises an individual's right to freedom of association and the Bill will give effect to this right by making changes to ensure that provisions in industrial instruments or policies and procedures that give preferential treatment to industrial organisations have no effect.*<sup>162</sup>

It is understood that by removing section 110 (encouragement provisions permitted), the Bill brings the Industrial Relations Act '*in line with other state and federal industrial relations legislation*'.<sup>163</sup>

As well as deleting section 110 from the Industrial Relations Act, the Bill will amend section 691C to provide that an 'encouragement provision' in an industrial instrument is of no effect. The type of conduct considered as an 'encouragement provision' for the purposes of section 691C has been defined and will capture not only conduct encouraging another person to join or maintain membership of an industrial association (such as currently defined in section 110), but a broad range of other activities including provisions which require an employer to make available its payroll deduction facilities for membership fees, its resources or premises.

<sup>161</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, pages 2 and 8.

<sup>162</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 2.

<sup>163</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 8.

Submissions received by the Committee wrote of the benefit such provisions brought to the workplace.<sup>164</sup> In its submission, Queensland Nurses' Union considered encouragement provisions as essential to maintaining a '*stable, cooperative and productive workplace*'.<sup>165</sup> Similarly, Queensland Council of Unions considered such provisions are '*intended to provide good industrial relations outcomes*'.<sup>166</sup>

### Other changes

As noted above, the Bill will amend section 691C of the Industrial Relations Act expressly providing that provisions in industrial instruments that incorporate policies or have an 'encouragement provision' are of no effect. The Bill also amends the existing definition of 'contracting provision'; under current section 691C, a 'contracting provision' in an industrial agreement is of no effect.

As set out in the Explanatory Notes:

*The inclusion of a policy incorporation provision will allow policies formerly incorporated as part of an industrial instrument to be dealt with as policies, rather than as provisions of the relevant industrial instrument. The inclusion of an encouragement provision will release an employer from any real or perceived obligation to promote, encourage, resource or pay for any aspect of the activities of an industrial association.*<sup>167</sup>

The inclusion of an encouragement provision in section 691C was discussed above and will therefore not be dealt with again in this Part of the Report.

As for the definition of 'contracting provision', the Department advised the Bill 'clarifies the definition of a contracting provision to include the terms and conditions upon which contract out, or in, of services is to occur to remove ambiguity.'<sup>168</sup>

The Committee received two submissions on the changes proposed to section 691C. The Australian Council of Trade Unions was critical of the amendments stating that they '*are yet further examples of the government taking unilateral action to restrict the scope of negotiable matters and interfering in collective agreements already in force*'.<sup>169</sup> The second submission was made specifically with regard to the policy incorporation provision discussed next.

The Bill also includes transitional provisions for section 691C.

### Policy incorporation provision

This amendment is proposed in order to '*re-establish managerial prerogative regarding departmental policies*'.<sup>170</sup> This is further explained in the Explanatory Notes:

*A number of State Government certified agreements contain provisions that incorporate certain departmental policies as part of the agreement or award. This means that the terms of the policies, once incorporated into the relevant industrial instrument, cannot be amended without union agreement. This arrangement unreasonably fetters the ability of the chief executive of a department or the Queensland Public Service Commissioner to*

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<sup>164</sup> Australian Council of Trade Unions, Submission No. 9, page 2.

<sup>165</sup> Queensland Nurses' Union, Submission No. 7, pages 11-12.

<sup>166</sup> Queensland Council of Unions, Submission No. 11, page 3.

<sup>167</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 15.

<sup>168</sup> Letter from the Department of Justice and Attorney-General, 9 May 2013, page 3.

<sup>169</sup> Australian Council of Trade Unions, Submission No. 9, page 5.

<sup>170</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 1.

*exercise management prerogative to amend the incorporated policies to promote improved productivity and service delivery outcomes. The Bill will re-establish managerial prerogative within government entities.*<sup>171</sup>

Therefore, where an industrial agreement applies to, adopts for or incorporates a policy document (whether or not it can be amended by agreement), that policy will not form part of the industrial agreement.

The Committee received one submission on this issue. QTU submitted that the proposed sub-section and definition should be deleted from the Bill as *'the inclusion and relevance of policy incorporation provisions are matters appropriately left to the bargaining parties for consideration in the process of bargaining and in the context of the particular employment situation, rather than being the subject of wholesale invalidation as a result of legislation.'*<sup>172</sup>

In its response, the Department advised that this is a government policy position.<sup>173</sup>

### Contracting provision

This amendment extends the current definition. Essentially, where an industrial agreement restricts or prohibits the contracting out, or in, or services; is about the terms or conditions on which services may be contracted out or in; or is otherwise about the contracting out, or in of services, then those provisions will also have no effect.

As noted above, the definition has been amended to provide clarity.

### Transitional arrangements

The Bill includes a transitional provision to cover those circumstances where a certified agreement is being negotiated prior to the commencement of amended section 691C.

Clause 58 of the Bill introduces section 797. Section 797 applies to cases where a certified agreement is being negotiated in accordance with Chapter 6 division 1 (Certified Agreements; making agreements) immediately prior to the commencement of section 691C as amended by the amending Act. The ultimate effect of new section 797 is that where a certified agreement contains a 'newly invalid provision' (i.e. a provision to which previous section 691C did not apply but new section 691C applies) and the agreement has not been made at commencement, the steps taken by the employer pursuant to section 144 of the Industrial Relations Act<sup>174</sup> are not invalidated merely because they involve outlining the effect of a newly invalid provision. Section 797 ceases applying to the agreement where the steps under section 144 need to be taken again because the agreement is amended after the commencement.<sup>175</sup>

<sup>171</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 2.

<sup>172</sup> Queensland Teachers' Union, Submission No. 14, page 10.

<sup>173</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 9.

<sup>174</sup> Procedural steps to be taken when a certified agreement is proposed to be made with an employee organisation or employees. Importantly, the employer must take reasonable steps to ensure:

- (a) at least 14 days before the relevant employees are asked to approve the agreement, each relevant employee has access to the proposed written agreement;
- (b) the terms of the agreement and the effect of the terms are explained to each relevant employee; and
- (c) each relevant employee is informed that he or she may ask a relevant employee organisation to represent the employee in negotiating with the employer about the agreement.

<sup>175</sup> Section 797(3), Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013.

### Committee comment

The Committee considers the effect of these changes will give the Government flexibility with regard to its workforce, particularly in light of its commitment to embark on a process of ‘contestability’.<sup>176</sup> The purpose of that process is to ensure public services are being delivered efficiently and are the best services being delivered.<sup>177</sup> Accordingly, the Committee supports these amendments.

### 2.3 Right of entry

The Bill amends the Industrial Relations Act to ‘improve procedural arrangements for union right of entry into an employer’s premises’.<sup>178</sup>

The Explanatory Notes state the Queensland industrial relations system in relation to union right of entry provisions are out of step with national workplace relations laws. In this context the aim of the amendments is to achieve consistency with certain procedural requirements of the Fair Work Act. The stated aims include ensuring right of entry does not cause undue interference, harassment or disruption to an employer’s business.

The amendments to the right of entry provisions are based on aspects of the Fair Work Act which includes a requirement that permit holders are required to provide notice before entering an employer’s premises. It is noted that all Australian jurisdictions require an entry notice of some description.<sup>179</sup> Currently the Industrial Relations Act does not call for an authorised industrial officer to give an employer notice before visiting the employer’s premises.<sup>180</sup>

Clause 11 of the Bill amends section 372 which sets out right of entry into workplaces by authorised industrial officers to exercise a power under section 373. Specifically, the clause introduces a requirement for an authorised officer to provide an entry notice prior to attending the workplace.<sup>181</sup>

Clause 12 inserts a new section 372A and section 372B. Section 372A introduces a requirement for authorised industrial officers who propose to enter an employer’s workplace under section 372(1) to provide an entry notice.<sup>182</sup> The notice must be given to the employer or employer’s representative during the employer’s business hours and at least 24 hours, but not more than 14 days, before the proposed day and time of entry.<sup>183</sup>

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<sup>176</sup> Queensland Government Response to the Independent Commission of Audit Final Report, *A Plan – Better Services for Queensland*, April 2013, available <http://www.treasury.qld.gov.au/office/knowledge/docs/better-services-for-queenslanders/better-services-for-queenslanders.pdf>, accessed 9 May 2013. ‘Contestability’ is defined in the report to mean a process where Government tests the market to ensure it is providing the public with the best possible solution at the best possible price (page 2).

<sup>177</sup> Record of Proceedings, 1 May 2013, page 1336, per the Hon. T Nicholls MP.

<sup>178</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 1.

<sup>179</sup> Queensland Parliament, Client Information Brief, Australian jurisdictional comparison of industrial relations provisions, 15/05/2013, page 2.

<sup>180</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 8.

<sup>181</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 10.

<sup>182</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 10.

<sup>183</sup> See proposed new section 372A(2)(b) the *Industrial Relations Act 1999* (Clause 12 of the Bill).

The entry notice must be signed and state the following—

- the workplace the officer proposes to enter;
- day and time of proposed entry;
- officer's name and organisation;
- records to be inspected;
- if the records include time and wage records of employees—
  - o each employee or class of employee, whose records are to be inspected;
  - o entitlement of the organisation to represent the industrial interests of the employee or class; and
  - o provision of organisations rules entitling the officer's organisation to represent the industrial interest of the employee or class.<sup>184</sup>

Section 372B provides if an employer's representative receives an entry notice from an authorised industrial officer, the employer or employer's representative may provide the authorised industrial officer an *employer notice*.<sup>185</sup> The employer notice deals with the location where the records are to be inspected. There is a penalty for employers for non-compliance with this provision.<sup>186</sup>

Clause 13 amends section 373 which provides things an authorised industrial officer may inspect if they enter a workplace under section 372. Specifically, the amendment introduces a new subsection 2AA which provides that an authorised industrial officer may only inspect the time and wages record of an employee if the officer's organisation is '*entitled to represent the industrial interest of the employee*' (emphasis added), and the employee, or class of employee, was identified in the entry notice.

New provisions (9) and (9A) which become renumbered section 373(12) and (13), allow the employer to give the authorised industrial officer who has entered a workplace directions to take, or not take, stated action if the employer is satisfied the direction is reasonably necessary to discharge the employer's duties under the *Work Health and Safety Act 2011*. Of note is the introduction of a penalty of 27 penalty units for failure to comply with this direction.

Stakeholders expressed the following views in their written submissions and at the hearing in relation to right of entry:

#### Australian Council of Trade Unions

*Whilst unions operating in the Federal System would be familiar with the requirement to provide entry notices in connection with entry to a workplace, these amendments do not mimic the federal right of entry scheme. Rather, the amendments will have the effect of confusing both unions and employers/occupiers about the relevant requirements for entry to particular locations and are an invitation to provoke conflict, for no discernible gain.*<sup>187</sup>

#### Queensland Council of Unions

*There are currently no disputes arising out of right entry under the state legislation. This contrasts markedly with the federal system since the Howard Government introduced legislation to restrict right of entry in the Workplace Relations Act 1996. By placing*

<sup>184</sup> See proposed new section 372A(3) the *Industrial Relations Act 1999* (Clause 12 of the Bill).

<sup>185</sup> See proposed new section 372B the *Industrial Relations Act 1999* (Clause 12 of the Bill).

<sup>186</sup> See proposed new section 372B(5) the *Industrial Relations Act 1999* (Clause 12 of the Bill).

<sup>187</sup> Australian Council of Trade Unions, Submission No. 9, page 2.

*restrictions on right of entry this creates yet another matter for the employer and a union to disagree. The Bill is clearly intended to make it difficult for unions to communicate with members and potential members. The Bill also portrays a harmonisation with the federal law (Attorney General 2013:2-3) with regards to right of entry, however the Bill is not based on existing federal provisions and the existing provision may well be subject to change in the near future.*<sup>188</sup>

#### United Voice

*The next issue relates to right of entry requirements. As far as United Voice is concerned, there is no justification for amending the existing laws as there are currently no disputes arising out of right of entry under state legislation. How can union officials discuss potential workplace grievances if they cannot meet with workers and see first-hand what's going on? Placing restrictions on right of entry limits the ability of workers to access their union. There's no valid reason for this amendment except to make it more difficult for workers to communicate with their union. Furthermore, the Attorney General's statement to Parliament that these changes will bring the Industrial Relations laws in Queensland in line with federal legislation is blatantly misleading. This Bill is much more restrictive than any Industrial Relations regime in modern Australian history and as far as we are concerned makes a mockery of the very notion of freedom of association and democracy. For United Voice, this will mean that many of our members, particularly ambulance officers and health professionals will not be able to access their union to address important issues- often affecting public safety. We all know when workers have no representative body, cannot access advice or are unaware of their rights, these rights will inevitably be abused. So in this government's attempts to punish and restrict the activities of unions, they will harm working Queenslanders, the very people who they were elected to represent.*<sup>189</sup>

#### United Voice (hearing)

*The changes to right of entry and union encouragement provisions are unjustified. The existing provisions seek to promote harmonious workplaces, positively frame an employee's right to join a union and allow officials to assist in the resolution of disputes. The changes appear to be an attempt to lower the level of workplace awareness of unions and participation in union activities even in workplaces that have benefited from longstanding mutually beneficial relationships.*<sup>190</sup>

#### **Committee comment**

It is noted the Department consulted with the PSC Chief Executive and Queensland Health in relation to the right of entry provisions.<sup>191</sup> However, the Committee has not received any information from the Department in relation to the outcome of those consultations. The Committee believes such information would have been useful for the Committee's consideration of this matter.

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<sup>188</sup> Queensland Council of Unions, Submission No. 11, pages 3-4.

<sup>189</sup> United Voice, Submission No. 12, page 2.

<sup>190</sup> Transcript - Public hearing, 20 May 2013, page 14.

<sup>191</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 7.

The Introduction Speech and Explanatory Notes to the Bill highlight the stated policy objective to make the right of entry provisions consistent with certain procedural requirements and entry notice provisions contained in the Fair Work Act.<sup>192</sup> The Committee notes one of the stated objects of the Fair Work Act is to balance:

*the right of organisations to represent their members in the workplace, hold discussions with potential members and investigate suspected contraventions of [the Act].*

...

*[and]*

*the right of occupiers of premises and employers to go about their business without undue inconvenience.*<sup>193</sup>

The Committee examined the Fair Work Act as it relates to the Bill and considered the proposed entry notice requirements were broadly similar with regard to the level of detail required in the notice and the provisions prohibiting certain acts such as obstructing the authorised officer or the employer.<sup>194</sup> The Fair Work Act also expressly requires a minimum of 24 hours, but no more than 14 days notice before the entry.<sup>195</sup>

However, the Fair Work Act differs in that both exemption certificates and affected member certificates may be granted in certain circumstances.<sup>196</sup> An exemption certificate may be granted where the authorised organisation has applied for the certificate and the Fair Work Commission (FWC) reasonably believes that advance notice of the entry given by an entry notice might result in the destruction, concealment or alteration of relevant evidence.<sup>197</sup> The exemption certificate must also specify certain particulars including the relevant premises, organisation, days for entry, suspected contravention and section authorising the entry.<sup>198</sup>

An affected member certificate may be granted where the FWC is satisfied that a member of the organisation performs work on a particular premises and the organisation is entitled to represent the industrial interests of the member and a suspected contravention of a certain kind affects the member.<sup>199</sup> An affected member certificate must state the relevant premises, organisation suspected contravention and that the FWC is satisfied of the matters requiring the certificate.<sup>200</sup> An affected member certificate must not reveal the identity of the member or members to which it relates.<sup>201</sup>

Arguably these two provisions assist in achieving the stated object of the Act.<sup>202</sup> The two provisions protect against the mischief the provisions are designed to prevent (e.g. the potential concealment, destruction or alteration of evidence by certain employers suspected of a contravention).

<sup>192</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 5; Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, pages 47-50.

<sup>193</sup> *Fair Work Act 2009* (Cth) ss.480(a) and (c).

<sup>194</sup> *Fair Work Act 2009* (Cth) s.518 and Division 4 (Prohibitions).

<sup>195</sup> *Fair Work Act 2009* (Cth) s.487(3).

<sup>196</sup> *Fair Work Act 2009* (Cth) ss.487(4), (5), 519 and 520.

<sup>197</sup> *Fair Work Act 2009* (Cth) s.519(1).

<sup>198</sup> *Fair Work Act 2009* (Cth) s.519(2).

<sup>199</sup> *Fair Work Act 2009* (Cth) s.520(1).

<sup>200</sup> *Fair Work Act 2009* (Cth) s.519(2).

<sup>201</sup> *Fair Work Act 2009* (Cth) s.519(3).

<sup>202</sup> *Fair Work Act 2009* (Cth) ss.480(a) and (c).

The Committee considers the Bill in its current form is adequate and the two additional provisions from the Fair Work Act are unnecessary.

## 2.4 Recovery of overpaid wages

The Bill amends the Industrial Relations Act to 'further facilitate the efficient recovery of public monies overpaid to employees of the Department of Health and of Hospital and Health Services'.<sup>203</sup>

These amendments relate to relatively recent changes made to the Industrial Relations Act for the recovery of health employment overpayments. In August 2012, the Legislative Assembly passed the Penalties and Sentences and Other Legislation Amendment Bill 2012 (Original Bill) which, among other things, introduced provisions into the Industrial Relations Act to facilitate the recovery of overpaid wages to Queensland health employees. The background to the overpayment of wages is well known; a Commission of Inquiry is currently underway to review the implementation of the Queensland Health payroll system.<sup>204</sup> The Committee does not intend to comment on that process.

The Committee reviewed the Original Bill to understand the amendments which the Government now seeks to make. The Original Bill was introduced into the Legislative Assembly on 11 July 2012 and in accordance with the Standing Rules and Orders of the Legislative Assembly,<sup>205</sup> the Committee reported back to the Legislative Assembly on 23 July 2012. In its Report,<sup>206</sup> the Committee recommended the Original Bill be passed and highlighted some concerns raised in submissions.

As was explained by the Department, the 'main specific' provision of these changes is to make it clear that where an employee ceases to be a health employee, any outstanding overpayments can be recouped.<sup>207</sup> This is achieved with new sections 396C and 396D which entitle a health employer to recover the full amount outstanding, with the final payment to be taken from not only unpaid wages, but any other amount payable to the employee, such as untaken leave.

One of the other changes relates to the form of the consent to be obtained before a deduction can be made by an employer.<sup>208</sup> The Bill will amend section 391 to provide that if an employer is relying on consent to make a deduction from wages, that consent need not be in writing provided that the employer first provides the employee with a written acknowledgment. In addition, the Explanatory Notes provide that '*the employer is not required to confirm whether an employee has received that email or other written confirmation prior to commencing deductions.*'<sup>209</sup>

The Bill also introduces new definitions to aid interpretation of the amendments, groups others and updates the dictionary in Schedule 5 to the Act.<sup>210</sup>

In relation to overpayment recovery, the Queensland Nurses' Union took a strong stance against the amendments, described them as '*extending the already unreasonable provisions inserted into the Act with respect to Queensland Health employees who have experienced an overpayment by their*

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<sup>203</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 1.

<sup>204</sup> Commissions of Inquiry Order (No. 2) 2012.

<sup>205</sup> Standing Order 136.

<sup>206</sup> Legal Affairs and Community Safety Committee, Penalties and Sentences and Other Legislation Amendment Bill 2012: Report No. 5, tabled 23 July 2012.

<sup>207</sup> Transcript - Public hearing, 20 May 2013, page 8.

<sup>208</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 15.

<sup>209</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 10.

<sup>210</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clauses 14, 16, 18 and 59.



employer which allows for automatic deductions from the employee's fortnightly wage<sup>211</sup>. The Queensland Nurses' Union further stated:

*The first and most obvious issue is that the failure of Queensland Health to meet its legal obligation to correctly pay an employee is not the fault of the employee. Yet the legislation punishes the employee and gives their employer an automatic right to recover wage errors of the employer's own making.*

*Queensland Health employees did not create the payroll debacle. Neither did the QNU or other health unions.*

*The Bill now seeks to extend Queensland Health's right to automatic recovery of overpayments by allowing the employer to withhold monies when an employee ceases employment. This provision contains no safeguards with respect to the employer's ability to withhold any monies from a termination payment.*

*While no other employer in Queensland can withhold monies upon termination, the situation is exacerbated by the inability to rely on Queensland Health's inaccurate and incomplete records. There is no limit on the amount Queensland Health can withhold from an employee's termination pay and there are no other safeguards associated with this amendment.*

...

*This amendment allows Queensland Health to reclaim any cash reserve an employee may have intended to rely upon and, in effect, leave them penniless. The individual employee has no rights to negotiate a reasonable repayment plan or to advance personal hardship arguments.<sup>212</sup>*

The Committee also received a submission from the Queensland Law Society about the removal of the requirement to obtain an employee's written consent to a deduction from their wages. The Queensland Law Society was concerned that this 'has the capacity to result in an unauthorised deduction with financial loss to the employee'.<sup>213</sup> It further stated:

*However, where consent is given verbally or by implication, there is scope for argument about whether consent was in fact given and what it was given for. Employees whose first language is not English are particularly susceptible to being affected. The provision of an acknowledgement does not address this issue. Particularly where the acknowledgement is sent by email, there is scope for it not to be received or given its proper attention. Similarly, given that there is no form for the acknowledgement, there is further scope for confusion on the part of the person receiving the acknowledgement about its scope and purpose.*

*The requirement for an authorisation to be given in writing reflects best practice and there is no pressing reason which has been shown for that position to be varied. If the proposed amendment is to be adopted, then it should be made clear that such consent can be withdrawn by the employee at any time and that an irrevocable authority will not be valid.<sup>214</sup>*

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<sup>211</sup> Queensland Nurses' Union, Submission 7, page 5

<sup>212</sup> Queensland Nurses' Union, Submission 7, pages 5-6

<sup>213</sup> Queensland Law Society, Submission No. 18, page 2.

<sup>214</sup> Queensland Law Society, Submission No. 18, page 2.

In response to the submission made by Queensland Nurses' Union, the Department stated:

*Queensland Health has consistently communicated that overpayments need to be repaid, regardless of the circumstances in which they occurred. This expectation is consistent with the department's obligation to recover overpaid amounts under the Financial Accountability Act 2009.*

*In many circumstances, it is expected that outstanding overpayments will be resolved while employees remain with the department. In circumstances where this does not occur, and regardless of the precipitating circumstances, it is logical and appropriate to resolve any outstanding overpayments at the time of cessation of employment. This prevents the need for post-employment recovery action, thereby simplifying repayment and reducing inconvenience for both the employee and the Queensland Health.*

*Employees should be aware of any outstanding overpayments, both through letters summarising their overpayment provided in June 2012 and subsequent payslip notifications. Also employees have been encouraged to contact Queensland Health if they have queries or concerns about an overpayment. Queensland Health is committed to providing detailed analysis and information upon request by an employee.<sup>215</sup>*

In its response to the concerns raised by the Queensland Law Society, the Department advised that currently, agreement between the health employer and employee is often made by email exchange or telephone discussion and 'there is often significant delay and follow-up required to finalise the administrative aspects of this process'<sup>216</sup>. The amendments will therefore streamline the recovery process allowing for the timely implementation of agreed outcomes.

#### **Committee comment**

Whilst the Committee sympathises with the position taken by the Queensland Nurses' Union, on balance it considers that sufficient notice has already been provided to those employees whom were overpaid, and it must be noted that the monies in question rightfully belong to the taxpayer. The Committee also supports changes which will streamline the administrative process where agreement has been reached. As such, any possible impact upon individual employees is outweighed by the public interest in recovering these monies.

#### **2.5 Senior Appeals Officer – Public Service Act 2008**

The Bill amends the *Public Service Act 2008* (Public Service Act) to create a senior appeals officer. This position will be held by the vice president of the QIRC,<sup>217</sup> and as an 'appeals officer', is appointed by the Governor in Council.<sup>218</sup>

The functions of the senior appeals officer are set out in clause 64 of the Bill. In addition to the functions of an appeals officer, the senior appeals officer will be able to 'decide procedures to be followed in a particular appeal' and to make practice directions to be followed in appeals. These additional functions can also be delegated to an appeals officer.

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<sup>215</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, pages 7-8.

<sup>216</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 8.

<sup>217</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 63.

<sup>218</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 62. This is consistent with existing provisions for the appointment of appeals officers under section 88A of the *Public Service Act 2008*.

For those appeals started before commencement which have not been decided or withdrawn, the Bill contains appropriate transitional provisions which provide for any procedures decided by the senior appeals officer, or direction made in accordance with the new provisions to be followed or applied in the appeal.<sup>219</sup>

The Bill also amends the dictionary in Schedule 4 of the Act to incorporate the terms 'senior appeals officer' and 'vice president'.<sup>220</sup>

### **Committee comment**

The Committee sees the amendments as relatively non-controversial and supports the improvement to the operation of the Public Service Act by the creation of the Senior Appeals Officer.

## **2.6 Definition of 'Worker' in the *Workers' Compensation and Rehabilitation Act 2003***

The Bill amends the definition of 'worker' in the Workers' Compensation and Rehabilitation Act 2003. As outlined in the Explanatory Notes, 'the current definition ... is considered to be unworkable; it creates uncertainty and adds to the regulatory burden on employers who have to interpret the definition i.e. who is a worker and who is a contractor. The Bill amends the definition of worker by aligning it with the tests used by the ATO to determine whether a person is a worker for workers' compensation purposes.'<sup>221</sup>

Although the definition has, historically, remained fairly stagnant (discussed in more detail below), the Committee's examination of this aspect of the Bill needs to be considered in the context of the broader review undertaken by the Finance and Administration Committee. This is discussed next.

### **Complementary review by the Finance and Administration Committee**

On 7 June 2012, the Legislative Assembly agreed to a motion that the Finance and Administration Committee (FAC) inquire into and report on the operation of Queensland's workers' compensation scheme (FAC Inquiry).

The terms of the FAC Inquiry required the FAC to consider:

- i. the performance of the scheme in meeting its objectives under section 5 of the Act;*
- ii. how the Queensland Workers' Compensation scheme compares to the scheme arrangements in other Australian jurisdictions;*
- iii. WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth;*
- iv. whether the reforms implemented in 2010 have addressed the growth in common law claims and claims cost that was evidenced in the scheme from 2007-08;*
- v. whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment;*

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<sup>219</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 68.

<sup>220</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, clause 69.

<sup>221</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 3.

- vi. *the implementation of the recommendations of the Structural Review of Institutional and Working Arrangements in Queensland's Workers' Compensation Scheme.*<sup>222</sup>

Initially, the FAC was required to report to the Parliament by 28 February 2013, however this was extended to 23 May 2013.

When this Bill was introduced into the House on 30 April 2013, the Attorney-General stated that further referral to the Legal Affairs and Safety Committee was necessitated since:

*Confusion with the current definition of 'worker' represents one of the most common areas of complaint made to government members in respect of the operation of the workers compensation scheme ... While the committee is currently undertaking a review of the scheme, it is not due to report its findings to the parliament until 23 May 2013. This time frame does not enable the government to consider its response to the recommendations in time to impact premium renewals for the 2013-14 period, thereby preventing any reduction in affected employers' premiums being implemented before the 2014-15 financial year. Implementation of the change from an interim date would require employers to calculate and lodge two separate wages declarations for the one financial year, increasing both cost and red tape. The government in responding to the legitimate concerns of business decided to act immediately on this issue.*

*Further, following the extension of the reporting date of the parliamentary committee inquiry from 28 February 2013 to 23 May 2013, the Chairman of WorkCover, Mr Glenn Ferguson, wrote to me to ask that the government urgently clarify this issue outside of the current review and in time for the commencement of the next premium period. For the benefit of all honourable members, I have written to the chair of the Finance and Administration Committee, the member for Coomera, to outline our position on this issue and the need for urgent legislative amendment that will clarify this issue for workers, employers and WorkCover.*<sup>223</sup>

Accordingly, this leaves the Committee in the unenviable position where, on the one hand it has an obligation, in the short timeframe provided, to examine this aspect of the Bill with a view to determining whether to recommend the Bill be passed<sup>224</sup> - against another committee's detailed examination of substantially the same issue - with both processes reporting on their respective inquiries at around the same time.

As it would be remiss of the Committee not to have considered the amendments contemplated, the Committee has reviewed the history behind the definition of 'worker'.

## History

The definition of 'worker' contained in section 11 of the Workers' Compensation and Rehabilitation Act 2003 has evolved over time, and depends upon *'there being a contract of service between the employer and worker or like contract.... An employment relationship only exists if the employee has entered into a contract of service with the employer with the mutual intention of creating legal relations.'*<sup>225</sup>

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<sup>222</sup> Finance and Administration Committee, Inquiry into the operation of Queensland's workers' compensation scheme, Information Paper prepared by the Department of Justice and Attorney-General, Q-COMP and WorkCover Queensland, page 6-7.

<sup>223</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction speech, 30 April 2013, pages 1305.

<sup>224</sup> Standing Order 132.

<sup>225</sup> Williamson v Suncorp Metway Insurance Ltd & Anor [2008] QSC 244, per Mullins J at 12.

This necessarily excludes genuine contractor arrangements and as such mirrors the definitions contained in earlier legislation such as the Workcover Queensland Act 1996, introduced by the Borbidge Government following the recommendations of the Kennedy Commission of Inquiry.<sup>226</sup>

In version 1 of the Act, section 11 originally read as follows:

*Who is a worker*

1. *A worker is an individual who works under a contract of service.*
2. *Also, a person mentioned in schedule 2, part 1 is a worker.*
3. *However, a person mentioned in schedule 2, part 2 is not a worker.*

This was amended in 2004 to read:

*Who is a worker*

1. *A worker is a person who works under a contract of service.*
2. *Also, schedule 2, part 1 sets out who is a worker in particular circumstances.*
3. *However, schedule 2, part 2 sets out who is not a worker in particular circumstances.*
4. *Only an individual can be a worker for this Act.*

Schedule 2 expressly sets out a number of specific categories of who is considered a worker under the Act, according to their particular circumstances and working arrangements. For example, a salesperson paid entirely or partly by commission is regarded as a worker in some instances<sup>227</sup> and so is a person who works under contract for labour only<sup>228</sup>. There are a number of other clearly identified categories of “worker” contained within the schedule.

One of the primary objectives of the 2004 amendments was to promote consistency between the Act and the *Electrical Safety Act 2002* by aligning the definition of employer as a result of confusion between the two. It followed that the purpose of the amendment to the definition of ‘worker’, although slight, was to align *‘the terminology in the definition with the amended definition of employer. The scope and application of the definition has not been changed.’*<sup>229</sup>

The definition as amended in 2004 remains current and has not been subject to any further amendments to date.

Essentially, clause 71 of the Bill will amend the current definition to omit subsections (2)-(4)<sup>230</sup> and replace them with the requirement that a worker is an employee for the purpose of assessment for PAYG taxation withholding under the *Taxation Administration Act 1953* (Cth) schedule 1, parts 2-5. Simply put, this will mean that the critical question of whether a person is regarded as a worker or contractor will now be defined by that person’s PAYG status.

<sup>226</sup> That defined a worker as an individual who worked under a contract of service and was a PAYE taxpayer.

<sup>227</sup> Sch 2, Part 1 (4)

<sup>228</sup> Sch 2, Part 1 (1)

<sup>229</sup> Workers’ Compensation and Rehabilitation and Other Acts Amendment Bill 2004, Explanatory Notes, page 6.

<sup>230</sup> Together with the categories of who is a worker in particular circumstances (Sch 2, parts 1 and 2).

### Matters raised in submissions

Seven of the 24 submissions received addressed the proposed change to the definition of 'worker', from varying industry perspectives. The Committee notes that a number of the submitters to the Committee on this Bill also made submissions to the FAC Inquiry.<sup>231</sup> However, only Carpet Call, Housing Industry Association Ltd, Master Builders and Australian Mines and Metals Association made any reference to the FAC Inquiry.<sup>232</sup>

In its submission, Carpet Call indicated that difficulties had arisen for installers from time to time, with 'WorkCover, while accepting that the installers are not workers under section 11(1), nevertheless ... asserts that some installers are workers under the provisions of Schedule 2 Part 1 ... ie on the basis that they are supplying "labour only or substantially labour only ... " or that they fail the "results" test...'. Carpet Call goes on to state 'the necessity to respond to repeated WorkCover investigations and inquiries and to object to any assessments in respect of installers is a continuing unwelcome burden and distraction.'<sup>233</sup> Carpet Call therefore made a specific recommendation that floor covering installers should be listed as one of the categories of persons who are not workers.

Housing Industry Association advised that workers in the home building industry also faced similar difficulties, although it ultimately supported the amendments:

*The subjective nature of the worker determination regime has long burdened small businesses in the industry with significant risk. In many cases, genuine contractors of the home building industry have been captured within the scope of the worker definition, resulting in the consequential back payment of WorkCover premiums exceeding hundreds of thousands of dollars.*

...

*In providing recommendations for the [Finance and Administration Committee Inquiry], HIA strongly urged the Committee to consider the adoption of a GST-based approach, simply being that anyone who is registered for the GST system and charges their client GST should not be regarded as an employee or worker. It is HIA's position that the implementation of such an approach would create a predictable and simple administrative process ...*

...

*While it continues to be HIA's preference to adopt a GST registration approach for worker determination purposes, HIA strongly supports the proposed amendment to Section 11 of the Act.<sup>234</sup>*

QIEU suggested that the proposed amendments would be inadequate to produce the desired effect of reducing the confusion associated with the current definition. In its submission, it stated:

*Having removed the well defined concept of "contract of service", the Bill proposes to link categorisation of whether a person is a "worker" to determinations under the Federal taxation legislation.*

*There is nothing in the changes to give comfort that if an employer pays a person as PAYG, therefore they are a worker for WorkCover purposes, or vice versa. ... The same issues and*

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<sup>231</sup> [www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/IndustrialRelations](http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/IndustrialRelations)

<sup>232</sup> See Submissions No. 1, 3, 10 and 23.

<sup>233</sup> Carpet Call (Qld) Pty Ltd, Submission No. 1, page 2.

<sup>234</sup> Housing Industrial Association Ltd, Submission No. 3, page 1.

*uncertainties as exist with current definitions will inevitably arise under the proposed amendments.*

*The definitions of worker in Schedule 2 are intended to ensure workers are not disadvantaged by being excluded unfairly from the WorkCover scheme.*

...

*Removal of the "substantially labour only" test may have unintended, detrimental consequences for many industries.*

...

*QIEU submits reference to workers as being a person employed under a contract of service should remain as it is a well defined legal concept.*

*QIEU submits that of the Schedule 2 definitions, the "labour only" test should remain.<sup>235</sup>*

Master Builders Queensland shared these concerns, and opposed the amendment in its current form. In its view:

*Whilst on the surface the proposal seems to have merit, ... the proposal does not go far enough to clarify who is a worker for the purposes of workers compensation in Queensland.*

*The catalyst for the proposed change before the parliament was that employers deserve to know if the compulsory workers compensation insurance applies before they engage individuals. The proposed Bill has failed to achieve this ... .*

*The GST registered exclusion promoted by Master Builders and the HIA would provide employers the level of certainty, clarity and simplicity needed in the workers compensation scheme. We strongly urge the Queensland Government to amend the current Bill to include an exclusion for all individuals who are charging GST.*

*... the proposal to align with the ATO definition when properly analysed actually increases the complexity in determining who is a worker.<sup>236</sup>*

The ECA, whilst supporting the change to the definition of worker as proposed in the Bill, pointed out the financial implications that would be brought about by the amendment, resulting in an unnecessary burden on small business:

*... a personal services determination is an exercise that many small employers would need assistance in achieving. Engaging the services of a professional to perform this service and obtain a ruling from the Australian Taxation Office in our estimate would cost approximately \$3000 - \$5000. ... we suggest that the definition be altered so that the words "and/or" are added to the definition with the result that either requirement will result in the Contractor being a Contractor and not inadvertently an Employee.<sup>237</sup>*

In response to the range of submissions on this aspect of the Bill, the Department stated:

*Five submissions addressed the proposed change to the Workers Compensation and Rehabilitation Act 2003 (the WCR Act). The Housing Industry Association supports the proposed amendment. The Electrical Contractors Association also supports the proposed amendment with a recommendation for minor amendment. However, the effect of this would be to exclude all persons from the definition of worker and on that basis is not*

<sup>235</sup> Queensland Independent Education Union, Submission No. 6 (Supplementary), pages 3-4.

<sup>236</sup> Master Builders Queensland, Submission No. 10, page 1.

<sup>237</sup> Electrical Contractors Association, Submission 13, page 4. This submission was also supported by Master Plumbers Association of Queensland, Submission No. 22.

*supported. The issue raised in Carpet Call's submission is addressed by the change as the proposed amendment removes the "labour only" and the "results" tests. The Queensland Independent Education Union raised concerns at removal of "labour only test" and "contract of service" as the primary test of a worker. The current application of the "labour only test" however has the potential to deem a person to be a worker when they would otherwise have failed the "contract of service" test. The proposed amendment will remove this anomaly.*

*The Master Builders Queensland (MBQ) is the only submission that opposes the proposed amendment. It is the department's view that the submission does not acknowledge that all businesses need to determine the tax status of individuals at the point of engagement. The Australian Tax Office (ATO) provides detailed guidance and tools for business to determine this and WorkCover will also use these in determining who should be covered for workers' compensation, thus ensuring consistent outcomes.*

*If the MBQ's recommendation was adopted, businesses would still need to make the ATO determination, but would also need to understand and apply a different definition for workers' compensation purposes that may result in a different outcome from the ATO determination. This would result in continuation of the present regulatory burden and confusion. The MBQ's proposal for change to the treatment of Principal Contractor liability is not related to the amendment proposed in the Bill.<sup>238</sup>*

Whilst the Department suggests that there was overall support for the amendment in the submissions (with the exception of the Master Builders Queensland submission), the Committee acknowledges that in fact several expressed concern about the mechanics of the proposed amendment, and/or suggested alternative ways in which the definition could be improved from their particular industry perspectives.

Further, in relation to the Department's endorsement of the ATO's online tools for aiding in determining who is a 'worker' and "ensuring consistent outcomes", the Committee notes that at least one stakeholder reported difficulty in using this tool at the public hearing, and suggested that caution be exercised in doing so.<sup>239</sup>

### **Report of the Finance and Administration Committee**

In addition to the submissions received by the Committee throughout this inquiry process, the Committee has also had the benefit of reviewing the report of the FAC Inquiry, which was tabled on 23 May 2013.

The FAC also had the benefit of reviewing the proposed provisions in the Bill prior to tabling its report. In relation to the definition of 'worker', FAC stated in its report:

#### *Definition of Worker*

*The [Finance and Administration] Committee has considered and consulted extensively on the issue of the definition of worker contained within the Act. There are numerous views of the 'best' definition based on individual viewpoints.*

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<sup>238</sup> Letter from the Department of Justice and Attorney-General, 20 May 2013, page 7. An additional 2 submissions were received by the Committee on this aspect of the Bill which due to time constraints, were not passed on to the Department for comment. The Committee considers the Department's earlier response addresses any issues raised.

<sup>239</sup> Transcript - Public hearing, 20 May 2013, page 38.



*The Attorney-General and Minister for Justice introduced the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013. The Bill includes clauses amending the Workers' Compensation and Rehabilitation Act 2003. The Attorney-General stated when he introduced the Bill that the amendments clarify the definition of worker to assist employers identify who must be included in their workers' compensation policy.*

*The Committee would have recommended that no changes be made to the definition contained in section 11. The Committee's preference would be to see better use of Schedule 2 rather than change the definition of worker.*

*The Committee agreed that the definition, as it currently stands, has been tested at law and fundamentally works. Any change to that definition will impact on both employers and workers.*

*There may also be unintended imposts on the scheme as any new definitions are tested in the courts.<sup>240</sup>*

The FAC made specific comment on the proposal submitted by Master Builders in relation to considering registration for GST as a component of the test for who should be a worker. In that regard the FAC stated:

*The Committee also considered that the suggestion regarding contractors' registration for GST has some merit. The Committee considers that the guidance material published by the ATO to assist in determining who is a worker and who is a contractor could have been incorporated into the 'Results Test' without the need for amending the definition contained in section 11. The Committee considers that if a contractor is registered for GST then this could assist with determining whether a person is a contractor or a worker. This, however, should not be the sole determinant.<sup>241</sup>*

The FAC went on to state:

*Of major concern to the Committee is ensuring that the principle of universal coverage is protected and vulnerable workers are not unknowingly excluded. The Committee considers that there are several groups of workers who are in a disproportionate position of power when it comes to negotiating their entitlements. These groups include those whose employment status is unclear, the poorly educated and those from culturally and linguistically diverse backgrounds.*

*The Committee considers that an education, awareness and compliance campaign be undertaken by the Department to assist both employers and workers in understanding their rights, obligations and responsibilities with regard to workers compensation coverage.<sup>242</sup>*

In conclusion - in relation to the definition of 'worker', the FAC recommended:

*The Committee recommends that the definition of worker contained in section 11 remain unchanged and amendments are made to Schedule 2 to strengthen who is or is not considered to be a worker.<sup>243</sup>*

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<sup>240</sup> Finance and Administration Committee, Report No.28, *Inquiry into the Operation of Queensland's Workers' Compensation Scheme*, May 2013, pages xiv-xv.

<sup>241</sup> Finance and Administration Committee, Report No.28, *Inquiry into the Operation of Queensland's Workers' Compensation Scheme*, May 2013, page 36.

<sup>242</sup> Finance and Administration Committee, Report No.28, *Inquiry into the Operation of Queensland's Workers' Compensation Scheme*, May 2013, pages xiv-xv.

### Committee comment

The Committee has closely considered the views of submitters to this Inquiry, the advice from the Department, and the report of the FAC. It is readily apparent that there is no consensus on the 'ideal' definition of worker, with many differing viewpoints. It is also apparent that there is an argument that aligning the definition of worker with the ATO PAYG withholding requirements might actually increase the confusion associated with the current definition, and may be unintentionally detrimental to some industries.

Unlike this Committee, the FAC had the benefit of almost 11 months in forming its recommendations. In doing so, that committee extensively considered the previous definitions; arguments for and against change; suggested alternatives to the definition of worker; the existing legislation; and other issues relevant to the definition of worker. As a result of that exhaustive analysis, the FAC determined that it was appropriate that the existing definition be retained unchanged.

The Committee acknowledges its role to examine bills as set out in the Standing Orders. However, given the comparatively limited time it has had to examine this important aspect of the Bill, it cannot ignore the recommendations made by the FAC.

On this basis, the Committee supports the recommendations made by the FAC in its recent report.

#### **Recommendation 12**

The Committee recommends the Attorney-General and Minister for Justice accept the recommendations of the Finance and Administration Committee in relation to the definition of 'worker'.

As such, the Committee recommends that the definition of 'worker' in the *Workers' Compensation and Rehabilitation Act 2003* remain unchanged and the relevant provisions in the Bill relating to the amendment of that Act be removed.

The Committee notes that the only requirement for urgent passage of the Bill was for the amendments to the definition of worker to be made in readiness for the new financial year. As the Committee recommends no changes to the *Workers' Compensation and Rehabilitation Act 2003*, the Committee considers the Attorney-General has sufficient time to fully consider all the Committee's recommendations prior to bringing the Bill back on for debate.

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<sup>243</sup> Finance and Administration Committee, Report No.28, *Inquiry into the Operation of Queensland's Workers' Compensation Scheme*, May 2013, page 37.

### **3. Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.
- The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

#### **3.1 Right and liberties of individuals**

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

A number of proposed amendments contained in the Bill will impact on the rights and liberties of individuals.

##### **Increases in penalties**

Clause 21 of the Bill amends section 527 of the Industrial Relations Act, from 40 penalty units to 3091 penalty units or 5 years imprisonment.

Similarly, clause 22 amends the maximum penalty attaching to a breach of section 528 of the Industrial Relations Act in relation to an officer’s duty of reasonable care and diligence from 40 penalty units (\$4,400) to 3091 penalty units (\$340,010) or 5 years imprisonment.

Clause 23 of the Bill amends section 529 of the Industrial Relations Act, which requires disclosure by an officer of a material personal interest in a matter involving the organisation’s financial management. The officer is prohibited from (a) voting at a meeting on the matter and from (b) remaining at the meeting when the matter is being considered. Each offence currently attracts a maximum penalty of 40 penalty units (\$4,400). The amendments made by clause 23 increase the maximum penalty to 3091 penalty units (\$340,010) or 5 years imprisonment.

##### **Committee Comment**

In furtherance of fundamental legislative principles, provisions designed to give effect to policy should be reasonable, appropriate and proportional. The Committee is satisfied that in view of the Government’s commitment to accountability and transparency – the increases in penalties, whilst substantial, are justified.

##### **Implied right to information privacy**

Clause 30 inserts inter alia, a definition in proposed new section 557I to prescribe who is an ‘official’, a ‘highly paid official’ or ‘board member official’ of an organisation. Pursuant to subsection 557I(1)(a) each officer or employee of an organisation is considered to be an official of the organisation. Under new section 557K, the initial disclosure statement must include particulars (annual remuneration, type and value of any non-cash benefit) for each highly paid official of the organisation for the initial year. A similar obligation exists in proposed section 557S in relation to annual financial disclosure statements.

Proposed sections 557G and 550M also appear to not limit the persons who may request that an organisation make a register of interests of its officials open for inspection, nor to require that they have any particular or sufficient ‘standing’, ‘interest’ or ‘concern’ with the content of the register such as might warrant their viewing of financial information about an official. It is not inconceivable

that a person could have malicious or nefarious motives for finding out (normally personal) financial information about an official and there is at present no requirement that they produce their personal identification details to at least serve as a minimum safeguard for their open access to the financial information of another person.

### **Committee Comment**

The Committee is of the view that access to the disclosure statements and register of interests, whilst warranted to give effect to the Bill, should be strictly restricted to members of the organisation and the QIRC. This is in accordance with Committee's recommendation 5.

### **Immunity from proceedings**

Clause 55 of the Bill inserts new section 636V(1) into the Industrial Relations Act to provide that an administrator for an organisation or a branch of an organisation is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. Section 636V(2) clarifies that where subsection (1) operates, the liability attaches instead to the State.

### **Committee Comment**

While this clause does confer some limited immunity from prosecution, it is a fairly standard provision designed to allow officials to undertake their duties without fear of personal liability. Attaching civil liability to the State gives aggrieved persons an avenue for legal redress. In these circumstances, the Committee considers the immunity provisions to be appropriate.

### **Section 4(4)(c) *Legislative Standards Act 1992* requires that legislation only allows or authorises the amendment of an Act only by another Act.**

Clause 58 of the Bill inserts new section 798 to confer a transitional regulation-making power. It provides that a (transitional) regulation may make provision of a saving or transitional nature -

- (d) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the pre-amended Act to the operation of the amended Act; and
- (e) for which this Act does not make provision or sufficient provision.

The former Scrutiny of Legislation Committee (SLC) reported that it was an 'inappropriate delegation' to provide that a regulation may be made about any matter of a savings, transitional or validating nature '*for which this part does not make provision or enough provision*' because it anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation.<sup>244</sup>

The transitional regulation making-power under proposed section 798 is arguably of the broader kind in that it allows a transitional regulation to be made about anything necessary to facilitate transition to the new legislative regime when the Act does not sufficiently provide for that matter. Such a regulation may also have retrospective operation to a day that is not earlier than commencement date (section 798(3)) and expires two years after commencement date (in contrast to many other transitional regulations that expire 1 year after commencement) which is recognised as the outer acceptable limit.

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<sup>244</sup> see SLC *Alert Digest* 1996/3, p.10, p.19

The SLC determined:

*... the transitional phase for legislation should be limited to a maximum of 2 years and therefore transitional regulation making powers should be subject to a sunset clause; and all regulations made pursuant to transitional regulation making powers should be subject to sunset clauses which bring about their expiry at the same time as the head of power expires.*<sup>245</sup>

Section 798(2) also operates as a Henry VIII clause, enabling an Act to be expressly or impliedly amended by subordinate or delegated legislation. Henry VIII clauses are considered to offend against the institution of Parliament by offending against the principle that amendment of an Act of Parliament should be by Parliament itself, by way of amendment of the Act, and not via executive action.

The SLC's approach was that if an Act was purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, it would request Parliament disallow the part of the instrument that breached the fundamental legislative principle requiring legislation to have sufficient regard for the institution of Parliament.<sup>246</sup> The SLC considered the possibly justifiable uses of Henry VIII clauses to be limited to circumstances where the clause was necessary to facilitate – immediate executive action, the effective application of innovative legislation, transitional arrangements, or national scheme legislation.

If a Henry VIII clause did not fall within any of the above situations, the SLC classified it as 'generally objectionable'. In this instance the Henry VIII clause in question is being used to facilitate transitional arrangements which may, in light of the SLC's reasoning above, bring it within the scope of Henry VIII clauses that are arguably justified.

It should be noted that in relation to the transitional regulation-making power in the Bill, the Explanatory Notes provide:

*Given the complexity of the subject matter and the time available for the policy development and drafting of this Bill, OQPC agrees that the provision is appropriate to manage the risk of issues arising after commencement.*<sup>247</sup>

### **Committee Comment**

The Committee notes the usage of the transitional regulation-making power and Henry VIII clause in the Bill. The Committee considers these amendments are justified in the circumstances and enable the Act to be amended flexibly.

### **3.2 General**

Is the bill unambiguous and drafted in a sufficiently clear and precise way?

#### **Recovery of Overpayments**

Clause 18 of the Bill inserts proposed new sections 396C and 396D into the Industrial Relations Act. Section 396C(2) will allow a health employer to deduct from a ceased former health employee's final payment an amount up to the amount of any outstanding overpayment made to that employee. Section 396C(3) allows the employer to deduct the money to recover the outstanding overpayment

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<sup>245</sup> Scrutiny of Legislation Committee, *The Use of 'Henry VIII clauses' in Queensland Legislation*, 1997, pages 50-51

<sup>246</sup> Scrutiny of Legislation Committee, *The Use of 'Henry VIII clauses' in Queensland Legislation*, 1997, 5.17.

<sup>247</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill, *Explanatory Notes*, page 7.

even if the overpayment was made by another health employer during the employee's employment with that other health employer and regardless of when the overpayment was made.

Section 396C(4) further clarifies that section 396C is of general application to health employers and health employees and is not limited by any other provision of this division; and does not affect the operation of section 396. Section 396 of the Industrial Relations Act relates to recovery of overpaid wages. Section 396(2) entitles an employer to recover an amount to which an employee is not entitled by deducting amounts from an employee's wages for subsequent pay period(s). Such deductions under section 396(2) must be commenced within 1 year after the (over) payment and may extend over a period of 6 years after the payment.

The 'limitation of action' period set for section 396(2) in relation to health employees is 1 year with recovery deductions having to commence within 1 year after an overpayment was made. By contrast, proposed new section 396C which is specified to not affect the operation of section 396, allows recovery of an overpaid amount from a ceased employee's final wage regardless of when the overpayment was made. It is not clear why there appears to be a limitation of action period applying in the case of continuing employees and, conversely, an ability to recoup from a ceased employee's final payment an amount up to any outstanding overpayment whenever it was made.

### **Committee Comment**

The Committee considers that further clarification from the Attorney-General as to the rationale for treating the recovery of overpayments made to continuing employees and those made to (now ceased) employees differently would have been beneficial.

### **Duty of honesty**

Clause 21 replaces the 'duty of honesty' in section 527 of the Industrial Relations Act with a 'duty of honesty, good faith and proper purpose' that requires an officer to act honestly and in good faith in the best interests of the organisation, and for a proper purpose. The removal of the words 'financial management' from the heading to Chapter 12, part 9, division 3 (via clause 19) also means the replacement section 527 now provides for 'officer's duties' rather than merely their financial management duties. This appears likely to greatly broaden the scope of this division, and consequently, sections 527-529.

The previous section 527 duty to (merely) act honestly attracted a maximum penalty of 40 penalty units (\$4,400) for its breach. The new maximum penalty imposed under the replacement section 527 is (maximum) 3091 penalty units (\$340, 010) or 5 years imprisonment. This is a particularly harsh penalty for breaching a provision for which the offence 'elements' are arguably subjective and particularly difficult to prove or disprove. Arguably what is 'in the best interests of the organisation' is inherently subjective and will shift over time depending on a range of factors both internal and external to an organisation.

A person may act 'in good faith' but in a way that is not *in the best interests of the organisation* because they may have been innocently unaware of some factor relevant to the organisation's management or financial management that, had they been aware of, would have indicated that the action they were taking would not be in the organisation's best interests.

### **Committee Comment**

The Committee considers that the extension of existing duties to apply to all officers of industrial organisations and the creation of a new duty to act in good faith and for a proper purpose will achieve the Government's objective to improve accountability and provide a proper deterrent for officers. The Committee supports the amendments.

## Political Purposes

Clause 29 of the Bill inserts section 553C, relating to spending money for a political purpose.

It states (inter alia) that an organisation spends money for a 'political purpose' through publishing or distributing in any way, including through advertising of material about a political matter. A 'political matter' is then defined in proposed section 553C(2) as meaning a political party, candidate for election or a matter that a reasonable person would associate with a political object.

A 'political object' is then further defined in that subsection as meaning a political party or other political organisation or a political cause or belief. A 'political cause or belief' is arguably unworkably broad as it could cover any controversial 'politicised' social topic such as workers rights', abortion, womens' rights, immigration, classroom size or any other of an infinite subset of issues for which there is competing community views and politicised stands from political parties and community groups.

The Department confirmed that political matters at the state, federal and local government levels are all captured by Part 12, Division 1B of the Bill, meaning that, for example, a Queensland registered organisation engaging in political campaigns at the federal level will be required to apply these new provisions to those activities.<sup>248</sup>

The Committee is aware that significant stakeholder concern exists in relation to clause 29, and in particular the broadly defined 'political purpose', 'political matter' and 'political object'. This concern was highlighted in several submissions to the Inquiry, amongst them the Queensland Law Society, which succinctly outlined:

*The Society's concern arises in light of the following. Having regard to the provisions set out above, the effect of the legislation appears to be that an organisation of employees or employers registered under the Industrial Relations Act would be required to conduct a ballot of the type described, before spending more than \$10,000 on publishing material about a matter that a reasonable person would associate with a political cause or belief.*

*As the legislation appears intended to apply to the expenditure of \$10,000 for a particular political purpose, the need for the ballot would arise in respect of each discrete political purpose.*

*"Political purpose", "political matter" and "political object" are all broadly defined. As a result, inclusion of an article about the change to the definition of "worker" in workers' compensation legislation in an organisational journal or newsletter may be sufficient to attract operation of the ballot provision. The Society is concerned that the definition is so broad as to make proper definition of its boundaries difficult. This is likely to be a significant issue, particularly for any court tasked with interpretation.*<sup>249</sup>

Similarly, the QTU stated:

*The Bill introduces new concepts of political purpose, political matter and political object which are ultimately so vague as to deny reasonable or accurate classification of the activities of industrial organisations.*<sup>250</sup>

The Queensland Council of Unions said:

*The definition of when an organisation spends money for a political purpose defies any logical explanation. Section 553C includes opinion polling in such a definition. Opinion*

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<sup>248</sup> Department response to supplementary questions asked by the Committee – email dated 28 May 2013.

<sup>249</sup> Queensland Law Society, Submission 18 (Supplementary), page 3.

<sup>250</sup> Queensland Teachers' Union, Submission 14, page 5.

*polling by any reasonable definition would be considered as research. Research is generally undertaken to obtain a better understanding and increase knowledge.*

...

*In addition, the definition of political objects contained in the Bill is so broad that it will render many unions to be completely ineffective if they are required to ballot their membership every time a decision is to be made. For those unions whose membership is mainly or exclusively within the employment of the Queensland Government every conceivable action by a public sector union could be perceived or indeed interpreted as being a political object, given that the union's members are engaged in activities about which political decisions will be made. A timely example is that class sizes directly affects the daily working conditions of teachers, however to campaign with respect to such a matter could be deemed to be a political object.<sup>251</sup>*

At the public hearing, Mr Jason O'Dwyer from the ECA anticipated the following difficulty with the proposed definitions:

*In section 553C, under the definition of 'political purpose', it goes on to describe in paragraph (d)(ii) 'a political matter'. If you look at the ordinary meanings of those words, they are so broad that it would cover just about everything that a trade union and an employer organisation would do.<sup>252</sup>*

Aware of the concern surrounding what is covered by political objectives, the Acting Deputy Director-General from the Office of Fair and Safe Work Queensland at the Department clarified the scope of the definitions at the hearing as follows:

*... we have a definition of political object. It means a political party or other political organisation or a political cause or belief. I think if you were conducting a campaign which had a political aspect to it, raising issues about the need for the change of policies on whatever issue they are, they would fall under this section.*

...

*I think that the way the bill is drafted that most things that industrial organisations were looking at where they are seeking to influence and change the views of governments at various levels would be covered by these provisions.*

*... I cannot give you universal global coverage, but I think it is fair to say that you just have to go to the bill and what it sets out in terms of political objectives.<sup>253</sup>*

### **Committee Comment**

Clause 29 is fundamental to the successful operation of expenditure ballots. The Committee, conscious of the concerns raised regarding the breadth of the definitions contained in clause 29 and the resultant difficulty which may arise in setting parameters for their application, is of the view that it would be helpful for detailed and specific examples to accompany the definitions of "political purpose", "political matter" and "political object", to ensure compliance with s.553C. It is imperative that the section is clearly drafted and understood by all organisations to which it will apply.

In relation to restricting the definition, the Committee considers that with the recommendations in relation to raising the threshold dollar amount for an expenditure ballot and reducing the quorum requirements for the ballot to be valid, the broad nature of the definitions becomes less of a problem

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<sup>251</sup> Queensland Council of Unions, Submission No. 11, pages 6-7.

<sup>252</sup> Transcript - Public hearing, 20 May 2013, page 35.

<sup>253</sup> Transcript - Public hearing, 20 May 2013, page 7.



as the requirement to hold such a ballot will be lessened. On that basis, the Committee makes no recommendation as to amending or restricting these definitions.

### **Registers**

Further to the discussion in part 2.1.3 of the report, Clause 26 of the Bill inserts section 550D to provide that, on pain of a maximum 20 penalty unit fine (\$2,200), an officer of an organisation must (within 21 days after commencement of section 550D) take reasonable steps to notify the organisation of each of the particulars of an interest that is required to be stated in the initial register of interests of the officer. The particulars referred to in section 550D are the financial and non-financial particulars of an interest as prescribed under a regulation made under section 550C.

Thus, until a regulation is made prescribing the relevant financial and non-financial particulars to be disclosed by an officer (and their relatives), the officer will be unable to ascertain exactly what financial and non-financial particulars they are required to disclose. Given the time limit for compliance inherent in section 550D (within 21 days from commencement of s.550D), if section 550D is commenced 22 days or more prior to gazettal of a regulation prescribing the financial and non-financial particulars of an interest that need to be disclosed, the officers will be unable to comply with their obligation under section 550D within time as they will have no guidance as to what prescribed particulars they are required to disclose.

Such a failure would make them potentially liable to a maximum 20 penalty unit fine, although section 550D does require that they take reasonable steps to notify the organisation of the particulars of their interest. Presumably a reasonable defence to any alleged failure to specify particulars in time would be the absence of a (s.550C) regulation prescribing the particulars that need to be disclosed.

### **Committee Comment**

The Committee is concerned about the ability of officers to comply with the requirements of section 550D. This is also another contributing reason why the Committee has recommended against any retrospective application of the Bill. The Committee does not regard the potential breach of fundamental legislative principals as being outweighed by the public interest of members of industrial organisations to publish the retrospective information in the disclosure statements.

The Committee considers the requirement to prepare retrospective registers will unnecessarily increase the regulatory burden on industrial organisations and for the reasons outlined in part 2.1.3 of the report, recommends that the Bill be amended to ensure there is no requirement for industrial organisations to prepare initial registers of interests of officers or initial disclosure statements for the period 1 July 2012 to 30 June 2013.

### **3.3 Explanatory notes**

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Under section 93(2) of the *Parliament of Queensland 2001*, the Committee is responsible for monitoring the operation of explanatory notes. Further, section 23 of the *Legislative Standards Act 1992* sets out a detailed list of the requirements of explanatory notes.

The Committee has seen a variety of Bills and accompanying explanatory notes over the past year and considers the Explanatory Notes provided with this Bill could have been improved. The Committee considers they were confusing and unclear in parts. For example, the freedom of association provision (Clause 4) in the Bill removes section 110 of the Industrial Relations Act in its entirety. It would appear to the Committee that the result of this proposed change is that all

employees, not just employees of government entities, are affected. However page 4 of the Explanatory Notes states that this change covers “*employees of government entities*”.<sup>254</sup>

Additionally, the language used in the Explanatory Notes was not consistent with the Bill and key points from the Bill were not included. For example, the Explanatory Notes referred to a “*register of the remuneration of the organisation’s highest paid official and employees*”.<sup>255</sup> However, the Bill does not include such a register. Under the Bill, the remuneration and benefits for highly paid officials must be included in the initial, mid-year and annual financial disclosure statements, but there is no requirement of a specific register of this information.<sup>256</sup>

There were also comments made by the Attorney-General in his Introductory Speech which are not reflected in either the Explanatory Notes or the Bill. For example, clause 30 of the Bill proposes to insert new section 557A of the Industrial Relations Act which provides for a register of gifts, hospitality and benefits received and given by officials and employees. While the provision does not specify the threshold amount but refers to a value prescribed under a regulation, the Committee notes that a threshold of \$500 was referred to in the Introductory Speech.<sup>257</sup> While the Committee anticipates that the Regulations to be introduced to support the legislation contemplated by this Bill will include the \$500 threshold, the Committee is of the opinion that this should have been at least noted in the Explanatory Notes.

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<sup>254</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, *Explanatory Notes*, page 4.

<sup>255</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill, *Explanatory Notes*, page 4.

<sup>256</sup> See sections 557K, 557S and 557Y of the Bill.

<sup>257</sup> Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013, Introduction Speech, 30 April 2013, page 1303.

**Appendix A – List of Submissions**

Sub #	Submitter
1	Carpet Call (Qld) Pty Ltd
2	United Firefighters Union of Australia Union of Employees Queensland
3	Housing Industry Association Limited
4	Australian Dental Association Queensland Branch
5	Australian Canegrowers Council Ltd
6	Queensland Independent Education Union
7	Queensland Nurses' Union
8	The Australian Workers' Union of Employees, Queensland
9	Australian Council of Trade Unions
10	Master Builders
11	Queensland Council of Unions
12	United Voice Qld
13	Electrical Contractors Association
14	Queensland Teachers' Union
15	Chamber of Commerce and Industry Queensland
16	Gerard Robinson
17	Local Government Association of Queensland Ltd
18	Queensland Law Society
19	Queensland Council for Civil Liberties
20	Clubs Queensland
21	Queensland Fire and Rescue – Senior Officers Union of Employees
22	Master Plumbers' Association of Queensland – Union of Employers
23	Australian Mines and Metals Association
24	Queensland Trucking Association Ltd

## Appendix B – Schedule of Witnesses at the Public Hearing

<p>Department of Justice and Attorney-General</p> <ul style="list-style-type: none"><li>• Dr Simon Blackwood, Acting Deputy Director-General, Office of Fair and Safe Work Queensland</li><li>• Mr Tony James, Executive Director, Private Sector Industrial Relations, Office of Fair and Safe Work Queensland</li><li>• Mr Thomas Brauns, Principal Consultant, Public Sector Industrial and Employee Relations, Public Services Commission</li></ul>
<p>Queensland Council of Unions</p> <ul style="list-style-type: none"><li>• Mr John Battams, President</li><li>• Mr John Martin, Industrial Officer</li></ul>
<p>United Voice</p> <ul style="list-style-type: none"><li>• Ms Kylie Badke, Senior Industrial Officer</li><li>• Mr Michael Freeman</li></ul>
<p>Queensland Teachers' Union</p> <ul style="list-style-type: none"><li>• Mr Graham Moloney, General Secretary</li><li>• Ms Thalia Edmonds, Industrial Advocate</li></ul>
<p>Queensland Independent Education Union</p> <ul style="list-style-type: none"><li>• Mr Terence Burke, General Secretary</li></ul>
<p>Chamber of Commerce and Industry Queensland</p> <ul style="list-style-type: none"><li>• Mr Stephen Tait, Chief Executive Officer</li><li>• Mr Nick Behrens, General Manager, Advocacy</li></ul>
<p>Local Government Association of Queensland</p> <ul style="list-style-type: none"><li>• Mr Greg Hallam, Chief Executive Officer</li><li>• Mr Tony Goode, Workforce Strategy Executive</li></ul>
<p>Master Builders Association</p> <ul style="list-style-type: none"><li>• Mr Graham Cuthbert, Executive Director</li><li>• Mr John Crittall, Director, Construction and Policy</li><li>• Mr Dean Cameron, Senior Workplace Relations and In-house Legal Advisor</li></ul>
<p>Electrical Contractors Association</p> <ul style="list-style-type: none"><li>• Mr Jason O'Dwyer, Workplace Policy Manager</li></ul>



## Peter Wellington MP

Member for Nicklin

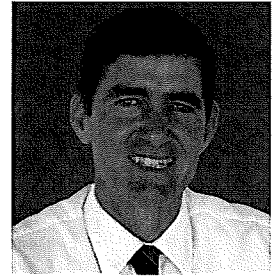
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29 May 2013

Mr Brook Hastie,  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Brook

**Dissenting Report on Legal Affairs and Community Safety  
Committee Report into the Industrial Relations (Transparency &  
Accountability of Industrial Organisations) and Other Acts  
Amendment Bill 2013**

While there are some parts of this Bill that I am able to support, my position at the time of finalising this report on the basis of information to date presented to the Committee is, I cannot support the Bill in its current form. I believe the continuing uncertainty about the possible ambit and effect of this Bill, be it intended or unintended necessitates the Bill being withdrawn and redrafted. If the Minister intends to introduce amendments to the Bill, those amendments should be forwarded to the Committee by the Minister for consideration, before the Bill and the amendments proceed to consideration by Parliament.

I am at a loss to understand how the Bill in its current form was able to progress through the rigour and scrutiny of a Cabinet hearing.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Wellington", with a long, sweeping flourish extending to the right.

**Peter Wellington MP**  
**Member for Nicklin**



# **BILL BYRNE MP**

Member for Rockhampton

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Office: Shop 3, 7 Denham Street, Rockhampton Q 4700 Mail: PO Box 729 Rockhampton Q 4700

**31 May 2013**

## **Dissenting Report**

The Opposition strongly opposes the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill and does not support the recommendation of the Legal Affairs and Community Safety Committee that the legislation should be passed.

The legislation is an extreme attack on freedom of speech and has no place in a modern democratic system.

The ideological position of the Government was laid bare in the Committee submissions and public hearing. It should be noted that the recommendation from LNP Members of the Committee to pass the Bill are in direct conflict with the overwhelming opposition from a wide range of organisations and stakeholders.

In fact, the only organisation who submitted that they would support the passage of the Bill, said that they would only support it if they were exempt from the legislation themselves.

The Opposition will outline serious community concerns with this legislation during second reading debate on the Bill.

A handwritten signature in black ink, appearing to be 'B. Byrne', with a long horizontal line extending to the right.

**Bill Byrne MP**  
**Member for Rockhampton**