REVIEW OF ENTERPRISE BARGAINING IN
THE QUEENSLAND PUBLIC SECTOR

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SEPTEMBER 2002
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EXECUTIVE SUMMARY

In July 2002, the Queensland Premier invited me to conduct a Review of Enterprise Bargaining in the Queensland Public Sector in accordance with the Terms of Reference (Attachment 1). Key stakeholders, including government central and line agencies, public sector unions, the Queensland Council of Unions and the Australian Workers' Union were consulted.

In seeking to discharge this mandate, I have operated on the basis of what I believe is a fundamental truth in achieving an equitable and sound industrial relationship: the recognition by the parties that wages are both an income and a cost. For workers, this is normally their only source of income and for the employer (in this case the Government), a significant cost item in the budget. Each party needs to view issues in this industrial relationship not simply through the prism of self-interest but with an understanding of the responsibilities of the other.

The Government and unions have expressed reservations that enterprise bargaining in the public sector has become increasingly adversarial and political and is having a negative effect on the relationship between the Government and public sector unions.

The right to collectively organise and bargain is fundamental to a democratic and just society and must remain the cornerstone of the industrial relations framework in which wages and conditions of employment are determined. As the fundamentals for the private and public sectors should remain consistent, I am proposing minimal legislative change.

Equally, the community has the right to demand and expect the delivery of high quality and reliable public services.

Clearly there will be occasions when these objectives will appear to conflict. The industrial relations system must have the capacity to reconcile the interests of employees and their unions with the public interest. This has been my paramount consideration during this review. A structured bargaining approach, complemented by a code of 'good faith' bargaining would enable the fundamental interests of unions and Government to be preserved and provide an orderly and predictable system.

Agreement will not always be easy. There is a need for a stronger role for the independent umpire and timely access to that independent tribunal will be essential.

The public sector has special characteristics: it's big, it's diverse, it provides critical services to the community. There is only one employer. It is also true that decisions affecting the public sector can have ramifications throughout society and the industrial relations system. There are clear advantages in having common principles to govern the determination of wages and conditions for both sectors. The Queensland Industrial Relations Commission should continue to oversee the processes of bargaining. However, there is merit in establishing a specialist panel within the Commission to ensure that the interests of all parties and the public interest are given due consideration.
Finally, the issue of having an ongoing mechanism to allow discussion on a range of employment matters arising during the period of an agreement has been raised with me. I agree that a constructive and enduring relationship between government agencies, employees and their unions requires regular consultation and the timely consideration of contemporary and emerging issues. The sharing of information and concerns at regular and formal meetings between senior management and senior union officials is desirable. This mechanism may assist to establish and maintain the good will which is so critical in the relationship between a Labor Government, its employees and the union movement.

While I have, necessarily, made these recommendations and offered these observations in the context of a Labor Government, I believe that the principles are valid and most likely to produce a constructive underlying relationship whatever the political complexion of the administration.

**RECOMMENDATIONS**

It is recommended that:

1. Collective bargaining with public sector unions continues to be the basis for determining wages and conditions for Queensland Government employees.

2. The Government implement a modified and structured bargaining system for departments and agencies with the following characteristics:
   - Negotiations to commence no later than three (3) months prior to the expiry of the existing agreement.
   - The parties to advise the Queensland Industrial Relations Commission two (2) weeks prior to the commencement of negotiations.
   - The parties to “bargain in good faith”.
   - Access to the Queensland Industrial Relations Commission for assistance if a party believes that another is “not bargaining in good faith”, if agreement cannot be reached on procedures or if negotiations have not commenced within three (3) months of the expiry of the existing agreement.
   - The parties to inform the Queensland Industrial Relations Commission of progress two (2) weeks prior to the expiry date (beginning of peace obligation period).
   - Allow for the initiation of protected action one (1) week after the expiry date (end of the peace obligation period).
• Negotiations to continue for a reasonable defined period in which protected action is possible, unless the Queensland Industrial Relations Commission orders that the action is "endangering the personal health, safety or welfare of the community."

• Queensland Industrial Relations Commission to conciliate for a maximum period of two (2) weeks if no agreement has been reached. The Commission to have the power to issue orders about bargaining in good faith.

• Queensland Industrial Relations Commission to arbitrate an outcome if conciliation does not result in agreement.

3. The Government begin negotiations with public sector unions on development of a "code of good faith negotiations", in terms consistent with the principles in Attachment 2.

4. A specialist public sector panel be established in the Queensland Industrial Relations Commission to hear and determine public sector industrial matters.

5. A maximum of five Commissioners of the Queensland Industrial Relations Commission be specifically appointed to the public sector panel.

6. The Director-General of the Department of Industrial Relations and Senior Officers of the Queensland Council of Unions and the Australian Workers' Union meet formally at least quarterly to discuss broad industrial issues affecting the Queensland public sector.

7. The chief executives of each Government agency and secretaries of unions with coverage in that agency meet formally at least quarterly to consider issues specific to that agency.

R.J.L. Hawke
September 2002
1: BARGAINING IN THE QUEENSLAND PUBLIC SECTOR

1.1 Introduction
On 1 July 2002, the Queensland Government approved a Review of Enterprise Bargaining in the Queensland Public Sector in accordance with the Terms of Reference. Those Terms required a review of enterprise bargaining in the Queensland Public Sector in consultation with public sector agencies and unions, and the recommendation of strategies to improve the processes for determining public sector wages and conditions.

During the review, the current industrial relations environment in the Queensland public sector and the factors influencing it were assessed. Inherent difficulties with bargaining negotiations were identified. Key stakeholders, including government central and line agencies, public sector unions and the Queensland Council of Unions were consulted.

As a result, a range of possible models for the determination of wages and conditions was identified. In determining models, issues considered included:

- the need for reasonable wage outcomes for public sector employees;
- the budgetary impact of wage increases;
- the need to meet community expectations for the provision of public services;
- the Government’s commitment to various conventions of the International Labour Organisation, particularly the rights to collective bargaining;
- the interaction between federal and state industrial relations jurisdictions;
- the current and future Queensland public sector environment; and
- the relationships between the Government and its employees and unions representing public sector workers.

1.2 Background
Since 1989, the Queensland public sector has undergone substantial operational, administrative and management reforms that focused on increased accountability at an agency level.

Enterprise bargaining became part of the industrial relations system in Queensland through the Queensland Industrial Relations Commission’s State Wage Case Decision of 30 January 1992.

In the past ten years there have been three ‘rounds’ of public sector enterprise bargaining in Queensland, with the next ‘round’ underway.

Bargaining has become increasingly adversarial and political, making constructive dialogue between the parties very difficult and leaving parties - and, I suggest, the community - dissatisfied with the process.

1.3 Issues
The State Government has a duty to ensure the effective, efficient and reliable provision of community services. The Government is the largest employer in Queensland, and must consider improvements to wages and conditions in the
context of fairness to its employees and its responsibility for the efficient and equitable management of the state’s economy.

Public sector unions exist to represent the legitimate aspirations of their members for fair wages and conditions of employment.

Unions have expressed concerns about the quantum of pay increases, seemingly continuous structural and organisational change, employment security and processes for negotiating employment conditions.

Unions have also said that the Government is ‘pattern bargaining’ because it has sought to establish consistent wage outcomes for all of its employees, regardless of occupation. However, when determining the level of wage increases, unions generally rely on benchmarking Queensland public sector occupational groups against those interstate and/or the highest wage outcome achieved for other occupational groups in the Queensland public sector.

Unions and employees are particularly negative about bargaining which focuses on trade-offs of conditions or approaches which make employees work harder and longer, rather than more effectively. This is said to have been the effect of some enterprise agreements in the past and is resisted by employees and unions as ineffectual cost cutting.

Industrially strong unions in budget dependent departments with politically sensitive services have exercised their rights to use the certified agreement provisions and take protected industrial action during the negotiation process with the objective of maximising the outcomes for their members.

The assessment by government and its employees and their unions as to the fairness of wages and conditions will not always coincide and can result in acrimonious and protracted industrial/political disputation. Thus, there is a need for timely access to an independent umpire to determine unresolved issues.

An independent tribunal with the responsibility for resolving disputes over public sector wages and conditions has a more complex task than a general industrial tribunal, because the independent umpire has a particular responsibility to balance the aspirations of public sector employees with the broader public interest.
2: OPTIONS FOR DETERMINING WAGES AND CONDITIONS IN THE QUEENSLAND PUBLIC SECTOR

2.1 Introduction
While there has been significant disquiet on the part of both Government and unions over the operation of the current system of determining wages and conditions, the introduction of any new system is not a matter to be undertaken lightly. Rights to organise and bargain are fundamental in a democratic and fair society, but open-ended bargaining systems have the potential to result in prolonged (and sometimes unnecessary) disputation. This can adversely impact on the Government's duty to ensure the effective, efficient and reliable provision of community services.

2.2 Alternative options
Several different approaches have been suggested as alternative industrial relations systems for the Queensland public sector. Three basic models have been considered as part of the review process.

1. A modified bargaining model
A bargaining system with restrictions on the time taken to bargain and which provides for timely access to conciliation and arbitration.

2. Economic adjustment and independent arbitration
A system providing for periodic economic wage adjustments and access to arbitration for work value claims (determined by a new tribunal/arbiter outside the Queensland Industrial Relations Commission).

3. Average annualised wage increases
A system providing for the benchmarking of salary levels and wage movements against other Australian jurisdictions (by occupational group). This would result in wage increases for Queensland public sector employees reflecting average wage movements in other states.

Any proposed amendments to the current system of wage determination will only apply to employees (and their unions) subject to the Queensland industrial relations jurisdiction. It would not apply to employees of Government Owned Corporations and commercial business units which compete with private sector organisations.

Proposed changes must, as far as possible, meet the needs both of Government and of unions and their members. If a new system for determining wages and conditions of employment for public sector employees is unacceptable to public sector unions, these unions may consider withdrawing from the state jurisdiction in favour of the federal jurisdiction. Nurses are the only public sector group currently subject to the federal industrial relations jurisdiction. However, they may find the proposed new system sufficiently attractive to seek to have this system apply to them in future negotiations.
As collective bargaining is a fundamental principle, it must be maintained as the basis of any system of determining the wages and conditions of employees. On consideration, therefore I have rejected options 2 and 3 as being too mechanistic and not allowing sufficiently for the benefits that can arise for the parties and the public from genuine negotiation and bargaining in good faith. Additionally, either option 2 or 3 would result in fundamentally different systems for the private and public sectors.

2.3 Recommendation
It is recommended that collective bargaining with public sector unions continue to be the basis for determining wages and conditions for Queensland Government employees.
3: BARGAINING PROCESSES

3.1 Current arrangements
The *Industrial Relations Act 1999* (the Act) establishes the process for the negotiation and certification of enterprise agreements covering Queensland Government employees (with the exception of nurses who are subject to the provisions of the Commonwealth *Workplace Relations Act 1996*). In addition, Government policy requires that public sector agreements are to be made with the relevant unions and not directly with employees.

The Act establishes provisions that emphasise the importance of negotiating and genuine bargaining in good faith. The Act provides for a 21 day peace obligation period, which begins from the time the proposer of the agreement gives advice to all other parties of their intention to begin negotiations. The peace obligation period ends no earlier than seven days after the nominal expiry date of an existing certified agreement. Parties cannot take industrial action or ask for the Commission’s assistance in negotiating the agreement during the peace obligation period.

After this period, either party may initiate industrial action (in the form of strikes or lock-outs) in support of their claims. The Act provides immunity from civil liability for industrial action during a period of negotiations about a new agreement, provided that the party engaging in industrial action has given notice of an intention to begin industrial action three working days before it is to begin.

If negotiations stall (and after the conclusion of the peace obligation period), the Commission may help to finalise negotiations, if:
- one or more of the negotiating parties declares there has been a breakdown in negotiations and asks for assistance; or
- the Commission becomes aware that damaging or dangerous industrial action is being taken.

The Commission has conciliation powers to resolve any industrial dispute if there is an impasse in negotiations. For example, it may direct the industrial action to stop, make orders or give directions of an interlocutory nature or make other orders it considers appropriate for the prevention or prompt settlement of the dispute.

If the conciliation process fails to achieve agreement, the Commission may start proceedings to arbitrate an agreement. Arbitration can only occur if:
- the Commission considers industrial action has been protracted or is damaging or dangerous to the economy, community, a single enterprise or employees; or
- the Commission considers that further conciliation is unlikely to be successful within a reasonable time; or
- all negotiating parties request arbitration.

The current scheme of the Act encourages the making of agreements by a process of collective bargaining on the basis of negotiating in good faith. The Act acknowledges the legitimate role of industrial action in the bargaining
process. The Commission has the ability to intervene when industrial action is damaging the community.

3.2 Issues
The rights of the parties to engage in industrial action during negotiations should be balanced against the need to avoid protracted negotiations and/or to minimise the impact of that industrial action when it threatens critical public services. Similar circumstances may apply to local government.

The Act allows parties to take industrial action in support of claims for improved wages and conditions, and allows the Commission to intervene to resolve disputes and eventually arbitrate an outcome.

In any new system, it will be important to determine the extent to which negotiations and industrial action can occur before the Commission decides to intervene.

Two key issues must be addressed:
- the desired conduct of the parties during negotiations, particularly as they relate to the concept of good faith bargaining; and
- the duration and impact of the industrial action and the consequent intervention of the QIRC to resolve the dispute.

3.3 Good Faith Negotiations
The concept of good faith bargaining was first introduced into the Australian industrial relations legislative framework in March 1994, under the then federal Industrial Relations Act 1988.

The good faith bargaining provisions were mirrored in Queensland's industrial relations legislation in 1994. In that year, a Full Bench of the Australian Industrial Relations Commission described good faith bargaining in the following terms:

"Negotiating in good faith would generally involve approaching negotiations with an open mind and a genuine desire to reach an agreement as opposed to simply adopting a rigid predetermined position and not demonstrating any preparedness to shift." (PSU and ABC, 1994 AILR 372)

Those provisions gave the Industrial Relations Commissions the power to issue good faith bargaining orders.

These provisions applied where parties were already bargaining but importantly, the Commissions' power did not extend to issuing good faith bargaining orders to force the parties to bargain.

The good faith bargaining provisions were removed from the federal and state industrial relations legislation in 1997, following the election of Coalition Governments federally and in Queensland.

Following the election of a Labor Government in Queensland in 1998, good faith bargaining provisions were reintroduced under the Industrial Relations Act 1999.
Specifically, the Act requires the parties to negotiate in good faith and provides the following examples:

- agreeing to meet at reasonable times proposed by another party;
- attending meetings that the party had agreed to attend;
- complying with negotiating procedures agreed by the parties;
- not capriciously adding or withdrawing items for negotiation;
- disclosing relevant information as appropriate for the negotiations; and
- negotiating with all of the parties.

There was one significant change to the provisions that were in the earlier Queensland legislation. The Commission does not now have the power to order the parties to negotiate in good faith until the conciliation processes begin.

3.4 A code of good faith bargaining

Good faith bargaining requirements do not always prevent an impasse. Under the legislative provisions, the requirement to bargain in good faith does not necessarily equate to an agreement.

However, good faith bargaining is important for the development of collective agreements, to ensure that the parties negotiate openly and honestly. It also establishes an obligation to participate actively in the process by demonstrating the intention to find a basis for agreement.

The negotiating process is largely dependent on the behaviour of the parties, since the employment relationship can be detrimentally affected, even destroyed, by mistrust and suspicion during the process.

Therefore, the concept of bargaining in good faith should be seen as an extension of a constructive relationship between employers, employees and unions.

While, ultimately, the achievement of good faith bargaining depends on the attitude brought to the table by the parties, I believe it would be encouraged and enhanced by creating a code or protocol setting out the agreed elements essential to such bargaining. The Government should begin negotiations with public sector unions on the development of a "code of good faith negotiations". I have set out, in Attachment 2 a draft code as the basis for these negotiations.

3.5 Structured Bargaining Processes

What is seen as a key problem with the current process in the Queensland public sector is its open-ended nature: there are no time limits or other requirements to conclude negotiations in a reasonable timeframe.

Ideally, negotiations should be concluded prior to the expiry of the existing agreement. This should be encouraged.
If that is not possible, the bargaining process should be structured and limited by time. This will encourage all parties to finalise negotiations within a reasonable timeframe and ensure the continuity of public services.

The system proposed would:

- require the parties to commence negotiations no later than three (3) months prior to the expiry of the existing agreement with the Queensland Industrial Relations Commission having the power to direct the parties if negotiations have not commenced.

- require the parties to advise the Queensland Industrial Relations Commission two (2) weeks prior to the commencement of negotiations.

- require the parties to "bargain in good faith".

- allow parties access to the Queensland Industrial Relations Commission for assistance if a party believes that another is "not bargaining in good faith", if agreement cannot be reached on procedures, or if negotiations have not commenced three months prior to the expiry of the existing agreement.

- require the parties to inform the Queensland Industrial Relations Commission of progress two (2) weeks prior to the expiry date (beginning of peace obligation period).

- allow for the initiation of protected action one (1) week after the expiry date (end of the peace obligation period).

- require negotiations to continue for a reasonable defined period in which protected action is possible, unless the Queensland Industrial Relations Commission orders that the action is "endangering the personal health, safety or welfare of the community."

- require the Queensland Industrial Relations Commission to conciliate for a maximum period of two (2) weeks if no agreement has been reached during the period of protected industrial action. The Commission can issue orders about bargaining in good faith. The conciliation process would be used to reduce the extent of disagreement.

- require that Queensland Industrial Relations Commission arbitrate an outcome if conciliation does not result in agreement.

During the arbitration phase, the Commission would have access to a range of approaches to encourage agreement on as many items as possible. This will reduce the likelihood of ambit positions being maintained during the bargaining and conciliation processes. The Commission should be able to take account of the behaviour of the parties in negotiations, including particularly making a judgment as to whether a party has bargained in good faith. It could consider the final position adopted by each party and assess
where the parties may have ended if the bargaining had continued. It could make its own determination based on its assessment of what is “fair and reasonable” in the particular circumstances. Alternatively, the tribunal could use “last offer bargaining” where it would be empowered to make a determination based on a choice of one of the final positions put forward by both parties respectively.

3.6 Recommendations
It is recommended that the Government implement a modified and structured bargaining system for Government departments and agencies with the following characteristics:

- Negotiations to commence no later than three (3) months prior to the expiry of the existing agreement.

- The parties to advise the Queensland Industrial Relations Commission two (2) weeks prior to the commencement of negotiations.

- The parties to “bargain in good faith”.

- Access to the Queensland Industrial Relations Commission for assistance if a party believes that another is “not bargaining in good faith”, if agreement cannot be reached on procedures or if negotiations have not commenced within three months of the expiry of the existing agreement.

- The parties to inform the Queensland Industrial Relations Commission of progress two (2) weeks prior to the expiry date (beginning of peace obligation period).

- Allow for the initiation of protected action one (1) week after the expiry date (end of the peace obligation period).

- Negotiations to continue during a reasonable defined period in which protected action is possible, unless the Queensland Industrial Relations Commission orders that the action is “endangering the personal health, safety or welfare of the community.”

- Queensland Industrial Relations Commission to conciliate for a maximum period of two (2) weeks if no agreement has been reached. The Commission to have the power to issue orders about bargaining in good faith.

- Queensland Industrial Relations Commission to arbitrate an outcome if conciliation does not result in agreement.

It is also recommended that the Government begins negotiations with public sector unions about the development of a “code of good faith negotiations”, in terms consistent with the principles in Attachment 2.
4: TRIBUNALS

4.1 Current arrangements
Employment matters affecting Queensland Government employees are governed by both the Queensland Industrial Relations Commission and the Office of Public Service Merit and Equity. It is not intended to alter the functions of the Office of Public Service Merit and Equity.

Consideration has been given to alternative options for the structure to be responsible for handling public sector industrial relations, including:
- a specialist public sector tribunal separate from the Queensland Industrial Relations Commission; and
- a specialist panel within the Commission.

4.2 Issues
A number of issues peculiar to the public sector suggest the need for a change to the current arrangements. The public sector has special characteristics. There is one employer of approximately 170,000 employees. There is significant diversity in terms of functions and occupations. It provides critical services to the community. Decisions affecting the public sector can have ramifications throughout society and the industrial relations system.

A tribunal charged with responsibility for resolving disputes over public sector wages and conditions must take account not only of the need for fair wages and conditions, but also of the broader public interest, including the economic and social impacts of industrial outcomes, the Government's role as a major employer and community needs and expectations in the provision of public services.

However, there are clear advantages in having, as far as possible, common principles governing the determination of wages and conditions for both public and private sectors. Public sector wages and conditions are relevant to community standards. Since a public sector arbiter, independent of the Queensland Industrial Relations Commission could not easily achieve public/private common ground, the Commission should continue to oversee the processes of bargaining.

The preferred option therefore is the establishment of a specialist arbiter within the Queensland Industrial Relations Commission. This would involve the creation of a new public sector panel. A specialist panel would assist the implementation of a structured bargaining process (as proposed in Chapter 3), but would retain consistency and flexibility within the Queensland Industrial Relations Commission, by retaining the Commission as the tribunal responsible for the management of industrial relations across all sectors in Queensland. Within the Commission, a panel of commissioners with expertise in public sector matters would address wages and conditions issues specific to the public sector.

Wage fixing principles, precedents and the application of common rule awards would continue to support consistency and predictability of outcomes between decisions of the panels regulating public sector and private sector industrial relations. Further, it would be appropriate for a full bench to include a
member from the public sector panel where matters have significant implications for the public sector.

The public sector panel would hear and determine issues for employees of all Queensland Government agencies with the exception of Government Owned Corporations and should have the following powers and functions:

- the supervision of enterprise bargaining processes;
- the certification of agreements;
- the resolution of industrial disputes about wages and conditions by conciliation and, where necessary, by arbitration;
- reinstatement applications;
- the making, amending, and reviewing public sector awards, including the application of safety net adjustments;
- other general rulings or statements of policy for the public sector e.g. shift allowances, payment for work on public holidays etc.; and
- interpretations of awards and agreements.

The panel would be comprised of a maximum of five Commissioners drawn from within the Commission. The public sector panel Commissioners would also hold general Commission appointments and would retain all existing employment conditions.

4.3 Recommendations

It is recommended that:
- a specialist public sector panel be established in the Queensland Industrial Relations Commission to hear and determine public sector industrial matters; and
- a maximum of five members of the Queensland Industrial Relations Commission be specifically appointed to the panel.
5: RELATIONSHIPS WITH UNIONS

5.1 Introduction
The Queensland Government supports a system of collective industrial relations, which acknowledges that public sector unions are the representatives of its employees. All agreements are to be made with unions. There are also policies and procedures to encourage public sector employees to be union members.

In most cases, public sector agreements operate for two or three years. It has been claimed that there is too little discussion between senior management and unions about current workplace issues arising during the period of the agreement. Some agencies appear to have adopted the attitude that interaction with unions is only required during the process of negotiating an agreement, with some ongoing meetings limited to the implementation of the existing agreement.

However, a constructive and enduring relationship between government agencies, employees and their unions requires regular interaction and consideration of contemporary and emerging issues affecting them. This should also involve the regular sharing of information about developments and concerns relevant to each of the parties. Such discussions could include matters such as classifications, recruitment and retention issues, rostering arrangements and workplace reform. Where such matters did not involve significant budgetary implications, the parties, if not able to reach agreement, could have recourse to the public sector panel of the Queensland Industrial Relations Commission. However, wages and basic conditions of employment are matters to be dealt with during the bargaining processes and cannot be reopened during the term of an agreement.

While senior representatives of central agencies meet senior union officials about specific issues and some agencies have established regular meetings with unions, it is evident that in other agencies there is no regular interaction involving senior management and unions.

It is noted that the Premier and senior Government Ministers meet with senior officers of public sector unions to discuss the operation of the industrial relations system and broad issues impacting on government employees. However, dialogue between agency and employee representatives at all levels is important in establishing and maintaining desired relationships.

If concerns raised by unions are not considered during the period of an agreement, some matters which could be discussed constructively remain unresolved. This situation can have adverse impacts on future negotiations. By the time negotiations start for the next agreement, the log of claims can include many matters which are minor, or of an operational nature, and which could have been resolved through consultative processes and good will.

The relationship between Government agencies and public sector unions could be improved through the sharing of information and concerns in regular, formal meetings between its senior management and senior union officials.
During these meetings, the parties should genuinely attempt to resolve issues in accordance with the principles of good faith bargaining.

5.2 Recommendation:
It is recommended that:

- the Director-General of the Department of Industrial Relations and Senior Officers of the Queensland Council of Unions and the Australian Workers’ Union meet formally at least quarterly to discuss broad industrial issues affecting the Queensland public sector; and
- the chief executives of each Government agency and secretaries of unions with coverage in that agency meet formally at least quarterly to address issues specific to that agency.
6: CONCLUSION

I would like to thank the Premier, Peter Beattie, and the Minister for Industrial Relations, Gordon Nuttall, officers from their departments, the Queensland Council of Unions and their relevant affiliates and the Australian Workers Union for the co-operation and assistance extended to me in the preparation of this Report.

Throughout my public career I have always had a particularly warm regard for Queensland, and what I see as its importance for Australian development as a whole. The potential of Queensland to add further to that development remains huge. It is not an overstatement to say that an efficient, well-regarded public service working co-operatively with Government is critically important in maximising that potential.

I believe that if the recommendations in this Report are implemented and acted on in good faith by Government and unions, the resolution of disputes will be simplified. Even more importantly, the interests of the people of Queensland and Australia will be advanced.
Terms of Reference –
Review of Enterprise Bargaining for the Queensland Public Sector

1. Assess the current industrial relations environment in the Queensland public sector; identify the factors influencing it and inherent difficulties with negotiations.

2. Consult relevant stakeholders including government central and line agencies, public sector unions, and the Queensland Council of Unions to determine the advantages, disadvantages and flaws of the current system.

3. Identify appropriate models for the determination of wages and conditions of employment in the Queensland public sector.

   Any such models will:
   • provide for a period of bargaining, including a mechanism to ensure that bargaining is conducted in good faith by all parties; and
   • identify appropriate mechanisms for parties to raise and negotiate non-wage related issues.

   Issues that will also need to be considered include:
   • Community concerns where essential services are affected by wage negotiations (the public interest);
   • The current and future public sector industrial environment;
   • Overlap between the federal and state industrial relations jurisdictions;
   • Commitment to various ILO conventions eg collective bargaining; and
   • Consideration of wider budgetary implications.

4. Consider the implications of the options on other sectors within the Queensland economy.

5. Taking into account the above and the public interest, make recommendations for the future determination of wages and conditions of employment in the Queensland public sector (including legislative changes).

6. A report on these issues is to be finalised by 30 September 2002. Interested parties will then be given a further opportunity to provide comment by 14 October 2002.
Application

The protocol will apply to the Government, its agencies and their officers, and unions covering employees in the Queensland Public Sector and their officers who are engaged in collective bargaining in accordance with Chapter 6 of the Industrial Relations Act 1999.

The parties acknowledge the Government's commitment to collective bargaining with unions as representative of public sector employees and to the union encouragement provisions contained in agreements.

Bargaining for a certified agreement means all the interactions which relate to bargaining between the relevant parties, including negotiations, communications and/or correspondence before, during, or after negotiations.

Introduction

Each negotiating party to a proposed agreement will take part in negotiations in good faith and genuinely try to reach agreement with the other negotiating party or parties.

While noting the statutory periods in relation to bargaining, meaningful negotiations should start at least three (3) months prior the expiry of the existing agreement (or earlier where required by the agreement), and the parties should aim to reach agreement prior to the expiry date.

It is agreed that regular and ongoing consultation involving senior officers of agencies and public sector unions should not be limited to bargaining processes to assist in the development and maintenance of positive relationships between the parties.

This protocol cannot require a negotiating party to agree to any matter for inclusion in an agreement.

Development of an agreed bargaining process

The parties will endeavour to agree on a bargaining process as soon as possible after the initiation of bargaining.

The following matters should be considered, and where relevant and practicable be included in the agreement on the bargaining process:

a. the size, composition and representative nature of the negotiating teams and how any changes will be dealt with;

b. the names of individuals comprising the negotiating teams;

c. the presence, or otherwise, of observers;

d. the authority of the negotiators and any limitations to their authority;

e. the proposed frequency of meetings;
f. the proposed venue/s for meetings;
g. the proposed timeframe for the bargaining process;
h. the manner in which proposals will be made and responded to;
i. the manner in which any areas of agreement are to be recorded;
j. advice on ratification and signing-off procedures;
k. communication to interested parties during bargaining;
l. the provision of relevant information and costings;
m. any process to apply in matters for which there is no agreement;
n. when the parties consider the bargaining process is exhausted.

Meetings
The parties agree to meet regularly to expedite the bargaining process.
The frequency of meetings should be reasonable and consistent with any agreed bargaining arrangements.
The meetings will provide an opportunity for the parties to discuss proposals relating to the bargaining, provide explanations of proposals relating to the bargaining, or where such proposals are opposed, provide explanations which the relevant party considers support the proposals or opposition to it.
The parties are not required to continue to meet each other about proposals that have been considered and responded to.

Bargaining
The parties will adhere to any agreed process for the conduct of the bargaining.
The parties must consider and respond to proposals made by each other.
The employer and unions will provide to each other, on request, and in a timely manner information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of bargaining.
The parties will consider the other's proposals for a reasonable period. Where a proposal is not accepted, the party not accepting the proposal will offer an explanation for that non-acceptance.
Where there are areas of disagreement, the parties will work together to identify the barriers to agreement and will give further consideration to their respective positions in the light of any alternative options put forward.
The parties should attempt to reach an agreed settlement of any differences arising from the collective bargaining.
Good faith bargaining requires that the parties do not capriciously add or withdraw items during the negotiation process.

**Breach of good faith bargaining**

Where a party believes there has been a breach of good faith in relation to the bargaining process the party will detail any concerns about perceived breaches of good faith at an early stage to enable the other party to remedy the situation or provide an explanation.

Where a party has detailed its concern that there has been a breach of good faith and the other party/s have not responded in a satisfactory or timely manner, that party may refer the matter to the QIRC to seek its assistance or intervention.