Parliamentary Committees

Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015

Report No. 4, 55th Parliament
Finance and Administration Committee
June 2015

Parliamentary Committees

Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015

Report No. 4, 55th Parliament
Finance and Administration Committee
June 2015

Finance and Administration Committee

Chair	Ms Di Farmer MP, Member for Bulimba
Deputy Chair	Mr Michael Crandon MP, Member for Coomera
Members	Miss Verity Barton MP, Member for Broadwater
	Mr Craig Crawford MP, Member for Barron River
	Mr Duncan Pegg MP, Member for Stretton
	Mr Pat Weir MP, Member for Condamine
Staff	Ms Deborah Jeffrey, Research Director
	Dr Maggie Lilith, Principal Research Officer
	Ms Louise Johnson, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Finance and Administration Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7576
Fax	+61 7 3406 7500
Email	fac@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/fac

Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its inquiry. In particular the Committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

Contents

Abbreviations

ACCI	Australia Chamber of Commerce and Industry
ALP	Australian Labor Party
AMWU	Australian Metal Workers Union
ASMOFQ	Australian Salaried Medical Officers Federation of Queensland
AWU	Australian Workers Union
CCIQ	Chamber of Commerce and Industry Queensland
CFMEU	Construction, Forestry, Mining & Energy, Industrial Union of Employees, Qld
DJAG	Department of Justice and Attorney-General
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the *Legislative Standards Act 1992*
IR Act	*Industrial Relations Act 1999*
LGAQ	Local Government Association of Queensland
LNP	Liberal National Party
MBRC	Moreton Bay Regional Council
PSIER	Public Sector Industrial and Employee Relations
QCU	Queensland Council of Unions
QES	Queensland Employment Standards
QIRC	Queensland Industrial Relations Commission
QLS	Queensland Law Society
QNU	Queensland Nurses Union
RoPP	Rights of Private Practice
QTU	Queensland Teachers Union
SLC	Former Scrutiny of Legislation Committee
TCR	Provisions relating to termination, change and redundancy
TSIRC	Torres Strait Island Regional Council
UFUQ	United Firefighters Union Queensland
WBWC	Wide Bay Water Corporation

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
citations used in this report	The citations and hyperlinks used in the report are all current as at 1 June 2015.
the Bill	*Parliament of Queensland and Other Acts Amendment Bill 2015*
the Commission	Queensland Industrial Relations Commission (QIRC)
the Committee	Finance and Administration Committee
the department	Department of Justice and Attorney-General
the Tribunal	Queensland Industrial Relations Commission (QIRC)

Chair's Foreword

This report presents a summary of the Committee's examination of the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015.*

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, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders, which should make for better policy and legislation in Queensland.

The Bill amends the Industrial Relations Act 1999 and the Industrial Relations Regulation 2011. The policy objectives of the Bill are to give effect to the Government's election commitments and priorities relating to restoring fairness for government workers and restoring the ability of industrial organisations and their representatives to freely organise and access members so as to enhance and protect their industrial interests.

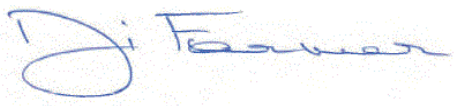
The Committee received in excess of 1,000 submissions and spoke with numerous stakeholders during the course of its inquiry. It was apparent from the outset that the Committee would be ideologically opposed on substantial parts of the Bill. However, the Committee was able to agree on some aspects of the Bill, which resulted in two recommendations to government.

After lengthy discussion and consideration, the Committee was also able to agree on the contents of the report, which contains details of the evidence provided to the Committee and the views of both government and non-government Members, for consideration by the Parliament during the second reading debate.

The Committee wishes to place on record its appreciation to all of the stakeholders who provided assistance to the Committee both in providing substantive submissions and additional information on a timely basis.

The Committee also appreciates the assistance of the A/Privacy Commissioner for meeting with and providing additional information to support the Committee in its deliberations. I would also like to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the Committee for both their active participation and willingness to think critically through the all of the issues raised in the Bill.



Di Farmer MP
Chair

June 2015

Recommendations

The Committee has made the following recommendation:

Recommendation 1 **42**

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, the Minister provide clarification on the issue of redundancy pay entitlements in his Second Reading Speech.

Recommendation 2 **45**

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, the Minister consider amending the Bill to enable QIRC to develop a standard dispute resolution clause that could be available to parties and able to be amended by mutual agreement.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 26 March 2015.[1] The Committee's primary areas of responsibility are:

- Premier, Cabinet and the Arts; and
- Treasury, Employment, Industrial Relations, Aboriginal and Torres Strait Islander Partnerships.

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 area to consider –

a) the policy to be given effect by the legislation;

b) the application of fundamental legislative principles to the legislation; and

c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

a) determine whether to recommend that the Bill be passed;

b) may recommend amendments to the Bill; and

c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the Bill by any of the following methods:

a) calling for and receiving submissions about a bill;

b) holding hearings and taking evidence from witnesses;

c) engaging expert or technical assistance and advice; and

d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships introduced the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015* (the Bill) to the Legislative Assembly on 7 May 2015. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion, after debate, requiring the Committee to report to the Legislative Assembly by Monday 1 June 2015.

[1] *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing, five public hearings and a public briefing with the Privacy Commissioner. The Committee also sought additional written advice from the department and stakeholders.

The Committee considered expert advice on the Bill's conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 8 May 2015. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The closing date for submissions was Monday 18 May 2015, however, the Committee agreed to accept additional submissions until Tuesday 26 May 2015. The Committee received 1,040 submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

Many of the submissions received by the Committee were form submissions generally supporting the provisions without addressing the clauses within the Bill. The Committee has not directly addressed these submissions in this report.

1.5 Public departmental briefing

The Committee held a public departmental briefing on the Bill with officers from the Department of Justice and Attorney-General on Wednesday 20 May 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

1.6 Public hearing

On Monday 25 May 2015, the Committee held five public hearings on the Bill with representatives from individuals and organisations who provided submissions. A list of representatives who gave evidence at the hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from stakeholders subsequent to the briefing.

1.7 Public briefing with Privacy Commissioner

On Thursday 28 May 2015, the Committee held a public briefing with the Privacy Commissioner on the privacy aspects of the Bill. A list of representatives who gave evidence at the briefing is contained in Appendix D. A transcript of the briefing is available from the committee secretariat. The Committee also sought additional written information from the Privacy Commissioner subsequent to the briefing.

1.8 Policy objectives of the Parliament of Queensland and Other Acts Amendment Bill 2015

The Bill will amend the following:

- *Industrial Relations Act 1999*
- *Industrial Relations Regulation*

The policy objectives of the Bill, as outlined in the explanatory notes, are to give effect to the Government's election commitments and priorities relating to:

1) Restoring Fairness for Government Workers', by:
    a) reinstating employment conditions for Government workers that were lost as a result of changes to the *Industrial Relations Act 1999* (IR Act) made in 2012 and 2013;
    b) re-establishing the independence of the Queensland Industrial Relations Commission (QIRC) when determining wage cases;
    c) returning the Commission to its position as a layperson's tribunal where employees and union advocates operate on a level playing field with employers; and
2) Restoring the ability of industrial organisations and their representatives to freely organise and access members so as to enhance and protect their industrial interests.

1.9 Outcome of Committee deliberations

Standing Order 132(1)(a), requires that the Committee examine the Bill and determine whether to recommend that the Bill be passed. During its consideration of the Bill it became apparent that the Committee would be unable to reach agreement on this issue. The government Members accepted the Bill should pass with amendments. The non-government Members considered that the Bill should not be passed unless significant amendments were made.

2 Examination of the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 – Preliminary*

2.1 Background

When the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, Hon C Pitt MP, introduced the legislation, he stated:

> *The Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 gives effect to the government's election commitments and priorities for industrial relations reforms. This bill abolishes those aspects of the LNP's industrial relations system that, if allowed to continue, would have irrevocably damaged the state's IR system and undermined the government's commitment to restoring fairness for government workers.*
>
> *The bill I am introducing today seeks to amend the Industrial Relations Act 1999 to, one, restore the conditions of employment in awards and agreements covering state government employees that were made unenforceable by the LNP, including job security, contracting out protections, union encouragement, organisational change, policy incorporation, private practice, resource allocation to and restrictions on termination change and redundancy—the TCR provisions—and giving personal employee information.*

> *Two, re-establish the independence of the Queensland Industrial Relations Commission—the QIRC—by removing the unfair requirement that the QIRC must consider the employer's financial position and fiscal strategy as part of the public interest in wage arbitration matters. The LNP's amendments were an abuse of power because the act already sufficiently contemplates such matters and gives the QIRC latitude to take account of such considerations. These amendments tilted the bargaining and industrial relations arrangements in the government's favour in circumstances where the government is the employer. Three, return the QIRC to a layperson's tribunal where workers and union advocates operate on a level playing field with their employers by removing provisions that were introduced by the LNP that allowed legal representation without the consent of all parties. Four, remove prohibitions in qualifications on content that can be included in a modern award or certified agreement in the future. This means that the previous prohibitions on content identified as non-allowable in modern industrial instruments, modern awards and modern certified agreements will be gone. Five, remove the notice requirements for an authorised industrial officer to enter a workplace and exercise rights under the IR Act. The notice requirements are overly bureaucratic and do not support a genuinely cooperative relationship between employers, unions and the workers they represent.*[2]

The explanatory notes state that the former government made extensive amendments to the IR Act, including:

- amendments that rendered certain provisions in industrial instruments applying to employment in a state government entity to be of no effect;
- commencing an award modernisation process within a framework that prohibits provisions relating to particular subject matters;
- placing restrictions on the content of certified industrial agreements following the modernisation of the underpinning award;
- curtailing the independence of the Queensland Industrial Relations Commission (QIRC) by mandating that financial position and fiscal strategy of public sector employers be considered when determining wages and employment conditions;
- broadening the circumstances in which any party may have legal representation without requiring the consent of all parties; and
- introducing notice requirements before an authorised industrial officer could enter a workplace.[3]

The explanatory notes identify that the award modernisation process initiated by the former government was suspended on 17 March 2015. The Bill provides for modern awards made up to the time of the suspension to be reviewed and varied to ensure fairness is restored to those employees.[4]

2.2 Urgency

The Bill was referred to the Committee on 7 May 2015. The Committee is due to report by 1 June 2015. This timeframe provided the Committee with a total of seventeen working days for consideration of the Bill.

[2] Queensland Legislative Assembly, Hon C Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, Introduction, *Parliamentary Debates (Hansard)*, 7 May 2015: 506
[3] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 1-2
[4] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 2

With regard to the urgency, the Minister noted:

> *We have prioritised the changes in this bill because of the ongoing, day-to-day, adverse effects the LNP's laws are having on hardworking government staff in this state. We have worked quickly to make the necessary changes to bring an end to this unfair situation. We welcome the input on these urgent changes that we have received from stakeholders to date, and are dedicated to continuing consultation and engagement with all stakeholders as the government looks to make amendments.*[5]

The issue of the urgency of the Bill was debated by the Parliament on 7 May 2015 and the Treasurer responded:

> *The reason this is so urgent is quite simply the decisions of the former government: the sacking of 14,000 workers, the arbitrary stroke-of-a-pen arrangements they put in place for industrial relations and their removing very important conditions that should have been considered to be allowable matters on any day of the week—hard-fought and won conditions, as we have heard from the Leader of the House. This has been our largest single platform, besides our opposition to the sale of public assets that they spent $70 million on, for a long time. This is about ensuring that we put in an act our election commitments.*[6]

The Committee also sought further explanation from the department of the reasons for the urgency of the Bill. The department advised:

> *The primary urgency is around the award modernisation and certified agreement process. The previous Industrial Relations Act provided for awards to be modernised over a two-year period and as a result of that new certified agreements could be entered into as a result of the modernisation of awards. The current government wants to, within its commitments, have those awards that have been modernised remade, but we also need to ensure that for other awards that have not been modernised to date that process is undertaken.*
>
> *I suppose the critical point from the government's point of view and from stakeholders is that you can only then enter into and begin to bargain once you have a modernised award. That means that as a consequence for quite a lot of organisations and workers the agreement-making process has had to slow down and by regulation and determination employees have been granted a wage increase in the meantime whilst this process is completed. But obviously collective bargaining forms a key part of the act and it is important that this process is expedited so that bargaining parties can bargain again.*[7]

The Queensland Nurses Union (QNU) noted the limited timeframe to contemplate the Bill, however, supported the need to rectify quickly the adverse effects of amending legislation introduced by the previous government.[8]

The Mareeba Shire Council and Tablelands Regional Council both identified their concern with the short time available for consideration of the Bill. They noted that, in light of the importance of the legislation and the effect on both employees and employers, more time should be allowed for better consultation and consideration.[9]

[5] Queensland Legislative Assembly, Hon C Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, Introduction, *Parliamentary Debates (Hansard)*, 7 May 2015: 507
[6] Queensland Legislative Assembly, Hon C Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, Introduction, *Parliamentary Debates (Hansard)*, 7 May 2015: 510
[7] Dr Blackwood, DJAG, Public Briefing Transcript 20 May 2015: 2
[8] QNU, Submission 1038: 2
[9] Mareeba Shire Council Submission 1024: 1; Tablelands Regional Council Submission 1001: 1

The Australian Industry Group (Ai Group) indicated their concern that the short timeframe for the Bill's consideration will result in the full impact of the Bill being overlooked.[10]

2.3 Committee comments – Urgency

The non-government Members highlighted their concern they considered the Committee had been allowed insufficient time to thoroughly examine the Bill. The short time frame provided for the examination of the bill was compounded by the additional inquiry work the Committee was and is undertaking. They considered that the limited time frame for the examination of the Bill has impacted the ability of stakeholders to prepare and make submissions to the Committee. This was further compounded by the consultation undertaken by the Government before the introduction of the Bill to the House. Local Government Authorities (LGAs) were given limited time to prepare and provide submissions and there was evidence received by the Committee that some LGAs were unable to make a submission because a full meeting of Council would not occur before the deadline for submissions.

From a Committee process perspective, the non-government Members made the point strongly that the very late inclusion of Councils in the invitation list and the very short time frame for the Councils to make submissions put them at a distinct disadvantage.

The non-government Members were concerned, although the Committee was advised that the Local Government Association of Queensland (LGAQ) was initially consulted in March during the preparation of the Bill, it was only with respect to allowable and non-allowable content which they thought was the extent of the proposed Bill and this was under strict confidentiality. As such the LGAQ were not able to discuss any of the proposed amendments with their members which severely impacted members' abilities to prepare submissions. This is contrasted with consultation with individual unions. They also considered that the severely truncated time frame within which the Committee was able to complete its inquiry reflects poorly on the Government and its respect of the Committee process and the Committee's role to properly examine legislation before the House.

The non-government Members noted that the Treasurer stated that he had consulted with the LGAQ. He stated:

> *I have met with the Local Government Association of Queensland on numerous occasions, and I will continue to meet with the Local Government Association of Queensland and individual councils as required, as will the Deputy Premier and Minister for Local Government, because we want to restore fairness.*[11]

The non-government Members argued that the evidence presented to the Committee showed that no meaningful consultation occurred.

The government Members acknowledged the short time frames available for the Committee's inquiry. However they pointed out that the government had committed, during the election campaign, to prioritising industrial reforms, and that the changes proposed in the bill had been broadly flagged for some time. They highlighted that:

(i) the Minister's comments that the Bill abolishes those aspects of the LNP's industrial relations system that, if allowed to continue, would have irrevocably damaged the state's industrial relations system and undermined the government's commitment to restoring fairness for government workers; and

[10] Ai Group Submission 1026: 1

[11] Queensland Legislative Assembly, Hon C Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, Introduction, *Parliamentary Debates (Hansard)*, 7 May 2015: 511

(ii) the department's advice about the need to expedite the bargaining processes around award modernisation and certified agreements. It was their view that, for these reasons, the urgency of the bill was warranted.

They were appreciative that, despite the timelines, over 1,000 submitters had nevertheless been able to express their views to the Committee.

Government Members disagreed with non-government Members regarding consultation timelines. They argued that no evidence had been provided to the Committee to suggest that unions had been provided with detail about the Bill at an earlier point that the LGAQ. It was the view of government Members that all parties were operating under the same constraints in terms of the time available to respond to the Bill.

The government Members considered that, although the timelines had placed pressure on the Committee to undertake a substantial body of work in a short period of time, the Committee had nevertheless been able to thoroughly examine the Bill.

2.4 Alternative ways of achieving policy objectives

The explanatory notes state there is no alternative way to achieve the policy objective other than through legislative reform.

2.5 Stakeholder consultation

The explanatory notes identify that the policy objectives contained in the Bill were announced in the governments' pre-election commitment for 'Restoring Fairness for Government Workers' and as a priority in the 2014 Labor State Policy Platform.[12]

The explanatory notes state that no public consultation was undertaken other than those identified as follows:

> *…Queensland Council of Unions; United Voice, Industrial Union of Employees, Queensland; the Australian Workers' Union of Employees, Queensland; Together Queensland, Industrial Union of Employees; Queensland Services, Industrial Union of Employees; Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland; Queensland Nurses' Union of Employees; Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland; Plumbers & Gasfitters Employees' Union Queensland, Union of Employees; the Electrical Trades Union of Employees Queensland; Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch; United Firefighters' Union of Australia, Union of Employees, Queensland; Queensland Teachers Union of Employees; and the Local Government Association of Queensland; and with the Department of Premier and Cabinet, Queensland Treasury, Queensland Health, other Government departments and the Public Service Commission.*[13]

[12] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 6
[13] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 6

The Committee asked the department to explain why no further community consultation was undertaken beyond those organisations identified in the explanatory notes. The department responded that the focus of the consultation was on the technical elements of the Bill. They advised:

> *We had clear guidance in relation to the objects and policy commitments so it was really just trying to get some views about how this bill would work in practice. So we undertook that. I think there had been further consultation that the Local Government Association had undertaken, we know in talking to them, with their members.*
>
> *From an industrial point of view I suppose, to answer your question, that is the way we would undertake the consultation. If it was in the private sector then we would primarily consult with, from an employer point of view, the industrial organisations that represent those employers. That is why we did that this way with the Local Government Association, then, as we say, all the departments as major employers and through the preparation of the cabinet submission and bill et cetera.*[14]

The Committee also sought advice from the department regarding why individual unions were consulted as well as the Queensland Council of Unions (QCU) but only the LGAQ and not the individual councils. The department advised:

> *We spoke to the Local Government Association industrial officers. In listing all those unions I think it is fair to say that, whilst the QCU sees itself as an umbrella organisation, a lot of those unions were involved in negotiations with the Local Government Association and also with departments around the award modernisation and agreement-making process. That is why we took the consultation in that way.*[15]

The Committee considered the issue of the consultation process at its public hearings. One of the United Voice representatives advised the Committee:

> *…when these laws were unnecessarily changed by the LNP government, they had a consultation similar to this and at that time that consultation with the public and the committee seemed to ignore the concerns of honest working people, and I know this because I was here.*[16]

The representatives from the Queensland Law Society (QLS) and the Bar Association of Queensland both advised the Committee that they were consulted on the Bill late the day before the Bill was introduced into the Parliament. Both confirmed that they had had discussions with the Minister regarding this process and believe that better consultation will occur in the future.[17]

The QLS submission noted that no consultation was carried out beyond relevant employee unions, the LGAQ, Queensland Government departments and the Public Service Commission (PSC). The submission states that they do not accept that this is an exhaustive list of stakeholders in the Queensland industrial relations system. The QLS view is that a 'closed shop' approach was taken in the development of the legislation and it is appropriate for broader community consultation to take place given that the Queensland industrial relations system is of importance to all Queenslanders.[18]

[14] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 4
[15] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 4
[16] Mr Hardman, United Voice, Public Hearing Transcript 25 May 2015: 14
[17] Mr Fitzgerald, QLS and Mr Murdoch, Bar Association, Public Hearing Transcript 25 May 2015: 30-31
[18] QLS Submission 1036: 1

The LGAQ advised the Committee that in late March they were approached to seek their views on the non-allowable matters included in the Bill, which at the time they understood would be the extent of the changes. They advised that at the time of the consultation they were asked to respect the confidentiality of the consultation. This request for confidentiality meant that they were prevented them from consulting with their members. They advised that once they saw a media release from the Minister indicating that the Bill was to be introduced, approximately a week before the Bill was actually introduced, they immediately contacted their members. They confirmed that they only saw the draft bill 24 hours before it was introduced.[19]

The LGAQ confirmed that they would have liked to have had the opportunity to have more time to look at the details and take the detail to their members. They advised that they considered that the consultation was probably correct as they have an industrial relations working group across councils which convene regularly and are the source of a lot of the information that comes from councils themselves. However, the restriction on them being able to go out and meet with their members meant that they were not able to gather the full range of information they could have.[20]

The LGAQ advised:

> *…we honoured the requirement for confidentiality and it was only once the bill was introduced that we were able to immediately and fully start to engage our members on the implications of it notwithstanding the fact that we were alerted, as Tony has indicated, to elements of the bill, but we did not see the specifics until 24 hours before its introduction. So our ability to engage all of our members was restricted to that point in time.*[21]

The Moreton Bay Regional Council (MBRC) confirmed that there had been no direct consultation with their council.[22] They advised the Committee that:

> *…in drafting this Bill, consultation has been undertaken with the Queensland Council of Unions as the peak body for unions, as well as individual unions themselves. Conversely, consultation with local government was only held with the peak body (Local Government Association of Queensland), not the individual councils individually affected by the proposed Bill. Therefore the detailed issues faced by this Council (the third-largest local government in Australia) and the potential negative impacts on staff were not considered in its drafting.*[23]

With regard to how Councils heard about the proposed amendments the Torres Strait Island Regional Council (TSIRC) advised:

> *I first became aware of this through the LGAQ. Our mayor sits on the board. He attended a board meeting in early May, I believe it was, and it was flagged from there. It was confirmed when I was looking on Facebook that night. There was something on Facebook about the changes that were coming forward.*[24]

[19] Mr Goode, LGAQ, Public Hearing Transcript 25 May 2015: 34
[20] Mr Goode, LGAQ, Public Hearing Transcript 25 May 2015: 34
[21] Mr Hoffman, LGAQ, Public Hearing Transcript 25 May 2015: 34
[22] Mr Hitzman, MBRC, Public Transcript 25 May 2015: 33
[23] MBRC Submission 323, MBRC: 2
[24] Ms Ahwang, TSIRC, Public Hearing Transcript 25 May 2015: 44

The Committee also sought additional information on the protocol for consulting with local government. The LGAQ advised:

> *It is best practice for us to have ample opportunity to engage with our members to ensure that the diversity of the state is recognised in considering the impacts that a potential piece of legislation will have and on an issue as significant as this. That is a most important point from our perspective to ensure that we can adequately and fully represent them.*[25]

Mareeba Shire Council commented that, whilst they note that consultation was conducted with the LGAQ, it is important to note that although the LGAQ provides general representation for local Councils, each local government finds itself in different circumstances and a one size fits all option is not suitable or effective.[26]

The department responded that it:

> *…consulted with the LGAQ, as the peak body representing Local Government in its dealings with Government.*[27]

2.6 Committee comments – Stakeholder consultation

The non-government Members were concerned that the consultation process prior to the Bill's introduction, did not allow for all stakeholders to have an opportunity to provide feedback on the Bill. They were concerned that by only consulting the LGAQ, and requiring the LGAQ to maintain confidentiality, individual councils were not fairly treated. They argued that in addition to consulting the LGAQ, councils should have been consulted directly. In addition the Bar Association of Queensland (Bar Association) and the QLS gave evidence they were consulted late in the afternoon the day before the Bill was introduced to the House and expressed dissatisfaction at the late and limited consultation. Further, the non-government Members expressed concern that neither the Privacy Commissioner nor the Queensland Council of Civil Liberties were consulted regarding provisions directly relating to, what they consider to be, the personal information of public sector employees being provided to unions without the employee's consent.

The non-government Members argued that evidence provided by the department clearly identifies that Councils were excluded from the process of review with no direct consultation being carried out with any Council. The department's evidence, that suggested that consultation with the LGAQ, as the peak body for Councils, was found to be left wanting, when the LGAQ gave evidence of a requirement for complete confidentiality. The non-government Members argued that this meant that the LGAQ could not consult with its members about their particular views and differing issues that confront Councils in such a geographically diverse state.

The non-government Members are also concerned that the department only consulted the LGAQ on a very narrow aspect of the Bill, that of "non-allowable matters". They were not consulted on the broader, more far reaching aspects of the Bill. This meant that, even if they were able to consult with Councils, they would not have been consulting on issues that have a major impact on Councils.

[25] Mr Hoffman, LGAQ, Public Hearing Transcript 25 May 2015: 34
[26] Mareeba Shire Council Submission 1024 : 4
[27] Correspondence to FAC from DJAG dated 26 May 2015: 5

The government Members of the Committee acknowledged the concerns raised by Councils and welcomed the submissions from the Councils that did submit to the Committee. The government Members' view was that the department had been guided in their consultation on this Bill by an established protocol with the LGAQ about consultation with councils, and that there had been no deliberate intent by the department to exclude councils. Government members noted that the submissions from individual councils mirrored the concerns raised by the LGAQ. Government Members pointed out the evidence provided to the public hearing by the LGAQ that they had been given a strong indication of the contents of the bill prior to its introduction, and had indeed seen a copy of the bill before that time; and that they contacted councils as soon as they knew the bill was in place. Unions gave evidence that the timing of the consultation with them on the bill was similar.

On the matter of consultation with the Privacy Commissioner about union encouragement clauses, government Members noted that the department had, on a number of occasions, conducted an exhaustive process with the Public Sector Industrial and Employee Relations team, the central public sector industrial relations team providing support to all government agencies and government owned corporations on industrial relations issues, regarding these clauses, including seeking Crown Law advice on their compliance with the Information Privacy Act. Government Members noted that the Acting Privacy Commissioner herself advised that "there is no requirement for agencies to consult the Office of the Information Commissioner on such matters"

Whilst the Committee agreed that the consultation process could have been improved, the government Members considered that this did not impact on the consideration of the Bill.

The Committee agreed that the Minister should note the comments made by stakeholders, with regard to the consultation process, to ensure a better process is adopted for future Bills.

2.7 Estimated Cost of government Implementation

The explanatory notes identify:

> *While there are no direct cost implications to Government with the legislative reforms set out in the Bill, it is noted that the re-introduction of job security, protections against contracting out and other measures arising from the Bill have cost implications to Government.*[28]

The Committee sought additional information about whether any work had been done regarding the cost implications of the re-introduction of the measures arising from the Bill. The department advised that they had not undertaken any costings and the costs will depend on the negotiation of those matters and agreements in the future. They considered that is a matter for employers, unions and workers to negotiate around. They advised that it is difficult to make any assessment of those costs.[29]

The Mareeba Shire Council submission notes that the movement to re-introduce job security, protections against contracting out and other measures, will have a significant financial impact on their council. They noted that pending how far these measures are taken, they will have detrimental effects on a community, which is unable to pay more through rates, and will therefore have no alternative but to reduce service levels.[30]

[28] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*:
[29] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 3
[30] Mareeba Shire Council Submission 1024: 4

2.8 Consistency with legislation of other jurisdictions

The explanatory notes state:

> *The legislative amendments contained in the Bill will align IR Act provisions more closely with the federal Fair Work Act 2009 (FW Act) in relation to award modernisation by removing restrictions and qualifications from what can be included in a modern award and agreement. The transitional arrangements for modern awards and agreements made are a consequence of unique factors and so do not reflect legislation of other jurisdictions. The right of entry amendments are similar to the New South Wales industrial relations legislation which does not require notice for the purposes of holding discussions. While the removal of notice requirements for right of entry is not consistent with the FW Act it should be noted that the FW Act responds to particular needs of the private sector.*[31]

The Committee sought additional advice from the department regarding the implications of any inconsistency with the legislation in other jurisdictions. The department advised in their experience, there would be no impacts as a result of there being differences from the FW Act.

With regard to the consistency of the Right of Entry provisions with the FW Act, the Committee noted that the explanatory notes state that the FW Act responds to the particular needs of the private sector. The Committee sought additional information regarding the different needs of the public sector as opposed to the private sector.

The department advised:

> *There was a review and issues of entry were raised in the Fair Work Act review a few years ago. Obviously, I think it is fair to say that it is regulating a lot of workplaces. They were considering how entry was occurring in manufacturing, construction and all sorts of workplaces. So that is why they had certain notice requirements there. Really, the Fair Work Act allows for dispensation of any prior notice for entry if an exemption certificate is obtained from the Fair Work Commission on the grounds of notice causing a risk of destruction, concealment or alteration of relevant evidence. They provide permanent holders broader rights on the site than the IR Act does. So we only have access here to time and wages records; a Fair Work Act permit holder has broad access to investigate any suspected contravention of the Fair Work Act or industrial instrument.* [32]

The department noted that the Acts are not consistent in the area of right of entry and that the FW Act responds to a much broader jurisdiction.[33]

The Committee noted that the previous changes that were made to the Act were ostensibly to harmonise some aspects of the state legislation with the Commonwealth industrial relations regime. The Committee sought additional information regarding the impact of the proposed amendments on that harmonisation process. The department highlighted that the concept of non-allowable provisions introduced in 2013 was not consistent with the FW Act. They noted that there are no similar prohibitions included in the FW Act and the proposed amendments will be bringing the Queensland Act more in line with the FW Act.[34]

[31] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 6
[32] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 9
[33] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 9
[34] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 6

The Committee questioned whether the union encouragement provisions are consistent with the FW Act and whether the department had sought written legal advice about any inconsistency. The department responded that:

> *The issue of consistency between the federal industrial relations system and the state industrial relations system is really up to government and policy commitments and the legislature. Whilst there are a lot of similarities between the two systems, there are some differences. For us it is just a policy issue about what is decided upon and those were commitments made—that those prohibitions, in particular in 691 of the Industrial Relations Act, that were introduced in 2012 went to a number of matters listed there, including union encouragement. There was a commitment made to remove those prohibitions and that has occurred. In terms of consistency, as I say, that is a matter for governments and industrial relations parties and organisations through consultation to say whether they are happy to live with some inconsistencies or not.*[35]

The department further advised:

> *There are no legal implications. They are two quite different industrial relations systems with quite different jurisdictions. If we were concerned that there was some sort of legal implication, certainly we would have a look at that, yes. We would advise in the explanatory notes if there were any legal implications.*[36]

The department also confirmed that historically there has always been a range of differences between the federal and state industrial relations regimes. They advised that in the last 20 to 25 years there has been a lot of focus on trying to have greater alignment. They noted that the use of the corporations' power and the fact that the federal system covers a broad field of the private sector and the fact that a lot of the state systems are public sector based means that they are quite different jurisdictions.[37]

2.9 Commencement

The Bill does not specify a commencement date.

3 Examination of the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 – Clauses*

The Bill amends the *Industrial Relations Act 1999* and the *Industrial Relations Regulation 2011*.

All of the submissions from employee unions generally supported the government's reform agenda to restore fairness to the industrial relations system and provided commentary on the changes made during the former LNP government's term.

The Queensland Council of Unions (QCU) noted that the union movement is broadly in favour of the amendments being included in the Bill and congratulated the government on acting quickly to implement election promises.[38]

[35] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 6
[36] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 7
[37] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 9
[38] QCU Submission 1016:

The Australian Manufacturing Workers Union (AMWU) commented that the changes instituted by the former government made 18 amendments to the Act which resulted in a significant erosion of employee rights and the removal of long-standing employment terms and conditions.[39]

Together Queensland, Industrial Union of Employees (Together) advised that the passage of the Bill is widely supported by their members and commented that:

> *The Bill seeks to undo some of these extreme legislative changes - changes which attacked the rights of Public Sector workers to bargain collectively and which stripped away existing rights and conditions from Awards and Collective Agreements.*
>
> *The Bill seeks to rectify this and addresses some of the immediate barriers to fair bargaining between employees and employers covered by the Act.*[40]

The United Firefighters Union Queensland (UFUQ) submission acknowledges that many of the legislative amendments proposed in the Bill address notorious issues arising from some of the legislative amendments to industrial laws enacted by the previous Parliament. They also acknowledged that the policy objectives addressed in the Bill were foreshadowed in pre-election announcements by the current government.[41]

The Australian Workers Union (AWU) submission supported the proposed amendments on the basis that they will restore many lost industrial conditions and protections to members, provide equality between workers and workplaces and provide a fairer and more balanced bargaining position between employers and employees.[42]

The Queensland Teachers Union (QTU) submission considers that the Bill is a significant step towards the reestablishment of a fair and equitable legislative framework for workers.[43]

The QNU supported the Bill on the basis that it works towards restoring the balance in the employment relationship. They stated that:

> *It is certainly an expectation that this Bill will address some of the existing unfair and unnecessary provisions that have served to alienate and demoralise the public sector nursing and midwifery workforce.*[44]

United Voice welcomed and supported the Bill as a vital first step to remove some of the immediate barriers to fair bargaining between employees and employers covered by the Act.[45] The Services Union also supported the legislation on this basis.[46]

The Australian Salaried Medical Officers' Federation Queensland (ASMOFQ) also supported the passage of the Bill.

[39] AMWU Submission 500: 2
[40] Together Submission 1014: 1
[41] UFUQ Submission 970: 2
[42] AWU Submission 917: 1
[43] QTU Submission 919: 2
[44] QNU Submission 1038: 3
[45] United Voice Submission 1022: 1
[46] The Services Union Submission 1015: 1

The Ai Group submission opposed the significant amendments proposed in the Bill on the basis that it would have an adverse impact on Ai Group Members who enter into outsourcing arrangements with Queensland State Government entities. They advised that the effect of Part 6.3A of the FW Act, which deals with a transfer of business from a state public sector employer, means that private sector employers who take over outsourced State Government work would be significantly impacted by the wide range of matters that the Bill would permit an enterprise agreement or an award to include.[47]

The LGAQ identified that they have been anticipating legislation from the incoming government that might serve to restore some of the industrial relations regulations that were amended by the former government. They noted however, that the nature and detail of some of the changes raise serious concerns with the Association and Councils.[48]

The LGAQ noted that Councils are experiencing significant pressures on their revenue sources in conjunction with rising costs and growing demands and expectations of their communities. They consider that a key ingredient to achieving these expectations is the ability for Councils to work within a contemporary, flexible industrial framework which does not present unreasonable regulatory barriers and which restrict Councils ability to redesign work to access productivity improvements.[49]

3.1 Principal objects of the Act (Clauses 3, 18 and 26)

Clause 3 amends the Act to omit section 3(p) and insert a new (j) and (o). Current section 3 is as follows:

> **3 Principal object of this Act**
>
> The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by—
>
> (a) providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and
>
> (b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and
>
> (c) preventing and eliminating discrimination in employment; and
>
> (d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and
>
> (e) helping balance work and family life; and
>
> (f) promoting the effective and efficient operation of enterprises and industries; and
>
> (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
>
> (h) promoting participation in industrial relations by employees and employers; and
>
> (i) encouraging responsible representation of employees and employers by democratically run organisations and associations; and
>
> (k) meeting the needs of emerging labour markets and work patterns; and
>
> (l) promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and
>
> (m) providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes; and
>
> (n) assisting in giving effect to Australia's international obligations in relation to labour standards; and

[47] Ai Group Submission 1026: 1
[48] LGAQ Submission 1027: 2
[49] LGAQ Submission 1027: 2

(p) ensuring that, when wages and employment conditions are determined by arbitration, the following are taken into account—

(i) for a matter involving the public sector—the financial position of the State and the relevant public sector entity, and the State's fiscal strategy;

(ii) for another matter—the employer's financial position.

Subsequent to the amendment section 3 would read as follows:

3 Principal object of this Act

The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by—

(a) providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and

(b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and

(c) preventing and eliminating discrimination in employment; and

(d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and

(e) helping balance work and family life; and

(f) promoting the effective and efficient operation of enterprises and industries; and

(g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and

(h) promoting participation in industrial relations by employees and employers; and

(i) encouraging responsible representation of employees and employers by democratically run organisations and associations; and

(j) promoting and facilitating the regulation of employment by awards and agreements; and

(k) meeting the needs of emerging labour markets and work patterns; and

(l) promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and

(m) providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes; and

(n) assisting in giving effect to Australia's international obligations in relation to labour standards; and

(p) promoting collective bargaining and establishing the primacy of collective agreements over individual agreements.

The explanatory notes identify:

> *Section 3(p) specifically provided that the Commission, when determining by arbitration 'wages and employment conditions' was required to take into account, amongst other things, the financial position of the State and the State's fiscal strategy or alternatively the employer's financial position, depending on the type of employer that was the subject of the proceedings. This aspect of the object does not need to be reflected in the IR Act moving forward because firstly, section 140D (5) is being amended to remove the requirement for the Commission to consider the employer's and/or the State's financial position and secondly, because Chapter 8, Part 7, which contains section 339A (Government briefings about State's financial position etc.) is being repealed by the Bill.*[50]

[50] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 7

The explanatory notes also state:

> *New aspects are also being inserted into the object provision at (j) and (o) – these reflect those removed from the IR Act by the Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013. The aspects are to the 'promoting and facilitating the regulation of employment by awards and agreements' and 'promoting collective bargaining and establishing the primacy of collective agreements over individual agreements' respectively.*[51]

Current section 140D is as follows:

Chapter 5A Modern awards

Part 1 Preliminary

140D Modern awards objectives

(1) In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.

(2) For subsection (1), the commission must have regard to the following—

(a) relative living standards and the needs of low-paid employees;

(b) the need to promote social inclusion through increased workforce participation;

(c) the need to promote flexible modern work practices and the efficient and productive performance of work;

(d) the need to ensure equal remuneration for male and female employees for work of equal or comparable value;

(e) the need to provide penalty rates for employees who—

(i) work overtime; or

(ii) work unsocial, irregular or unpredictable hours; or

(iii) work on weekends or public holidays; or

(iv) perform shift work;

(f) the likely impact of the exercise of the chapter 5A powers on business, including on productivity, employment costs and the regulatory burden;

(g) the need to ensure the modern award system—

(i) is simple and easy to understand; and

(ii) is certain, stable and sustainable; and

(iii) avoids unnecessary overlap of modern awards;

(h) the financial position considerations, including the likely impact of the exercise of the chapter 5A powers on those considerations;

(i) the likely impact of the exercise of the chapter 5A powers on—

(i) employment growth and inflation; and

(ii) the sustainability, performance and competitiveness of the Queensland economy.

(3) Also, to the extent the commission's chapter 5A powers relate to setting, varying or revoking minimum wages in modern awards, the commission must establish and maintain a minimum safety net of fair minimum wages, having regard to—

(a) the matters mentioned in subsection (2)(a) to (d), (h) and (i); and

(b) providing a comprehensive range of fair minimum wages to—

(i) young employees; and

(ii) employees engaged as apprentices or trainees; and

(iii) employees with a disability.

(4) The objectives of the commission under subsections (1) and (2) are the ***modern awards objectives***.

[51] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 7

(5) In this section—

chapter 5A powers means powers or functions of the commission under this chapter.

financial position considerations means—

(a) if the modern award or proposed modern award applies to, or will apply to, a public sector entity—

(i) the State's financial position and fiscal strategy; and

(ii) the financial position of the public sector entity; or

(b) if paragraph (a) does not apply—the financial position of the employers the modern award or proposed modern award applies to or will apply to.

public sector entity see section 149D(3).

Subsequent to the amendment section 3 would read as follows:

Chapter 5A Modern awards

Part 1 Preliminary

140D Modern awards objectives

(1) In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.

(2) For subsection (1), the commission must have regard to the following—

(a) relative living standards and the needs of low-paid employees;

(b) the need to promote social inclusion through increased workforce participation;

(c) the need to promote flexible modern work practices and the efficient and productive performance of work;

(d) the need to ensure equal remuneration for male and female employees for work of equal or comparable value;

(e) the need to provide penalty rates for employees who—

(i) work overtime; or

(ii) work unsocial, irregular or unpredictable hours; or

(iii) work on weekends or public holidays; or

(iv) perform shift work;

(f) the likely impact of the exercise of the chapter 5A powers on business, including on productivity, employment costs and the regulatory burden;

(g) the need to ensure the modern award system—

(i) is simple and easy to understand; and

(ii) is certain, stable and sustainable; and

(iii) avoids unnecessary overlap of modern awards;

(i) the likely impact of the exercise of the chapter 5A powers on—

(i) employment growth and inflation; and

(ii) the sustainability, performance and competitiveness of the Queensland economy.

(3) Also, to the extent the commission's chapter 5A powers relate to setting, varying or revoking minimum wages in modern awards, the commission must establish and maintain a minimum safety net of fair minimum wages, having regard to—

(a) the matters mentioned in subsection (2)(a) to (d), and (i); and

(b) providing a comprehensive range of fair minimum wages to—

(i) young employees; and

(ii) employees engaged as apprentices or trainees; and

(iii) employees with a disability.

(4) The objectives of the commission under subsections (1) and (2) are the ***modern awards objectives***.

(5) In this section—

chapter 5A powers means powers or functions of the commission under this chapter.

The explanatory notes identify:

> *Clause 18 amends the modern award objectives to omit section 140D(2)(h) from the list of matters the Commission must have regard to when exercising its powers in Chapter 5A in relation to modern awards. Section 140D(2)(h) required the Commission to have regard to 'the financial position considerations.' The definition of 'financial position considerations' at 140D(5) is also omitted by this clause and was defined to mean the State's financial position and fiscal strategy and the financial position of the public sector entity, where the employer is a public sector entity or in all other cases, the relevant employer or employers financial position.*[52]

Clause 26 omits section 339AA. Section 339AA is as follows:

Part 7 Other matters

339AA Government briefing about State's financial position etc.

(1) The treasury chief executive may, at any time, give the members of the commission a briefing about the State's financial position and fiscal strategy, and related matters.

Note—

The briefing is for information purposes only.

(2) The briefing must be given in an open hearing or otherwise made available to the public.

(3) In this section—

treasury chief executive means the chief executive of the department in which the *Duties Act 2001* is administered.

The explanatory notes identify that this provision was added to the Act by the *Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012* and related to the inclusion of sections 140D(5), which is also being omitted as part of the proposed amendments and 3(p) noted above. Section 3(p) contains the requirement for the Commission to consider the employer's and/or the State's financial position.[53]

The department advised:

> *The main changes that we have put in there in clause 3 are primarily those that were set out in terms of certain requirements or restrictions about how the commission were to consider matters about wage setting et cetera. Therefore, they are to take into account certain matters about the state's financial position et cetera. The financial position of the state and the state's fiscal strategy were some of the things that were included in the changes in 2012 and then a number of matters were omitted, and these are being reinserted. Again, those aspects that are being reinserted promote and facilitate the regulation of employment by awards and agreements and promote collective bargaining and establish the primacy of collective agreements or individual agreements. So essentially, these amendments remove one objective and put two in that were there previous to 2012.*[54]

The Chamber of Commerce and Industry Queensland (CCIQ) advised the Committee that it strongly believes that the QIRC should give consideration to the State's financial position and fiscal strategy, including the financial position of the relevant public sector entity, when determining wage negotiations.[55]

[52] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 11
[53] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 13
[54] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 7
[55] CCIQ Submission 989: 1

CCIQ disagreed with the premise that providing a guiding principle of fiscal sensibility curtails the independence of the Commission. They consider that section 3(p) provides that the principle object of the Act is to provide a framework for industrial relations that supports economic prosperity and social justice by ensuring that, when wages and employment conditions are determined these factors are taken into account.[56]

The CCIQ advised the Committee that whilst they have the highest regard for the State's public servants and do not oppose wage increase generally, they consider that any adjustment needs to be with the lens of affordability. They indicated that this is the reason why they are supportive of the current objective in the Act to ensure that the state's financial position and fiscal strategy is taken into consideration by the QIRC when determining wage outcomes.[57] They consider that having regard to the financial position of an organisation is not an unreasonable expectation from the business community.[58]

The QCU explained to the Committee that the QIRC is independent from government. They also stated that the Commission has always taken account of the government's fiscal position. They advised:

> *Where this oversteps the mark is a requirement in a particular way for that to be taken into account. We believe that places undue pressure on the independent umpire in making their decisions. From our perspective, certainly in the past we have taken account of the government's position and argued the point around that. But to introduce the fiscal strategy of the government—and particularly with the previous LNP Newman government it was based on a particular ideology and set of beliefs—in a mandatory way to the commission I think is overstepping the mark. That is where we take exception to the politics of the government interfering with the independence of the commission.*[59]

The Committee noted that many councils had concerns regarding the removal of the requirement to have regard for the financial position and fiscal strategy of employers. The Committee sought clarification as to why consideration would be given to the financial position of a council, for example. The department responded that:

> *The insertion of that provision in 2012 was decided by the previous government, and I think it is fair to say that the current government's view is that it wants to re-establish the independence of a QIRC. Having said that, the QIRC is guided by the need to balance economic and social needs and that would take into account a range of matters. There has been nothing ever to stop employers, and they have traditionally obviously put arguments about the economic impact and financial impact of any decisions in relation to awards and agreements and wage cases.*
>
> *It has always been the case that the commission considers those matters. It was just that it was considered that the insertion of that requirement around the financial position was a bit too constraining in terms of the independence of the commission.*

[56] CCIQ Submission 989: 3
[57] Mr Behrens, Public Hearing Transcript 25 May 2015: 2
[58] Mr Behrens, Public Hearing Transcript 25 May 2015: 5
[59] Mr Battams, Public Hearing Transcript 25 May 2015: 6

> *I suppose what it is saying is that the industrial tribunals in Australia have always had objectives which require them to look at a range of economic and social matters—employment, economic efficiency et cetera. Parties bring those submissions about the impact of any wages decision—obviously employers and unions and workers—and then the commission is asked to make a decision around that matter.* [60]

The department further elaborated that the amendments are specifically removing the requirement to give consideration to the financial position of an employer as part of the public interest test. They advised that the objects of the Act provide for the rights and responsibilities that ensure economic advancement and social justice for all employees and employers. They advised that:

> *These amendments are saying that that specific reference about their fiscal strategy and decision about wages, which was inserted in 2012, has been removed. It really goes to how specific the requirements should be in terms of guiding the commission in making a decision. What we are saying is that previously the act has always required the commission, but recognising it is independent, to hear the parties making submissions, and we would not expect there would be any change. Councils in Queensland have been making submissions to the QIRC for a hundred years and they will have been making them and highlighting, as does the state government through state wage cases, all the fiscal economic information, the impacts the decision might have, employment consequences et cetera. Nothing stops them. It is just a debate about whether it was needed to specify to that level of detail within the act what the commission should be guided by. That has been a policy debate. The previous government made a decision. This government is making another decision about whether that needs to be specified in that way.*[61]

The department suggested that it could be construed that the current legislation tilts the balance squarely towards an employer's economic position in terms of the public interest test.[62]

The TSIRC did not support the removal of the mandatory consideration of an employer's financial position as proposed in the Bill. They advised:

> *Council principally takes issue with the Bill's intent to remove mandatory consideration by the QIRC of an employer's financial position when determining wages and employment conditions, and a clear intent by the Government of the day to utilise new powers under Part 20, Divisions 2 and 3 of the Bill to give notice to the QIRC to review and vary the Modern Award (albeit agreement by the QIRC to do so would be a perverse outcome given such Modern Award was only endorsed by QIRC last year, a decision which would undoubtedly undermine the very integrity of the QIRC in making such decision). Such may result in an increased number of Modern Awards applicable to an organisation with industry breadth such as Local Government, and the requirement for Local Government to once again return to the negotiating table with staff within three (3) months of such variation being announced by the QIRC (s847(2)(a)).*

[60] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 10
[61] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015:10
[62] Mr James, DJAG, Public Departmental Briefing Transcript 20 May 2015: 10

> *The net outcome, as occurred with the introduction of the Modern Award in 2014 absent appropriate advance notice to the Local Government Industry by the QIRC and/or Government, is a total inability for Local Government to budget in accordance with the Local Government Act 2009 (Qld) for unforseen financial implications by introduction and/or variation of Modern Awards midway into financial years, and a lack of commitment by Government to support implementation through increased funding to Local Government to allow for increases in human resource costs. A lack of appropriate planning will inevitably result in recommencement of a cycle of redundancies to meet rising costs, lower service delivery due to less staff and disgruntled staff, less availability of jobs and a spike in WHS absences and claims for stress.*[63]

In response to the Committee's questions, the TSIRC stated:

> *Council is fundamentally opposed to clause 18. The statutory requirement that the Commission have regard to the "financial position considerations" is of central importance and should continue to be enshrined in the Act. The QIRC may inform itself of entities' financial position whilst remaining independent. Financial position considerations can affect outcomes, and the Commission can only make a balanced assessment of fair and relevant employment conditions in context. This administrative protection for the interests of State and public sector entities should remain in the list of key matters for consideration under section 140D.*
>
> *Arguably, omitting this statutory requirement would create an untenable risk that employers will make arrangements that are not economically sustainable. The QIRC as an independent entity should maintain the ability to enable accountability for employers in terms of their fiscal strategies for the overall purpose of employee wellbeing and job stability. This can only be ascertained by employers being accountable by tendering evidence through a quality assurance process that they can sustain their economic positions in a landscape that clearly outlines diminishing funding.*[64]

The Mareeba Shire Council advised that they require consideration of their financial position as their main source of income is rates from the community who have limited capacity to pay.[65] Tablelands Regional Council concurred with this view.[66]

The Mackay Regional Council advised:

> *The concept of requiring the Commission to take into consideration the financial position and fiscal strategy of Councils upon arbitrating a certified agreement determination is seen by Council as critical to providing a balanced decision which takes into account the financial sustainability of Councils as an employer, and the community which it services. In quite simple terms, if any employer is not financially sustainable, the ability to continue to employ generally is quite seriously challenged.*

The North Burnett Regional Council advised the Committee that they consider the QIRC should take into account amongst other things the financial position of the employer when determining by arbitration wages and employment conditions. They advised that this principle is universally applied within the federal industrial relations jurisdiction and forms part of the tribunal's consideration when determining central wage fixation at both the Queensland and Federal level.[67]

[63] TSIRC Submission 517: 3
[64] Correspondence to FAC from TSIRC dated 26 May 2015: 2
[65] Mareeba Shire Council Submission 1024: 4
[66] Tablelands Regional Council Submission 1001 RC:
[67] North Burnett Regional Council Submission 1013: 1

They stated:

> *Its removal does not support the introduction of greater 'independence' of the QIRC rather its maintenance will ensure proper consideration is given to such matters.*[68]

The Committee noted that councils in particular are concerned that QIRC should take into account their financial position. The Committee asked employee representatives to respond to this concern. The QCU reiterated that:

> *…in an independent industrial relations system, the parties have the opportunity to present evidence which they think is relevant to the determination of the wage increase or whatever other condition is under the spotlight. If these provisions are removed, as we are supporting, local councils, if they have to have a proposal arbitrated, would be quite free to present the material that has been published in the newspapers recently—that job losses would occur, for example—or that they cannot afford to pay more than X. So there is ample opportunity—and there was ample opportunity for the previous 100 years of our state industrial system—for the employer, if they believe the capacity to pay was a significant factor that should be considered, to present that material. We do not need provisions which curtail the independence of the Industrial Relations Commission like these did, particularly in relation to fiscal strategy.*[69]

Together explained that each entity will determine what they can offer as a wage outcome and then seek to negotiate with their workers. There is the opportunity to be able to convince its workers that it is a fair and reasonable deal. If the employer and the workers are unable to come to an agreement, this is when the QIRC gets involved. Together stressed that what this provision is about where the independent umpire has been brought in to try to arbitrate an outcome where the employer and employee cannot come to an agreed outcome. The parties still argue their claim. The current provisions are about how the independent umpire is to balance the various arguments.[70]

Together advised that:

> *Very few arbitrations have occurred in local government, if any. Very few arbitrations until recently occurred in the public sector. Workers are reasonable. They understand the fiscal circumstances facing their employers. That is why enterprise bargaining, by and large, is the best way of having outcomes. But where there cannot be agreement reached we have an independent umpire. That independent umpire should be allowed to make its decisions without having one hand tied behind its back. It should listen to both the workers' and the employer's arguments. The current legislation that was introduced under the Newman government which we are seeking to have removed under this bill would go back to the status quo, which was that the independent umpire, the Industrial Relations Commission, should make decisions in the way it sees fit rather than being determined.*[71]

[68] North Burnett Regional Council Submission 1013: 1
[69] Mr Battams, Public Hearing Transcript 25 May 2015: 7
[70] Mr Scott, Public Hearing Transcript 25 May 2015: 7
[71] Mr Scott, Public Hearing Transcript 25 May 2015: 8

The CCIQ advised the Committee that public sector wages growth has been significantly higher than in the private sector.[72] CCIQ provided the following statistics:

Table 1: Comparative Persons Average Weekly Earnings – Public versus private sector*

	Earnings; Persons Total earnings Queensland ; Private sector ;	Earnings; Persons Total earnings Queensland ; Public sector ;
Nov-2008	884.40	1068.10
May-2009	882.80	1089.20
Nov-2009	947.80	1113.10
May-2010	939.40	1140.60
Nov-2010	978.00	1169.40
May-2011	973.60	1194.30
Nov-2011	995.50	1208.80
May-2012	990.30	1224.60
Nov-2012	1025.60	1243.50
May-2013	1038.40	1263.90
Nov-2013	1036.20	1280.00
May-2014	1054.30	1304.80
Nov-2014	1054.00	1307.30
Nov 08 - May 12	11.97%	14.65%
May 12 - Nov 14	6.43%	6.75%
Source: 6302.0 - Average Weekly Earnings, Australia, Nov 2014		

* [Data available from the Australian Bureau of Statistics http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0]

Source: Correspondence to FAC from Mr N Behren, Director-Advocacy and Workplace Relations, CCIQ, dated 29 May 2015: 1

The QCU advised the Committee that:

> *Speculation as to a wages break out by the removal of the fiscal strategy reference is farcical. In justifying its position the CCIQ pointed to increases in total wage costs which, as pointed out at the time, do not equate to wages movements. Irrespective, these wage movements will be determined by government policy and will not be shaped by provisions contained in legislation. As the departmental briefing indicated, the financial impact of any agreed position occupies considerable discussion between the parties and is a fundamental consideration on the part of the employer.*[73]

[72] Mr Behrens, Public Hearing Transcript 25 May 2015: 8
[73] Correspondence to FAC from QCU dated 26 May 2015: 3

The QCU advised that wages growth is at an all time low and provided the following data to illustrate recent wage movements throughout Australia[74]:

Table 2: Wage Movements throughout Australia

Source: Correspondence to FAC from Mr J Martin, Research and Policy Officer, QCU, dated 26 May 2015: 3

The UFUQ advised the Committee that the practical effect of requiring the QIRC to have regard for the employer's financial position and fiscal strategy was to significantly regard the government's and agencies motivation to genuinely seek to reach agreement or participate constructively in conciliation proceedings and government agencies seemed to focus more on submitting that negotiations and conciliation be quickly curtailed so that matters could be arbitrated.[75] The UFUQ advised that the policy direction reflected in the current legislation overwhelms the industrial tribunal with the complex work of implementing inflexible and unfair outcomes. [76]

The UFUQ considers that proposed amendments will not limit the capacity of the tribunal to consider financial matters and costings, as it has always done.[77]

United Voice supported the objective to restore the independence of the QIRC when determining wage outcomes for government workers. They advised that they argued against the current provisions when they were introduced and consider that the change was designed to require the QIRC to consider not just the fiscal situation but also the preferred wage outcome sought by the government in the context of their wages policy.[78]

The CFMEU submission supported the proposed amendments in relation to the principal objects of the Act.

[74] Correspondence to FAC from QCU dated 26 May 2015: 3
[75] UFUQ Submission 970: 8
[76] Mr Spreckley, Public Hearing Transcript 25 May 2015: 4
[77] Correspondence to FAC from UFUQ dated 26 May 2015: 2
[78] United Voice Submission 1022: 3

In response to the submissions the department advised:

> *The Bill re-establishes the independence of the QIRC by repealing:*
>
> *(i) those provisions (sub section 149D(2)(e) – (g) and 149D(3)) requiring the QIRC's consideration of the "public interest", in determining a matter by arbitration (such as the state wage case) to include the financial position and fiscal strategy of the State and/or relevant public sector entity; or the financial position of the employer; and*
>
> *(ii) chapter 8 part 7 of the Act that permits the Queensland Treasury chief executive to, at any time, give the QIRC members a briefing about the State's financial position and fiscal strategy; and*
>
> *(iii) the provision concerning the principle object of the Act (paragraph 3(p)) that requires the State's financial position and fiscal strategy (or the employer, where relevant) to be taken into account when wages and employment conditions are determined by arbitration.*
>
> *The removal of these provisions is consistent with the Government's pre-election commitments and address concerns raised at the time the provisions were introduced that the amendments tilt bargaining and industrial relations arrangements in the Government's favour where the Government is the employer. The principal objects of the Act remains as provide(ing) a framework for industrial relations that "supports economic prosperity and social justice…", and "providing for employees and employers".*
>
> *It is noted that there is no similar provision legislating for a Government to brief an industrial tribunal in the Fair Work Act 2009 (FW Act).*[79]

The LGAQ expressed the view that they find it difficult to understand how the removal of the capacity for the QIRC to consider the financial position and fiscal strategy of the public sector when determining minimum Award rates or upon making a binding determination pursuant to the Act, has any relevance to, or bearing upon the independence of the QIRC.[80]

They stated:

> *Given that labour costs make up a very significant proportion of local governments' operational expenditure (as high as 60% in some cases), LGAQ finds it difficult to see how it would be fair to a local government (and their broader community), and for the QIRC to make a balanced decision, where the QIRC can make such binding determination on that part of the local government's operational expenditure, without being required to also consider the local government's financial position.*[81]

LGAQ is of the view that the removal of this requirement can only lead to an unbalanced outcome which may disadvantage the employer.[82]

The issue of consideration of the employer's fiscal strategy is also considered in sections 3.11 and 3.12 of this report.

[79] Correspondence to FAC from DJAG 26 May 2015: 3
[80] Correspondence to FAC from LGAQ dated 26 May 2015: 2
[81] Correspondence to FAC from LGAQ dated 26 May 2015: 2
[82] Correspondence to FAC LGAQ dated 26 May 2015: 2

3.2 Committee comments – Principal objects

The non-government Members of the Committee consider that it is essential that the financial position of employers is taken into consideration when the QIRC is determining a wages case. They consider that the existing provisions ensure that this is the case. The non-government Members consider that raising the importance of this issue is in the public interest given that the legislation applies to government and local government employees and the public is ultimately funding their wages. The non-government Members do not consider that allowing this provision to remain impacts on the QIRC's independence.

The non-government Members of the Committee do not support the changes. They do not believe the changes will enhance independence of the QIRC. The non-government members of the Committee are firmly of the view the QIRC should be required to consider the fiscal strategy and financial circumstances of the employer. This consideration is particularly important for local government authorities whose main source of income is rates from the community who sometimes have limited capacity to pay. Further, the non-government members of the Committee are of the view it is in the public interest for public sector employers' fiscal strategy and financial position to be taken into account when the QIRC makes its determinations.

The government Members consider that allowing the QIRC to determine each case on its merits allows for a healthy balance between the negotiating parties. They considered that the previous amendments tip the balance too far in favour of the employer. The government Members of the Committee consider that it is not the intention of the government that this issue be eliminated from consideration but to give it equal weighting with all the issues to be considered by the QIRC in making its determinations. Government members pointed out that the Bill related to the QIRC arbitrating an outcome where the workers and the employer cannot come to an agreed outcome.

The government Members are of the view that the financial position of the employer is seriously considered by the QIRC when determining these cases and evidence consistently presented to the Committee was that it has been an integral part of negotiations between employers and employees in the public sector for many years. The government Members believe that the evidence provided to the Committee during the course of the inquiry indicates that the QIRC certainly considered this issue in its determinations prior to the 2012 amendments.

Government members were concerned that the fiscal strategy of an employer can reflect a philosophical approach rather than an objective foundation on which negotiations on a wages case should proceed. They were concerned that the previous amendments allowed the fiscal strategy to be manipulated to give the QIRC no choice but to accept the employers' view of their financial position.

3.3 Modern industrial instruments (Clauses 5, 8, 13 and 14)

Clauses 5, 8, 13 and 14 relate to modern industrial instruments. The Committee notes that the modern industrial instruments will still proceed. The proposed amendments provisions will vary what is contained in those instruments.

Clause 5 omits and replaces section 71LA, which is the section that sets out the content requirements for modern industrial instruments by reference to relevant divisions and subdivisions of Part 2A (Modern employment conditions) of the IR Act.

The explanatory notes that that:

> *This replacement has the effect of removing certain references to provisions of the IR Act that will be repealed as a consequence of the Bill, particularly the non-allowable provisions and certain required content provisions (as they relate specifically to modern awards or certified agreements or industrial instruments as a whole).*
>
> *The replacement also reflects a change in the scheme of modern industrial instrument content, as introduced by the Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013. Part 2A created a scheme where all content was with either required, permitted or non-allowable. These proscriptive content requirements were at odds with how the IR Act was originally framed, with wide discretion given to the Commission and the parties in making awards and certified agreements. The removal of the concept of 'non-allowable content' as well as changes to how permitted content is framed is undertaken by the Bill so as to ensure the Commission is not unnecessarily constrained in its preparation of modern awards. The new framework specifies the required provisions for modern industrial instruments as a whole as well as modern awards and certified agreements specifically.*[83]

Existing section 71LA is as follows:

71LA Required or permitted provisions

(1) A modern industrial instrument must only include provisions that are required or permitted under—
- (a) part 2; or
- (b) division 2, subdivision 1 (required content for all modern industrial instruments); or
- (c) division 3, subdivision 1 (permitted content for all modern industrial instruments); or
- (d) for a modern award—
  - (i) division 2, subdivision 2 (required content for a modern award); or
  - (ii) division 3, subdivision 2 (permitted content for a modern award); or
- (e) for a certified agreement—
  - (i) division 2, subdivision 3 (required content for a certified agreement); or
  - (ii) division 3, subdivision 3 (permitted content for a certified agreement).

(2) However, a modern award may include matters it is permitted to include, and must include matters it is required to include, only to the extent necessary to achieve the modern awards objectives.

(3) Subsection (2) applies despite divisions 2 and 3.

Proposed new section 71LA is as follows:

71LA Required or permitted provisions

(1) A modern industrial instrument must include the provisions required under—
- (a) part 2; and
- (b) for a modern award—division 2, subdivision 2; and
- (c) for a certified agreement—division 2, subdivision 3.

(2) A modern industrial instrument may include the provisions permitted under division 3.

(3) This section is subject to section 71NCA.

Clause 8 omits chapter 2A Part 3, Division 2, Subdivision 1. This chapter contains the provisions relating to required content.

[83] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 8

Existing chapter 2A Part 3, Division 2, Subdivision 1, which is to be omitted, is as follows:

Division 2 Required content

Subdivision 1 Required content—all modern industrial instruments

71M Consultation—major organisational changes

A modern industrial instrument must include the provision prescribed under a regulation that requires an employer to consult with employees about the implementation of major organisational changes that are likely to have a significant effect on the employees.

71MA Dispute resolution

A modern industrial instrument must include the provision prescribed under a regulation for preventing and settling disputes about a matter arising under the instrument or the Queensland Employment Standards.

71MB Individual flexibility arrangements

(1) A modern industrial instrument must include the provision prescribed under a regulation enabling an employee and employer to agree to a flexibility arrangement to meet the genuine needs of the employee and employer.

(2) If an employee and employer agree to a flexibility arrangement under a modern industrial instrument—

(a) the industrial instrument has effect in relation to the employee and employer as if it were varied by the arrangement; and (b) for this Act, the arrangement is taken to be a provision of the industrial instrument.

(3) If an employee and employer purportedly agree to a flexibility arrangement under a modern industrial instrument and the arrangement does not meet a requirement provided for in the industrial instrument—

(a) the arrangement has effect as if it were a flexibility arrangement; and

(b) to the extent the industrial instrument requires the employer to ensure the arrangement meets the requirement, the employer contravenes the industrial instrument; and

(c) in addition to any method of termination of the arrangement provided for in the industrial instrument, the instrument is taken to provide that the arrangement can be terminated—

(i) by either the employee or employer giving 28 days' written notice; or

(ii) by the employee and the employer at any time if they agree in writing to the termination.

(4) In this section—

flexibility arrangement means a written arrangement between an employer and employee that varies the effect of a modern industrial instrument in relation to the employee and the employer.

The explanatory notes state that the Bill ensures that certain provisions prescribed under regulation, known as 'required content' provisions, will no longer be considered mandatory content for industrial instruments.[84]

The explanatory notes also state that instead the relevant parties, including the Commission in relation to modern awards, shall be open to agree on the scope and the terms of provisions covering the subject matters of consultation for major organisational change, the process for preventing and settling disputes (about a matter arising under the industrial instrument or about the QES) and in relation to the use of industrial flexibility arrangements.[85]

Clause 13 inserts a new section (section 71NCA) that specifies an overriding requirement on all modern industrial instruments. This section prohibits the inclusion in modern industrial instruments of provisions that discriminate against an employee or displace a provision of the QES. The explanatory notes state that these are based on the requirements that were contained at sections 71OH and 71OI prior to this amending Bill.

[84] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 8
[85] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 9

Proposed new section 71NCA is as follows:

71NCA Other requirements

(1) Despite any other provision of this division, a modern industrial instrument may not include—

(a) a provision that discriminates against an employee; or

(b) a provision that displaces, or is otherwise inconsistent with, a provision of the Queensland Employment Standards.

(2) For subsection (1)(a), a modern industrial instrument does not discriminate against an employee only because it provides for minimum wages for any of the following—

(a) all young employees;

(b) all employees with a disability;

(c) all employees engaged as apprentices or trainees;

(d) a class of employees mentioned in paragraph (a), (b), or (c).

(3) Subsection (1)(b) does not apply to a provision that may be included in the modern industrial instrument under section 71NA.

The Committee sought an explanation from the department regarding the development of the Queensland Employment Standards (QES). The department advised:

> *The Queensland Employment Standards are set in the act. They are very much based on a combination of two things. The Queensland Industrial Relations Act traditionally, over a very long time, set minimum employment standards around things like annual leave, sick leave, long service leave and so forth, and that expanded over time. In developing those Queensland Employment Standards, consideration was paid to the National Employment Standards that were set through the Fair Work Act in the last several years. Essentially, they are consistent with what is in the National Employment Standards. In terms of the industrial relations framework, they set the base. Again, there are redundancy entitlements there which have been set through tribunals over years. Those Queensland Employment Standards are all put into the act now, and that was done in 2013, and they set a base level for employees in terms of the conditions they can access. Then obviously above that you have awards and agreements that will set out other conditions and entitlements.*[86]

The Committee sought an explanation from the department regarding consistency between proposed new section 71NCA and the previous section 71OH and 71OI which it replaces. They explained that they are consistent with the previous requirements. They advised:

> *We are just rehousing the discrimination requirement and the safety net that is the QES in a different place. So, effectively, they were previously non-allowable content, and given the beneficial nature of them for employees we have housed them here. It also reflects the position in the act historically prior to the concept of non-allowable content being introduced in fair work harmonisation 2. The only change is some of the wording at 71NCA. We have slightly reworded subsection (3). It still does the same work as it did historically but on OQPC's advice we thought we would make it a bit clearer.*[87]

Clause 14 replaces existing section 71ND which sets out 'general matters', permitted content for a modern award. The proposed new section 71ND is based on the provision it replaces, in that it expressly lists minimum wages and skills base classifications and career structures as 'permitted matters', but it also contains the following key changes.

[86] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 3
[87] Ms Jacobs, Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 9

The explanatory notes state:

> *Firstly, the prohibition on 'non-allowable content' is removed. The removal of the 'non-allowable content' provisions from the IR Act make this reference unnecessary.*
>
> *Secondly wording is inserted to make it clear that a modern award may include provisions required to provide 'fair and just employment conditions.' This wording is based on the wording that was historically contained at section 125 of the IR Act, prior to the enactment of the Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013. The legislative intent of removing 'non-allowable content' together with inserting the reference to 'fair and just employment conditions' at 'permitted matters' is to ensure the Commission has the same level of discretion for the determination of modern award content as it did for awards generally, prior to the Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013 legislative changes.*[88]

The Committee questioned the clarity of the wording contained in proposed new section 71ND. The department advised:

> *The 'fair and just employment conditions' was previously in the act. It is just setting the framework for the commission when it considers decisions in award making and agreement making. It is almost like an object, so just a certain guidance for the commission about what it might do when making awards and agreements.*[89]

The Committee also asked stakeholders to respond to the issue of the wording contained in proposed new section 71ND.

The UFUQ advised that they understand that the terminology used in the provision is essentially to restore the previously existing discretion to the industrial commission to determine award content based upon merit arguments. The examples of content would be such content as would ordinarily be included in awards, prior to the prescriptive restrictions as to what content is mandatory or non-allowable, introduced during the previous Parliament.[90]

United Voice advised that their view is that the inclusion of the words 'fair and just employment conditions' enables the parties to jointly reach agreement, or for the QIRC in the exercise of their discretion, to include a wide range of matters in Modern Awards directly relating to the employment relationship.[91]

The LGAQ advised that the Modern Award Objectives in section 140D already prescribes that Modern Awards, inclusive of their conditions, must be fair and relevant. The LGAQ's view is that the inclusion of Modern Award Objectives that must be fair and just will make no material difference to the conditions prescribed in modern awards.[92]

The TSIRC considers that proposed section 71ND(1) is unnecessary in light of sections 71NA and 71NCA. They noted that while the legislative intention is to revert to pre-2013 statutory wording, Councils consider the inclusion of this wording to be redundant and potentially confusing. They advised that if the intention is to introduce a threshold test for the inclusion of provisions as part of the review of modern awards, it is unclear what provisions would fall under section 71ND(1) that are not already permitted under sections 71NA and 71NCA.[93]

[88] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 9
[89] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015:9-10
[90] Correspondence to FAC from UFUQ dated 27 May 2015: 1
[91] Correspondence to FAC from United Voice dated 26 May 2015: 1
[92] Correspondence to FAC from LGAQ dated 26 May 2015: 1
[93] Correspondence to FAC from TSIRC dated 26 May 2015: 1

They also considered that the inclusion of the term 'fair and just employment conditions' is unnecessary given the Commission's role of determining whether an award provides a minimum safety net of employment conditions that is fair and relevant. The current award covering all local government employees already satisfies this test.[94]

The Committee considered the comparisons between the previous government's award modernisation process and what has occurred in the federal jurisdiction. The LGAQ advised:

> *…in both of those processes there was the creation of singular local government awards, for want of a better term, both at the national level and at the state level. The national level, some of the observations that I could make in comparison to the state level, was that it was much more safety net focused whereas in Queensland, whilst we ended up with a similar structure of awards in the sense that we ended up with a single local government industry award, largely for some of the reasons paralleling the national system, with respect to the redrafting of conditions of employment there was a lot less of that in Queensland. You can go back to previous premodernised awards and you can see a lot of where the entitlements have been carried across; whereas at the national level it was very much the recreation of a whole new award, essentially, and there was probably equally as many awards in the federal arena that were amalgamated as well.*
>
> *The modern award objectives in both jurisdictions are very similar. There are some minor differences between the statutory objectives about award modernisation. Both jurisdictions had the capacity for the minister to make certain requests and they were requests in board terms, largely guiding the process in a sense that it might theme things, I suppose, and there were those sorts of requests made. But the requests themselves, both in the national system and in the state system, were quite similar types of things. They were not overly focused on telling the commission to do something. It was more around guiding principles, essentially, largely resembling what the modern award objectives were under the statute provided for.*
>
> *So yes, while there was a very similar framework, I would suggest that the outcome of the process was that the content of the awards ended up being a bit different and that is probably the historical basis—the different instruments that operated in the state versus the federal arena. So they had their own context around them as well.*[95]

The provisions contained in existing Chapter 2A, Part 3, Division 4, were the subject of considerable concern for the employee bodies.

The QNU noted that the provisions contained in Chapter 2A, Part 3, Division 4, not only prohibited the parties to modern industrial instruments to include matters relevant to the employment relationship, they also restricted the regulatory scope of the QIRC.[96]

The AMWU, which represents members employed by local government, advised the Committee that the previous amendments allowed for the conflagration of 39 pre-modernisation awards into one modern award. They advised that along with the constraints placed upon content under the non-allowable content provisions, has resulted in a significant reduction in safety net terms and conditions of employment for their members. The AMWU submission contains three case studies illustrating what they consider to be the significant impact on employees.[97]

[94] Correspondence to FAC from TSIRC dated 26 May 2015: 2
[95] Mr Blaney, Public Hearing Transcript 25 May 2015: 37-38
[96] QNU Submission 1038: 4
[97] AMWU Submission 500: 3

The AMWU supported the power to be given to the QIRC under the proposed amendments to increase the number of relevant modern awards covering an industry or occupation. They consider that the occupational grouping of employees into one modern award covering all employees of local government entities has allowed employment conditions to be downgraded. They considered that:

> *The pre-modernisation award terms and conditions have been developed over decades to reflect the necessary employment standards unique to this occupational grouping. Regrettably the award modernisation process did not result in the making of a modern award which appropriately and fairly reflected long-standing and necessary employment standards for this occupational grouping. On this basis, a provision facilitating the revisiting of the number of modern awards for local government is necessary to ensure proper and fair award standards are set for local government employees in building, engineering and maintenance.*[98]

The UFUQ advised the Committee that they currently have two main awards which have not been subject to the award modernisation process. These awards were reviewed in June 2012 and are current. They advised that the award modernisation process commenced in late 2014, but did not conclude. They supported the amendments which allow the QIRC more time to complete the work necessary and the prescriptive provisions regarding award content.[99]

The UFUQ noted that the award modernisation processes introduced during the last Parliament, diverted and pre-occupied the QIRC away from its traditional responsibilities towards a complicated, hasty process of modernising awards for employees who were already covered by an award.[100]

The Services Union submissions supports the approach taken in the Bill in clause 14 that a modern award may include provisions to provide fair and just employment conditions. However, they remain concerned that there is no stipulation that no employee will be worse off in take home pay or conditions.[101]

The LGAQ commented that:

> *Award modernisation for local government has never been about saving councils money or spending less on their workforce; it has been about providing councils with an optimism that they can better manage their workforce. Award modernisation has been about simplifying the system so councils can divert money spent on administering an overly complicated water arrangement to actually employing people.*[102]

3.4 Committee comments – Modern Industrial instruments

The non-government Members consider that modern industrial instruments need to be fair and flexible. They consider that they cannot be burdensome for employers and employers need to be able to manage their workforce themselves.

The government Members recognise that modern industrial instruments should still proceed with the inclusion of the proposed amendments, which allow the Commission to operate without unnecessary constraint when preparing modern awards. The restoring of previously existing direction for 'fair and just employment conditions' in respect to the commission lays out a fairer framework for agreement to be reached by both parties, essentially restoring a previously existing direction.

[98] AMWU Submission 500: 7
[99] UFUQ Submission 970: 4
[100] UFUQ Submission 970: 4
[101] The Services Union Submission 1015: 1
[102] Mr Goode, Public Hearing Transcript 25 May 2015: 33

3.5 Non-allowable content provisions (Clauses 4, 6, 7, 10, 11, 12, 15, 16, 24, 32 and 34)

3.5.1 Proposed Amendments

References to non-allowable content are made throughout the Act. Many of the provisions referred to in this section of the report relate to minor reference amendments. These include:

- Clause 4 omits "note 2" at this provision, which referenced section 71OI, a 'non-allowable content' provision
- Clause 7 amends section 71LC to remove the reference to section 71LB.
- Clause 10 amends section 71N (General matters) to omit the wording 'other than non-allowable provisions' as this reference is no longer necessary.
- Clause 11 amends section 71NA to omit the reference to 'other than a non-allowable provision' as this reference is no longer necessary.
- Clause 12 amends section 71NB to omit the reference to 'other than a non-allowable provision' as this reference is no longer necessary.
- Clause 15 amends section 71NE to omit the reference to 'other than non-allowable provisions' as this reference is no longer necessary.
- Clause 34 amends the provision for protected action ballots to remove at Schedule 4, section 8(1)(d) and section 12A references to 'non-allowable content'.

The explanatory notes state that Clause 6 omits section 71LB in its entirety, removing the restriction on modern industrial instruments containing content that contravened particular divisions of Chapter 2A (Modern employment provisions). This was defined under repealed section 71LB as 'non-allowable provisions' for industrial instruments.[103]

The explanatory note state:

> *The concept of 'non-allowable provisions' and section 71LB was introduced into the IR Act in 2013 by way of the Industrial Relations (Fair Work Harmonisation No 2) and Other Legislation Amendment Act 2013. No similar prohibitions are made in the FW Act. The non-allowable provisions had the effect of creating an absolute prohibition on certain content for industrial instruments, whether or not such content pertained to the employment relationship. The removal of these restrictions will again give the Commission the ability to include such provision in awards and restore employers and employees' ability to agree on including such content in certified agreements.*[104]

The Committee asked the department to explain the benefits of the proposed amendment and to provide some examples of what is considered to be non-allowable content. The department advised:

> *Non-allowable content: we set out a lot of what that is at page 10 of the explanatory notes. So that is 71O to 71OL, non-allowable content. We have all the provisions there that you can read that start with contracting provisions, employment security, encouragement, organisational change, policy incorporation, private practice and so forth. Then there is a requirement not to have discriminatory provisions et cetera.*

[103] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 8
[104] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 8

> *The explanatory notes state— Section 71OK prohibited a modern award from containing provisions about training arrangements, workload management, delivery of services or workforce planning.*
>
> *Those matters will be permitted in modern awards, subject to the parties and the commission considering whether or not they should be. Also, the repeal of section 71OL will remove restrictions on the content of certified agreements—so provisions inconsistent with provisions for industrial action, types of engagement or classifications and provisions that require a contravention of the freedom of association chapter. On page 11 there are a few provisions about workloads, training arrangements, restricting delivery of services and provisions about unfair dismissal. So those are the provisions where they were either non-allowable or not permitted under the current act and they will be reinserted.*[105]

Clause 16 omits Chapter 2A, Part 3, Division 4 which set out at sections 71O to 71OL 'non allowable content' as it related to all modern industrial instruments as well as specifically to modern awards or certified agreements.

The omission of Part 3 will mean the following restrictions on industrial instruments content are removed:

- contracting provisions: being requiring, restricting or prohibiting the contracting out, or in, of services (section 71O);
- employment security provisions: relating to job security or maximising permanent employment (section 71OA);
- encouragement provisions: relating to membership of industrial associations (section 71OB);
- organisational change provisions – requiring an employer to notify, consult or involve an entity in decision-making about organisational change (section 71OC);
- policy incorporation provisions: ensuring no policy documents can be incorporated into the modern instruments (section 71OD);
- private practice provisions: relating to medical practitioners (section 71OE);
- resource allocation provisions: relating to allocation of funding to a program or a scheme not directly related to entitlements of, or benefits for, employees (section 71OF);
- right of entry provisions (section 71OG); and
- general matters (section 71OJ).

The explanatory notes state that Section 71OK prohibited a modern award from containing provisions about training arrangements, workload management, delivery of services or workforce planning. Upon repeal provisions relating to these matters will be permitted in modern awards. The repeal of section 71OL will remove the following restrictions on the content of certified agreements:

- provisions inconsistent with the provisions for industrial action;
- provisions that set out types of engagements or classifications that are inconsistent with the relevant award;
- provisions that require or permit a contravention of the provisions in chapter 4 (freedom of association chapter);
- provisions that require an employer to manage workloads in a particular way;

[105] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 7

- provisions that restrict access to training arrangements;
- provisions that restrict delivery of services; and
- provisions about unfair dismissal or a remedy arising from termination of employment relating to notice and redundancy pay other than the QES minimums.[106]

The explanatory notes also state that the removal of the prohibition on including notice or redundancy pay provisions different to that of the QES will mean certified agreements may again contain more advantageous arrangements than those provided for in the QES. This is consistent with the QES providing a safety net. It does not operate to restrict increased entitlements being negotiated and agreed on by parties to a certified agreement.

Clause 24 relates to protected action ballots. The clause omits section 176A in its entirety. This provision prevented a protected action ballot from authorising industrial action if the claims included 'non-allowable content'. The removal of the 'non-allowable content' provisions from the IR Act make this section irrelevant.

Clause 32 amends the IR Act by omitting Chapter 15, Part 2. The provisions contained in this part (sections 691A to 691E) specified those types of provisions in industrial instruments that were deemed of no effect by the *Public Service and Other Legislation Act 2012*. The prohibition on these types of provisions is being removed by this Bill.

3.5.2 General comments – non-allowable content

Many of the submissions commented on the prohibition of items under the current legislation which will be available for inclusion in awards and agreements should the proposed amendments be passed. ASMOFQ advised the Committee that they considered that the prohibition of union encouragement and organisational change provisions in industrial instruments is an attack on industrial democracy. They considered that traditionally awards and collective agreements have contained these types of provisions to allow employees to give practical effect to their freedom to associate and to bargain collectively.[107]

The Services Union advised the Committee that the notion that the introduction of non-allowable matters to the Act harmonised it with the provisions of the FW Act is not true. They advised that the FW Act does not contain any provisions which prevent the parties to an Agreement under the Act from including provisions which entitle employees to such issues as job security, enhanced consultation provisions or redundancy pay.[108]

Together stated that Chapter 15, Part 2 has had the effect of eliminating the right to genuine consultation under Queensland law in a way that meant workers had fewer consultation rights than any other workers in Australia. They noted that QIRC's general ruling on Termination Change and Redundancy (TCR) mirrored the long standing Federal Commission's TCR provisions. They considered that these TCR provisions encapsulated the legal requirements of employers to consult with employees around organisational change and provide them with a bona fide opportunity to influence the decision maker.[109]

[106] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 10
[107] ASMOFQ Submission 1006: 6
[108] The Services Union Submission 1039: 1
[109] Together Submission 1014: 2

Together consider that the former government legislatively overruled the decision of the independent umpire, the QIRC. This, combined with the model clause in regulations relating to consultation, rendered the requirement for genuine consultation ineffective.[110]

Together noted that the provisions included in Chapter 2A, Division 4, prohibit the employers and employees from agreeing to include certain provisions in modern industrial instruments. They considered the prohibitions to be an ideological attack on the rights of Queenslanders in their workplace and a desire by the previous government to remove any capacity for employees to have a genuine say on conditions that may have a profound effect on their lives.[111]

United Voice indicated their support for the removal of Chapter 15, part 2 of the Act which they considers destroys numerous conditions and rights. They advised that removing these provisions re-enlivens 'encouragement provisions' to help build effective employee organisations. They consider:

> *It is a well-recognised feature of democratic nations that employees should have the right to associate for the purpose of improving and protecting their interests. It is reasonable for employees to receive encouragement and support to build an effective voice to protect their interests and to ameliorate the power imbalance that exists in the employment relationship. It is also reasonable for employees to be able to discuss workplace issues and issues relating to their organisations during work time, as well as to have reasonable access to their delegates and organisers for advice and support.*[112]

The UFUQ noted that an unfortunate outcome of the invalidation of the existing award content about the non-allowable matters by the previous Parliament was that the removal was also applied in practice as a reversal of workplace policies about these matters as well.[113]

The AMWU provided the following examples of conditions that might have been lost during that award modernisation process:

> *In terms of our members, and this all relates to the CFMEU as well as the plumbers union and the ETU, building, engineering and maintenance employees, as outlined in our submission, have had reductions of a significant nature. One in particular is allowances. Under the premodernisation awards there were scores of allowances and they have been essentially rolled up into one allowance called the local government industry allowance. I have detailed it in our submission. Essentially, not only does that create a situation where it is a lower allowance collectively compared to some individual allowances, it also knocks out your ability, for instance, we have members who work with live sewers. Under the premodernisation award they would receive, for instance, a confined space allowance which is 75 cents per hour plus a live sewer allowance. Under the local government industry award now they only get one. So it is not only in terms of the reduction of the number of allowances in terms of the quantum, but it also is in relation to knocking out other allowances. Under the engineering award state which our members are covered by, or used to be covered by in terms of local government, there was a long-standing provision that said that you get paid for each and every disability suffered. These are people who do not get paid a lot of money. We are talking sometimes $19 an hour. They are working in live sewers up to their hips, they are in confined spaces, there are noxious gases, and under the local government industry allowance a lot of the things that they were previously paid are no longer there.*

[110] Together Submission 1014: 2
[111] Together Submission 1014: 3
[112] United Voice Submission 1022: 2
[113] Correspondence to FAC from UFUQ dated 26 May 2015: 2

> *We also detail in our submission that employees who are scheduled to work on Saturdays used to get paid time and a half for the first three hours and double time thereafter. Under the local government industry allowance they get paid time and a half for the whole Saturday. That might not seem like a big deal, and I know that penalty rates are a contentious issue, but when you are someone who has always not only not been on a huge wage but also relied upon that amount, this is the difference between people being able to put food on their table or being able to pay their mortgage. So there are quite considerable reductions.*[114]

Council submissions raised no objection to the proposal to the removal of non-allowable content.

The LGAQ advised that:

> *The current Bill's proposed removal of non-allowable matters and prescribed content from the legislation was expected by Councils and, in themselves, as proposed, cause no anxiety for councils.*[115]

The Mareeba Shire Council and Tablelands Shire Council both raised no objection to the removal of non-allowable provisions. They both noted that their flexibility on these items is limited due to financial constraints.[116] Mackay Regional Council also noted that generally they have no objection with the previously listed non-allowable items being able to be negotiated and the terms included in the enterprise agreement.[117]

The Fraser Coast Regional Council advised the Committee that, with regard to the Bill's proposed removal of non-allowable matters and prescribed content from the legislation, they had expected this and it was not the cause of any concern. They advised that these non-allowable items had been committed to staff outside of the certified agreement and underwritten and that should the legislation be amended, then the non-allowable matters committed to during negotiations would be submitted to the QIRC for attachment to the certified agreement.[118]

However, the North Burnett Regional Council stated:

> *The current provisions largely reflect the industrial scheme on a national level as provided for within the Fair Work Act 2009 (Cth).*
>
> *The bill seeks to remove in particular 'non-allowable' matters which is not only incongruous to the national scheme but has the direct effect of reintroducing potentially damaging conditions regarding the manner in which Council can conduct its operations. In particular the current legislation protects Council from the introduction of legally binding terms and conditions that may severely inhibit and restrict Councils ability to provide quality services to the community.*[119]

The UFUQ supported the amendments which remove the requirements to include certain specified mandatory content in industrial instruments. Similarly they support those amendments which remove certain restrictions on the inclusion of specified non allowable content in industrial instruments.[120]

[114] Ms Allen, AMWU, Public Hearing Transcript 25 May 2015: 22
[115] LGAQ Submission 1027: 3
[116] Mareeba Shire Council Submission 1024: 2; Tablelands Regional Council Submission 1001: 2
[117] Mackay Regional Council Submission 1019: 4
[118] Fraser Coast Regional Council Submission 1037: 2
[119] North Burnett Regional Council Submission 1013: 1
[120] UFUQ Submission 970: 3

The AWU submission supports rescinding the provisions which restrict the content which can be contained in awards and agreements. They consider that the ability of workers to include provisions in industrial instruments that provide protections, job security and genuine consultation on matters pertaining to the workplace, such as workloads, safety, training, organisation change and work practices enhances democracy as well as productivity. They consider that equipping employees with the means to have their say at work and appropriately respecting and rewarding their contributions has been found to benefit business productivity as there is a greater incentive to actively participate in productivity enhancing changes when employees have a reasonable belief that they will benefit from them.[121]

United Voice supported the removal of Chapter 2A, part 3, Division 4 as they consider that in its current form it has the effect of prohibiting rights and conditions from modern industrial instruments which is unacceptable and ultimately denies important rights and conditions of their members.[122]

The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU) also endorsed the removal of restrictions on the content of industrial instruments that only serve to drastically undermine the wages and conditions of Queenslanders who work within the state jurisdiction.[123]

3.5.3 Private practice provisions

The ASMOFQ advised the Committee that under the existing provisions section 71OE prevents a provision about a private practice arrangement being included in an award. They advised:

> *The Medicare system provides Australian patients with access to universal health cover, including through the private sector. To ensure the highest quality of services for patients, it is important for Australian public hospitals to be able to offer working conditions that are competitive with the private sector. Part of what makes hospital practice competitive for hospital doctors is the opportunity to participate in private practice arrangements known as Rights of Private Practice (RoPP). Participation in properly constructed private practice schemes by medical practitioners can improve access to care for patients by providing them with a choice of private or public care. RoPP also provide an important supplement to hospital revenue that can be invested into patient services and improved facilities.*[124]

They noted that prior to the previous amendments, senior public sector doctors had access to RoPP while enjoying the industrial protections of awards and collective agreements. Subsequent to the previous amendments, the government was able to coerce senior medical officers into accepting high income guarantee contracts on the basis that they agree to these contracts or lose their access to RoPP.[125]

[121] AWU Submission 917: 1-2
[122] United Voice Submission 1022: 2
[123] Submission CFMEU 1028: 5
[124] ASMOFQ Submission 1006: 6
[125] ASMOFQ Submission 1006: 7

3.5.4 Workload management provisions

ASMOFQ highlighted their concern that workload management is included as a non-allowable content topic under the existing provisions.[126] They advised:

> *Before 2014 senior doctors in the Queensland public hospital system worked under a medical officers certified agreement which they signed with the Newman government, and it worked. It worked because it was fair and equitable and it protected patients. Fatigue provisions, which were developed under the guidance of Dr Morrison, meant that patients were not being cared for by dangerously tired doctors forced to work unsafe hours. These provisions were developed after the probably avoidable death of a child in Queensland in which medical officer fatigue was a significant factor.*[127]

They further advised that in response to a coronial inquiry which identified doctor fatigue as a significant factor in the death of a child, Queensland Health developed a policy which included prohibition of workers hours longer than 12 hours with a minimum gap between shifts. ASMOFQ were extremely concerned when the previous government decided to take those rostering and fatigue provisions out of the award.[128]

3.5.5 Union encouragement and trade union trading provisions

A submission from a doctor in north west Queensland stated that, whilst not agreeing with all positions taken by unions, he could see no reason why unions should not be allowed to inform staff of their options. He considered that it is not correct to block choices as long as staff are not mislead.[129]

Together provided an example of union encouragement provisions in an industrial relations ruling. This ruling specifies that:

> *At the point of engagement, an employer to whom this Award applies shall provide employees with a document indicating that a Statement of Policy on Union Encouragement has been issued by the Queensland Industrial Relations Commission, a copy of which is to be kept on the premises of the employer in a place readily accessible by the employee.*[130]

Mareeba Shire Council opposed both union encouragement and trade union training provisions. They considered that whilst they support each employee's right to become or not become members of a union, they do not see it as their role to encourage one way or another. They do not support the provision of union training during work time due to the limitations this would place on them as a small employer. The Council supports the TCR provisions.[131]

The Committee asked delegate representatives at each of the Committee's hearings about their experiences when joining their respective unions. The representatives advised the Committee that at no time did they ever feel pressured to become members and some had sought out their delegate themselves in order to become members of the union.[132] The Committee was advised that union material was available in the work place.[133]

[126] ASMOFQ Submission 1006: 7
[127] Dr Turnbull, Public Hearing Transcript 25 May 2015: 4
[128] Dr Morrison, Public Hearing Transcript 25 May 2015: 10
[129] Submission 922: 2
[130] The Services Union Submission 1039: Attachment A
[131] Mareeba Shire Council Submission 1024: 3
[132] Various respondents, Public Hearing Transcript, 25 May 2015
[133] Dr Donald, Public Hearing Transcript 25 May 2015: 11

The issue of privacy was raised in respect to both access to employee names in relation to the union encouragement provisions and the access to employees time and wages records. These privacy issues are considered in sections 3.19 and 3.20 of this report.

3.5.6 Redundancy pay

Together advised the Committee:

> *Clause 5 of the Bill sets out the required or permitted provisions in a modern industrial instrument. While it removes any reference to non-allowable matters, it appears to continue a Newman Government prohibition against the inclusion of any entitlement to redundancy pay above the Queensland Employment Standard (QES) minimum.*
>
> *Section 71NA of the Act says that modern industrial instruments can supplement entitlements under the Queensland Employment Standards (such as redundancy pay); however, section 71NA(2)(b) says you cannot supplement matters under part 2, division 9, subdivision 2. This is the redundancy pay provision.*
>
> *The proposed amendments do not disturb this provision.*
>
> *The effect appears to be that only minimum QES redundancy payments can be included in a modern industrial instrument which is inconsistent with the pre LNP Act.*[134]

They recommended that section 71NA(2)(b) be omitted. United Voice identified the same issue in their submission.[135]

The department responded that it had:

> *…noted the observation by Together Union and United Voice that section 71NA(2)(B) be omitted to clarify that a modern award or certified agreement may include a provision more beneficial (but not less beneficial) than the prescription contained in 71NA in relation to redundancy provisions. DJAG will undertake further consultation with Office of Queensland Parliamentary Counsel to ensure this policy position is adequately addressed and reflected in the drafting of the Bill.*[136]

3.6 Committee comments – Non-allowable content provisions

The non-government Members of the Committee have serious concerns about the union encouragement provisions. The non-government members of the Committee believe in the freedom and the right to associate with any organisation of an individual's choice; however, conversely, the non-government Members believes in the right to not associate with an organisation. This is in direct contrast with the CFMEU's contention this, '*is a vulgar stretch*.' The non-government Members of the Committee are firmly of the view that public sector employees' permission should be sought before their personal information is provided to a third party organisation external of government, in this instance a union. The non-government Members of the Committee are also concerned that this legislation allows the national privacy principles to be overridden. The non-government Members of the Committee are concerned that no direction has been provided to unions nor sought by unions regarding the protection of the personal information of public sector employees. The non-government Members of the Committee are extremely concerned by the government's flagrant disregard for the privacy of public sector workers and believes their union encouragement provisions are an egregious breach of an individual's right and freedom to associate or not associate with an organisation.

[134] Together Submission 1014: 4
[135] United Voice Submission 1022: 7-8
[136] Correspondence to FAC from DJAG 26 May 2015: 6

Government Members note that unions are bound by strict National Privacy Regulations and, as such, are accountable under Commonwealth law, which overrides any state legislation. They also noted that the Queensland Privacy Commissioner has no jurisdiction over unions. Government members have noted elsewhere in this report the extensive consultation undertaken by the department to ensure there was no breach of the Information Privacy Act in relation to the union encouragement clauses; and that the Acting Privacy Commissioner had confirmed to the Committee that there was no breach.

The Committee noted that there was general support from stakeholders about the clauses relating to non-allowable provisions. The Committee was unable to reach agreement with regard to union encouragement provisions. Government Members support all of the amendments. Non-government Members support the amendments with the exception of the union encouragement provision.

The Committee notes that there appears to be an inconsistency between the intent outlined by the Minister and the proposed amendments and acknowledges the submissions which draw attention to the apparent drafting error. The Committee recommends the Minister provide clarification during his Second Reading Speech regarding redundancy pay entitlements.

Government Members support the omission of 71NA(2)(B) regarding Queensland Employment Standards and recommends that the Minister accept this amendment.

Recommendation 1

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, the Minister provide clarification on the issue of redundancy pay entitlements in his Second Reading Speech.

3.7 Dispute resolution procedures (Clause 9)

Clause 9 inserts new s71MCA containing a requirement for a modern award to provide a dispute resolution procedure that includes consultation at the workplace, involvement of relevant organisations in dispute resolution and any other matter prescribed by regulation.

The explanatory notes detail that proposed new Section 71MCA is not based on omitted section 71MA, which provided for a dispute resolution clause as prescribed by regulation, but broadly on requirements previously contained at section 127 of the IR Act, as repealed by the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013.*[137]

Proposed new section 71MCA is as follows:

71MCA Dispute resolution procedure
A modern award must contain a dispute resolution procedure that provides for—
(a) consultation at the workplace; and
(b) the involvement of relevant organisations; and
(c) any other matter prescribed by regulation.

The Committee sought an explanation from the department regarding the benefits of the requirement that a dispute resolution procedure be included in an award rather than being prescribed by regulation.

[137] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 9

The department advised that rather than the mandatory standardised format, which would be included under the previous provisions, which were set out in regulation, the new provisions give more scope to what the dispute resolution procedure would provide for. They advised that the Bill allows the parties more flexibility in determining what would be the dispute resolution procedure and the commission more flexibility as to what would be in the dispute resolution procedure in both the award and the agreement.[138]

The QLS submission identified that there is significant merit in a standard dispute resolution clause being adopted across modern awards. They consider that this would reduce the cost to parties and the time taken in addressing the procedure in the dispute resolution clause in the QIRC. They noted that advisors would not need to be familiar with provisions in different awards which may potentially be different in substance or degree and less cost may be incurred to parties where it is not necessary to check on the particular terms of a particular dispute resolution provision. They further noted that the time taken by the QIRC would be less where it is not moving between different provisions and not needing assistance from the parties in relation to particular provisions. They advised that, in their view, the standardisation of the dispute resolution clause in federal modern awards has been a significant advancement in that jurisdiction.[139]

The department responded that:

> *The Bill removes the mandated form for the Dispute Resolution clause that was designed by the former Government and returns the matter to the Commission when it makes a modern Award. It should be noted that the Award is a creature of the QIRC as the independent tribunal. The proposed amendment in the bill is a return to the broad ambit of what should be in a Dispute Resolution clause, drawing on the language of the IR Act prior to the amendment in 2013. The language is similar to that of the FW Act. Standardising the Dispute Resolution is a matter for the QIRC, as has been the case for the Fair Work Commission in the national system.*[140]

The Mackay Regional Council indicated that they see merit in a uniform dispute resolution clause that is applicable to all enterprise agreements.[141]

The North Burnett Regional Council consider:

> *The current provisions largely reflect the Fair Work Act 2009 (Cth) and as such do not require change. The State Government has not provided any justification as to why these arrangements need to be changed and the proposed variations are incongruous with federal industrial laws on how dispute resolution should be prescribed in industrial instruments.*[142]

[138] Mr James, DJAG, Public Departmental Briefing Transcript 20 May 2015:
[139] QLS Submission 1036: 1-2
[140] Correspondence to FAC from DJAG, dated 26 May 2015: 5
[141] Mackay Regional Council Submission 1019:3
[142] North Burnett Regional Council Submission 1013: 2

The department responded:

> *QLS has suggested a mandated and standard form for dispute resolution procedures, citing similar arrangements in the national jurisdiction. The Bill removes the mandated form from the Dispute Resolution clause that was designed by the former Government and returns the matter to the Commission when it makes a modern Award. It should be noted that the Award is a creature of QIRC as the independent tribunal. The proposed amendment in the bill is a return to the broad ambit of what should be in a Dispute Resolution clause, drawing on the language of the IR Act prior to its amendment in 2013. The language is similar to that of the FW Act. Standardising the Dispute Resolution clause is a matter for QIRC, as has been the case for the Fair Work Commission in the national system.*

The Committee asked stakeholders at its hearing to comment on the QLS's submission that there is merit in a standard dispute resolution clause being adopted across modern awards, particularly in terms of costs and time.

QCU advised that disputes procedures have been a mandatory feature of awards and agreements of the QIRC for decades. They advised that the major concern of unions is that whatever procedure is adopted, it include the capacity to take matters to the QIRC for determination in cases where the parties cannot agree. There are arguments for and against standard clauses and in some cases the parties to an award or agreement may have their own preference for such a clause. They considered that providing a default clause in regulation may be of assistance to the parties.[143]

The UFUQ responded that it disagreed with the QLS submission and considered that dispute resolution clauses should all allow a broad scope of industrial matters to be dealt with. They advised that particular steps and processes might sensibly vary across awards and differing workplaces.[144]

Together responded that the dispute procedures in Awards should be able to meet the requirements of the industry or organisation covered by the Award and a standard procedure across all Awards is not conducive to that outcome. They noted that the Fair Work Act does not mandate a prescribed clause though it does provide a model clause by regulation that may be adapted. They consider that the proscription of a mandated clause would be, in some cases, detrimental to the interests of both employers and employees as well as imposing additional inflexibility and regulation when compared with the Fair Work jurisdiction.[145]

The QTU and United Voice considered that the QLS submission does not take into account specific Award provisions around dispute resolution for specific industries. The QTU considered that by enacting a "one size fits all" provision, there would be an increase in the number of matters taken to the QIRC.[146] United Voice recognised the important role played by the QIRC in dispute resolution, which remains a viable option should prior efforts to resolve any dispute fail. They considered that the adoption of standard dispute resolution procedures, as seen in the Federal IR jurisdiction, can have negative impacts particularly if the scope is limited. They noted that the limited scope of the Fair Work model procedure often sees disputation around whether the subject matter falls within the scope of the procedure.[147]

[143] Correspondence to FAC from QCU dated 26 May 2015: 1
[144] Correspondence to FAC from UFUQ dated 27 May 2015: 1
[145] Correspondence to FAC from Together dated 26 May 2015: 1
[146] Correspondence to FAC from QTU dated 26 May 2015: 2-3
[147] Correspondence to FAC from United Voice 26 May 2015: 1

The Services Union supports a standard dispute resolution clause which stipulates certain matters which must be present in a dispute procedure but does not mandate the language and does not restrict the scope of what might be agreed as being subject to the procedure. They indicated that they would support a provision which reflects the capacity of the dispute settlement provisions being agreed between the parties and which does not restrict having all employment matters being dealt with under the disputes process.[148]

LGAQ considered that there would be merit in a provision that provides a standardised process which facilitates disputing parties to first attempt to resolve disputes about industrial matters at the workplace, followed by referral to the QIRC for conciliation and arbitration if the matter remains unresolved. They considered that it would be preferable that the QIRC determine a standard clause after consideration and submission by all relevant interested parties, which is then required by legislative means, for inclusion in all modern industrial instruments.[149]

TSIRC advised that they prefer the section 71MA approach (proposed to be deleted under clause 8) to the proposed section 71MC approach (under clause 9). They consider that the inclusion of a standard dispute resolution clause has merit in that it would provide for consistency across modern awards, however, it does not provide for standardisation across other benefits, entitlements, conditions and processes that is provided for by having a single industrial instrument.[150]

3.8 Committee comments – Dispute resolution procedures

The non-government Members noted the evidence of the LGAQ that a standard dispute resolution clause would be beneficial.

It was the view of the Committee that a standardised dispute resolution process does not allow for flexibility across different awards, agreements, industries and organisations.

The Committee considered that the availability of a standard dispute resolution clause would be beneficial and of assistance to parties, if required, however, parties should be able to amend this clause as appropriate by mutual agreement and suggests the Minister consider this option

Recommendation 2

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, the Minister consider amending the Bill to enable QIRC to develop a standard dispute resolution clause that could be available to parties and able to be amended by mutual agreement.

3.9 Variation of award modernisation (Clause 17)

Clause 17 omits subclauses (3) and (4) of section 140CA. Subclause 140CA(3) only allowed a variation notice given by the Minister to extend the award modernisation process by a maximum of 2 years. Subclause 140CA(4) allowed the Minister to extend the date by which the Commission has to complete the award modernisation process only once.

[148] Correspondence to FAC from The Services Union dated 26 May 2015: 1
[149] Correspondence to FAC from LGAQ dated 26 May 2015: 1
[150] Correspondence to FAC from TSIRC dated 26 May 2015: 1

The explanatory notes detail that the deletion of these provisions is intended to ensure that a variation to an award modernisation request under 140CA can extend the time for completion more than once and by more than 2 years, if the Minister so chooses. This is to better ensure the Commission has appropriate time to undertake this exercise, having regard to the amended legislative framework and the restored flexibility around award content. For the avoidance of doubt, this will apply even though the award modernisation process was commenced prior to the Bill.[151]

The Committee queried the proposed two year time frame. The department advised:

> *That relates to the variation of the award modernisation request. The award modernisation request was issued at the beginning of 2013, so we were looking at an end date as at the end of 2015. Given that the award modernisation process has been suspended and the commission will now have obligations to reconsider the 10 awards that have been made, it was seen as appropriate to release that restriction to finish by December this year to allow the commission adequate time to consider the issues without being forced into an expedient decision.*[152]

3.10 Committee comments – Variation of award modernisation

The non-government Members of the Committee understand the need for flexibility.

The Committee notes the ten awards which have already been made are a major issue and strongly urges the government to provide every available assistance.

3.11 Arbitration (Clauses 19, 20, 21, 22 and 23)

Clause 19 amends section 149(2)(c) to omit the reference to '*any issue the conciliating member considers relates, or may relate, to non-allowable content under chapter 2A, part 3, division 4, subdivisions 1 and 3*' as a content requirement for the written report a Commissioner prepares after unsuccessfully conciliating negotiations between parties to a proposed certified agreement. The requirement to include such information in a Commissioner's report is no longer required as Part 3 of Chapter 2A, which deemed certain content 'non-allowable,' is being removed by this Bill.[153]

Clause 20 omits the reference in repealed section 149(C)(2) to the full bench of the Commission not being able to include a provision containing 'non-allowable content' in an arbitration determination. The removal of the 'non-allowable content' provisions from the IR Act make this reference unnecessary. The provision does not otherwise alter the Commission's powers in regard to the making of arbitrated determinations.[154]

Clause 21 amends existing section 149D by omitting paragraphs 149D(2)(e), 149D(2)(f) and 149D(2)(g) and the corresponding definitions for 'high-income guarantee contract' and 'public sector entity' in section 149D(3). This removes these considerations from the scope of the "public interest" that the Commission must consider in determining a matter by arbitration.[155]

[151] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 11
[152] Mr James, DJAG, Public Departmental Briefing Transcript 20 May 2015:
[153] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 11
[154] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 12
[155] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 12

Clause 22 amends existing section 156 by omitting the reference to the repealed provisions dealing with 'required content' for all modern industrial instruments (repealed Chapter 2A, Part 3, Division 2, Subdivision 1) from paragraph 156(1)(d), and omitting 156(1AA) which stated that the Commission must refuse to certify an agreement if it included 'non-allowable' content. The removal of the 'non-allowable content' provisions from the IR Act make this reference irrelevant.[156]

Clause 23 amends existing section 158 by omitting paragraphs 158(4) – (6). These paragraphs refer back to section 156(1AA) which is repealed by Clause 22 of this Bill. As a result the reference is irrelevant.[157]

The UFUQ submission supported the policy intent of the proposed amendments to section 149 of the Act. They advised that prior to the inclusion of the previous amendments, the QIRC in arbitrating matters was expected to balance the interests of all parties and consider all relevant financial and economic matters. They consider that the previous amendments distorted the QIRC's ability to balance the interests of all parties to an arbitration and diminished confidence in the Commission.[158]

The UFUQ advised the Committee that a number of major arbitrations were significantly affected by the application of the provision in practice. They noted that whilst, on their face the provisions might be seen as a reiteration of long standing considerations always made by the QIRC during arbitrations, their application was linked with government submissions which stated that the 'fiscal strategy' was to withhold funds from agencies, so as to manufacture an 'incapacity to pay' any arbitrated wages outcome other than as submitted by government. They considered that the QIRC:

> *…abrogated its perceived independence in the face of explicit threats to cut services or sack staff if the government didn't get its way in the arbitration.*[159]

The UFUQ provided a number of examples of QIRC rulings where this issue was raised. These examples included[160]:

State of Queensland (Department of Community Safety – Queensland Ambulance Service) v United Voice, Industrial Union of Employees, Queensland (No.2) [2014] QIRC 093

"*Although the Commission has always been required under s149 of the IR Act to consider the cost impact of a decision on the economy and the particular enterprise concerned, the present provisions require more sharply focussed consideration of the financial effect of the Determination on the State and the public sector entity concerned as well as consideration of the State's fiscal strategy.*

We consider that s149(5)(c)(ii) introduces a "capacity to pay" factor, such that in considering appropriate wage increases to be awarded, the Commission must consider how its decision can be accommodated within the State's financial position as well as its impacts on the State's fiscal strategy, the public sector entity concerned and the economy and community generally."

[156] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 12
[157] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 12
[158] UFUQ Submission 970: 7
[159] UFUQ Submission 970: 7
[160] UFUQ Submission 970: 7

State of Queensland (Department of Community Safety – Queensland Fire and Emergency Services) v United Firefighters' Union of Australia, Union of Employees, Queensland and Queensland Fire and Rescue – Senior Officers Union of Employees (No.2) [2014] QIRC 224

…while s149(5)(c)(ii) of the IR Act does not compel the Commission to apply the Government's position on wages and employment conditions, the reality is that any increases in wages and employment-related costs which exceed the figure set out in the Minute will (not might) lead to reductions in employee numbers in the agency concerned and/or reductions in areas of service delivery and/or reductions in capital expenditure, and the like.

QFES said that if the Commission was considering whether to award a wage increase in excess of 2.2% per annum it was required to consider the financial position of the agency concerned and the effect of this decision on the agency. In particular the Commission was required to understand and accept that QFES would be required by strict Government policy to sacrifice other programs and/or employment numbers in order to provide the necessary supplementation of funding to meet any increase in wages which exceed the Government's wages policy".

UFUQ considered that the proposition put by the government to the QIRC is that the Commission was expected to consider whether it was appropriate to inflict that impact on the fire service, with a connotation that it was the QIRC inflicting the impact, rather than the government.[161]

They consider the proposed amendments are:

> *…consistent with a mature policy direction, which would refrain from threatening or blaming the state industrial tribunal for service or employment cuts, anticipated from the treasury refusing to fund arbitrated outcomes which differ from those proposed by the state of Queensland as employer.*[162]

The AWU submission details their support for the removal of the criteria of giving weight to the fiscal position of the entity when arbitrating. They consider that:

> *…a fiscal position can easily be retro-fitted by an entity to game the process and as such cannot be considered bargaining in good faith.*[163]

The UFUQ advised the Committee that from their experience in arbitration prior to the previous amendments, both employers and unions go to considerable expense to have independent auditing and costings by major, highly reputable forensic accountants to prosecute their cases before the Commission in regard to capacity to fund wages outcomes.[164]

3.12 Committee comments – Arbitration

The non-government Members reiterate their comments in respect of consideration of financial position and fiscal strategy by the QIRC in determining wage cases. The non-government Members consider that there is a need for consideration of the challenges of affordability for employers who have to work within budget constraints.

Government Members support these amendments.

[161] UFUQ Submission 970: 8
[162] UFUQ Submission 970: 8
[163] AWU Submission 917: 2
[164] Mr Spreckley, Public Hearing Transcript 25 May 2015: 6

3.13 Representation of parties (Clause 25)

The explanatory notes further state that the Bill will achieve its objective of returning the Commission to its status as a 'layperson's tribunal' by restoring legal representation arrangements for parties appearing before the Commission to be as they were prior to the *Public Service and Other Legislations Amendment Act 2012*.[165]

Clause 25 amends section 319 to return the provisions of the IR Act to what they were prior to the amendments made by the *Public Service and other Legislation Amendment Act 2012.* The *Public Service and Other Legislation Amendment Act 2012* amended section 319 of the IR Act to allow any party to be legally represented in Commission proceedings relating to: arbitration of agreements, action on industrial disputes, declarations on industrial matters, injunctions and interpretations of industrial instruments.

The explanatory notes state:

> *It is proposed to reverse the amendments to section 319 (with the exception of referencing section 110 as this has since been repealed) by omitting and replacing section 319(2)(b) and (ba) and 319(3A) and inserting a new section 319(2)(b). The references at section 319(4) to (2)(ba)(ii) is also omitted and replaced with a reference to new subsection (2)(b)(iii). The effect is that legal representation is no longer an automatic right in these matters, thereby restoring the Commission as a layperson's tribunal as it was prior to the former Government's changes.*[166]

The proposed new section 319 is as follows:

Division 3 Conduct of proceedings

319 Representation of parties

(1) In proceedings, a party to the proceedings, or a person ordered or permitted to appear or to be represented in the proceedings, may be represented by—

(a) an agent appointed in writing; or

(b) if the party or person is an organisation—an officer or member of the organisation.

(2) The party or person may be represented by a lawyer if, and only if—

(a) for proceedings in the court—

(i) the proceedings are for the prosecution of an offence; or

(ii) all parties consent; or

(iii) the court gives leave; or

(b) for proceedings before the commission, other than proceedings under section 278 or 408F—

(i) the proceedings relate to a matter under chapter 4; or

(ii) all parties consent; or

(iii) the proceedings relate to a matter under chapter 3, or under section 275, 276 or 279, or under chapter 12, part 2 or part 16 and, on application by a party or person—

(A) the commission is satisfied, having regard to the matter the proceedings relate to, that there are special circumstances making it desirable for the party or person to be legally represented; or

(B) the commission is satisfied the party or person can be adequately represented only by a lawyer; or

[165] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 3
[166] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 12

(c) for proceedings before an Industrial Magistrates Court, other than proceedings remitted under section 278(6) or 408F(5)—

(i) all parties consent; or

(ii) the proceedings are brought personally by an employee and relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court; or

(iii) the proceedings are for the prosecution of an offence; or

(d) for proceedings before the registrar, including interlocutory proceedings—

(i) all parties consent; or

(ii) the registrar gives leave.

(3) However, in proceedings mentioned in subsection (2)(c)(iii), the person represented can not be awarded costs of the representation.

(4) For subsection (2)(ba)(iii), the commission may consider, for example, the following—

(a) the amount claimed in the proceedings, if any;

(b) the nature and complexity of the matter;

(c) the nature of the evidence to be adduced;

(d) the cross-examination likely to be required;

(e) the capacity of the party or person to represent himself or herself;

(f) the questions of law likely to arise;

(g) whether the duration or cost of the proceedings will be decreased or increased if the party or person is represented.

(5) In this section—

proceedings means proceedings under this or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar.

With regard to the objective of the bill to return the QIRC to its status as a layperson's tribunal the department advised:

> *The amendments that are proposed there are in relation to section 319 of the act. In particular, if you go to page 12 with regard to the representation of parties, there are a number of matters where the changes made previously allowed any party to be legally represented in commission proceedings relating to arbitration of agreements, action on industrial disputes, declarations on industrial matters, injunctions and interpretations of industrial instruments. So those are the key areas where under the previous act legal representation was allowed without the consent of the parties and certain requirements there. That is being changed back to the position that it was previously. The effect is that it is no longer an automatic right, and that is to be limited in that industrial relations area where lay advocates appear. So it would be clear that that does not impact on other areas of the tribunal's work—for instance, workers comp and regulated matters where lawyers are allowed to appear in individual matters et cetera. So it is in relation to a defined set of proceedings where lay advocates can appear and where legal representation can continue, but it is via the consent of the parties which was the situation prior to 2012.*[167]

The Bar Association made comment on the statement that the amendments return the QIRC to its position as a lay person's tribunal where employees and union advocates operate on a level playing field with employers. Their view is that the premise of this statement is misplaced and that legislation seeking to effect this outcome is likely to have adverse effects on Queenslanders' access to justice. They advised the Committee that it is decades since the QIRC has operated in this way.[168]

[167] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 2
[168] Submission Bar Association of Qld Submission 905: 1

They advised:

> *In recent decades, participants as advocates have included barristers and solicitors, unions and legally trained employees of unions and employer organisations. Additionally these organisations have frequently used persons with considerable other professional qualifications and training in other disciplines (eg economics and human resources).*[169]

The Bar Association also iterated its concern that with union participation nationally in the order of 42 percent as at August 2013 there is a significant body of employees not represented by union officers. They considered that with the QIRC regulating State Government Departments and local authorities as employers, these employers are likely to be well resourced. They considered that the inability to use lawyers will mean many public sector employees, especially those in non-union situations, will not be adequately represented and it will not be a level playing field for an individual proceeding against the government in the Commission. They consider that:

> *Rather than achieve a level playing field, the stated objective would be to tip the balance in favour of well-resourced State Government employers.*[170]

The QLS also did not support the restrictions imposed on legal representation by the proposed amendment. Their arguments were similar to those outlined by the Bar Association. They argued that employees who are union members may have the benefit of experienced union staff to represent them against employers who have the advantage of being represented by employees experienced in industrial relations. However, those employees who are not union members or who do not wish to engage their union for representation purposes are effectively denied the benefit of legal representation when those opposite are effectively provided with that benefit.[171]

The QLS advised that the group of employees who are not union members by choice is significant. In addition, their members have reported that they are regularly contacted by employees who are disgruntled with their union and do not wish to engage a union to represent them.[172]

The QLS noted that whilst there is provision for legal representation by consent in a number of instances, it is a common tactical step for an objection to be made to legal representation requests where the other party has the benefit of experienced industrial representatives. The consider that the principle that the QIRC is a layperson's jurisdiction does not reflect the practical reality of representation in Queensland and the need for a hearing to determine whether legal representation should be allowed is in itself a deterrent to such applications given their time and cost and uncertainty of outcome.[173]

They advised the Committee that lawyers have a long history of providing constructive assistance to the QIRC, not least in the simplification and efficient handling of matters. Given the quite technical nature of employment and industrial law, there is no practical reason for the effective exclusion of legal representation in a large number of matters that come before the QIRC, particularly unfair dismissal claims.[174]

They do not consider that there is any evidence that the current provisions have resulted in any inequities in representation in the QIRC.[175]

[169] Association of Qld Submission 905: 1
[170] Bar Association Submission 905: 2
[171] QLS Submission 1036: 2
[172] QLS Submission 1036: 2
[173] QLS Submission 1036: 2
[174] QLS Submission 1036: 2
[175] QLS Submission 1036: 2

The QCU responded to the example used by the Bar Association in their submission. They advised:

> *The example that was given by the Bar Association of Queensland before the committee was of a non union employee having a dispute with their employer. For the vast majority of employees in the Queensland jurisdiction, legal representation (particularly including counsel) would be cost prohibitive. If one takes an unfair dismissal as an example, the vast majority of these matters that are advantageous to employers, result in an amount of money being paid to the employee. The limit in the jurisdiction for unfair dismissal is six months' pay and it is very rare that employees receive anywhere near this amount of compensation. Anecdotally, the usual compensation would be in the order of 12 weeks' pay and for most employees in the Queensland jurisdiction this would be approaching equivalence to the legal bill for the case. What is more likely is that a non-union employee is going to represent themselves in such a case, particularly to the conference stage. In the case of self representation, a lay tribunal would be more advantageous for the non-union member.*[176]

The government responded:

> *Section 319 of the Act, which sets out where legal representation is available in the QIRC, was amended by the Public Service and Other Legislation Amendment Act 2012 to allow any party to be automatically legally represented in Commission proceedings on:*
>
> *(i) arbitration of agreements;*
>
> *(ii) action on industrial disputes;*
>
> *(iii) declarations on industrial matters;*
>
> *(iv) injunctions; and*
>
> *(v) interpretations of industrial instruments*
>
> *The Bill restores section 319 of the Act to what it was prior to the Public Service and other Legislation Amendment Act 2012. This is consistent with the Government's 'Restoring Fairness to Government Workers' election policy commitment "where workers and union advocates operate on a level playing field with their employers."*
>
> *No change was made to the representational arrangements in applications for unfair dismissal.*
>
> *New section 855 confirms that amended section 319 (which contains the requirements for legal representation) will not apply to proceedings commenced but not finalized prior to the Bill commencing.*[177]

The UFUQ supported the proposed amendments regarding legal representation. They consider that the previous changes were introduced for the convenience of the government as employer to outsource its representation to law firms.[178]

The Services Union welcomed the return to of the QIRC to a lay person tribunal. They support the provision which allows the QIRC the discretion to decide on representation on a case by case basis.[179]

[176] Correspondence to FAC from QCU dated 26 May 2015: 3
[177] Correspondence to FAC from DJAG, dated 26 May 2015: 2-3
[178] UFUQ Submission 970: 9
[179] The Services Union Submission 1015: 3

The AMWU advised the Committee that they have seen a trend towards a far more legalistic approach in the QIRC over the last decade. They considered that it is important for any jurisdiction that deals with industrial relations that it needs to be done on the basis of people sitting down in a collaborative manner to resolve issues.[180]

Together advised that their view is that the removal of the provisions that fettered unnecessary legal representation has resulted in increased costs to all parties and has, in particular, resulted in significant expenditure of public moneys by departments engaging legal representation in circumstances where previously such legal costs would not have been incurred.[181]

The QNU advised the Committee:

> *The industrial commission was always a laypersons tribunal for a reason. That was that it was accessible by workers and their representatives without having to pay exorbitant legal fees. The reality is that if one side of the dispute gets legal representation, which means solicitors and then a barrister, it is almost a requirement for the other side to then enter into an arrangement with solicitors and barristers too.*
>
> *I have been going before the Queensland Industrial Relations Commission for 25 years now. In the past, experienced lay advocates from either side—whether they are employed by the union or employed by the employer—would deal with these things in a fairly efficient, effective and cheap way. Whereas once you get barristers and solicitors involved the cost is exorbitant.*[182]

The QNU also advised:

> *Contrary to the submissions of the Bar Association of Queensland, the QNU submits that the QIRC has operated as a lay tribunal since its inception and to a great extent over the past 50 years, with the exception of the recent period under the Newman Government. The QNU submits that it should return to that status.*
>
> *The QIRC and other industrial tribunals in Australia for that matter were set up as lay tribunals to allow easy, low cost, efficient access by workers and their employers, without the cost and strictures usually associated with tribunals where only legally qualified advocates are allowed.*[183]

The QNU submitted that non-union employees would not be disadvantaged by this amendment as the Bill still allows for legal representation of parties in numerous circumstances. They noted that the Bill specifically allows representation in unfair dismissal matters in certain circumstances[184].

The UFUQ noted that the amendments made in 2012 significantly expanded the circumstances where an automatic right of legal representation applied and the QIRC's discretion was curtailed as a result. They supported the proposed amendment to return the provisions to the way they were prior to the 2012 amendments.[185]

[180] Ms Allen, Public Hearing Transcript 25 May 2015: 25
[181] Correspondence to FAC from Together 26 May 2015: 3
[182] Ms Semple, Public Hearing Transcript 25 May 2015: 26
[183] Correspondence to FAC from QNU dated 26 May 2015: 1
[184] Correspondence to FAC from QNU dated 26 May 2015: 2
[185] Correspondence to FAC from UFUQ dated 25 May 2015: 2

The TSIRC advised the Committee that it supports the operation of the QIRC as a layperson's tribunal. It also supported that the QIRC should retain discretion to permit legal representation in any case where the Commission is satisfied that it is desirable for the party to be legally represented. They consider that Clause 25 unjustifiably limits the Commission's discretion in this regard.[186]

The QLS submitted that one of the things that involving lawyers does do, however, is it lowers the emotion involved. They advised that:

> *…people who make the decisions become very emotionally attached to them and the people who are the subject of the decisions obviously are in a very emotive state. What having legal representation on either side does is it takes that emotion out of it. It stops the shouting. Most lawyers these days have a fairly significant alternative dispute resolution practice because it is unavoidable. They have the skills and the training to stop people from the yelling and screaming and that sort of thing.*[187]

3.14 Committee comments – Representation of parties

The Committee agreed that the availability of legal representation in some circumstances was appropriate. The Committee considered that lawyers could assist in some situations. The Committee was conscious of ensuring that those who were not union members had access to suitable assistance.

The non-government Members considered that the involvement of lawyers means an assessment based on facts rather than emotion. The non-government Members considered that it is extremely difficult to self-advocate. They iterated their concern that the requirement to seek the QIRC's consent to legal representation places individuals at a disadvantage.

The non-government Members of the Committee are of the view that legal representation should be available to all parties in disputes before the QIRC. The majority of workers across Australia are not members of a union and therefore do not have access to industrial advocates in the employ of unions. The non-government members of the Committee are concerned non-represented employees would be at a significant disadvantage during a proceeding against the government. The non-government members of the Committee also believe the evidence of Queensland Law Society that having legal representation often takes the 'heat' out of a dispute very persuasive. The non-government members of the Committee are also concerned a well-resourced party might make a tactical decision an object to legal representation for one party thereby significantly disadvantaging said party.

Government Members support the spirit of the laypersons' tribunal, which is to provide a level playing field, and encourage collaboration, negotiation and conciliation. It is their view that these principles can be more easily dispensed with under the existing provisions of the act, which allow legal representation automatically. Government members nevertheless agree that legal representation should be made available where necessary, and note that, under the proposed amendments, this can be made available upon the consent of the QIRC.

[186] Correspondence to FAC from TSIRC dated 26 May 2015: 2
[187] Mr Budden, Public Hearing Transcript 25 May 2015:

3.15 Right of entry (Clauses 27, 28, 29, 30 and 31)

One of the policy objectives is restoring the ability of industrial organisations and their representatives to freely organise and access members in order to enhance and protect their industrial interests. The explanatory notes state that the Bill will achieve this by restoring right of entry provisions to be as they were prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*[188]

Clause 27 amends section 370A to omit definitions that were inserted along with amendments to the right of entry provisions in existing sections 372A and 372B by the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013*. The Bill amends the provisions relating to right of entry to return them to what they were prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*[189]

Clause 28 amends section 372 to return it to what it was prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.* Clause 29 omits section 372A. Clause 30 omits section 372B.[190]

Clause 31 replaces existing section 373 with the version of section 373 that existed prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*[191]

Proposed new section 373 is as follows:

373 Right to inspect and request information—authorised industrial officer

(1) This section applies to an authorised industrial officer who has entered a workplace under section 372.

(2) The officer may inspect the time and wages record of—

(a) a member employee; or

(b) an employee who is eligible to become a member of the officer's organisation.

(3) The officer may also inspect a record required to be kept under the code made under section 400I.

(4) The employer—

(a) must allow the officer to inspect the record for an employee mentioned in subsection (2)(a) or (b), unless the employee has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and

(b) must not allow the officer to inspect the record for an employee who has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and

(c) must allow the officer to inspect the record mentioned in subsection (3).

Maximum penalty—27 penalty units.

(5) The officer may make a copy of the time and wages record or the record mentioned in subsection (3), but can not require any help from the employer.

(6) A person must not, by threats or intimidation, persuade or attempt to persuade an employee or prospective employee to make, or refuse to make, a written request to the employer or prospective employer that the record not be available for inspection by an authorised industrial officer.

Maximum penalty—27 penalty units.

(7) If the employer keeps particulars other than those mentioned in section 366 in the record, the employer need not make the other particulars available for inspection.

[188] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 3
[189] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 13
[190] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 13
[191] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 13

(8) The officer may discuss matters under this Act with the following persons during working or non-working time—

(a) the employer;

(b) a member employee, or an employee who is eligible to become a member of the officer's organisation.

(9) The officer may discuss any other matter with a member employee, or an employee who is eligible to become a member of the officer's organisation, during non-working time.

(10) A person must not obstruct the officer exercising a power under subsection (8) or (9).

Maximum penalty—27 penalty units.

(11) The officer must not—

(a) wilfully obstruct the employer, or an employee during the employee's working time; or

(b) contravene a requirement of this section.

Maximum penalty—27 penalty units.

(12) A person must not act as an authorised industrial officer under this section, unless the person holds a current authorisation.

Maximum penalty—27 penalty units.

(13) In this section—

member employee means—

(a) an employee who is a member of the authorised industrial officer's organisation; or

(b) a former employee who was, or is, a member of the officer's organisation.

time and wages record means the time and wages record required to be kept under section 366.

The Mareeba Shire Council recommended that section 373 be amended to reverse the onus so that a union representative may inspect a payroll record on any staff member only with their permission in writing.[192]

The Mareeba Shire Council also suggested the provisions be amended to ensure that an industrial officer not interrupt the normal working operations of the organisation and the industrial officer should seek approval from the Chief Executive Officer or their delegate. This amendment could be countered by a provision that directs that Council should not unreasonably deny access. They seek the inclusion of a 24 hour notice period except in cases of demonstrated emergency.[193]

The Mackay Regional Council agreed that prior notice and control of access is essential for reasons of security, privacy and workplace health and safety reasons. They argued that unfettered and uncontrolled access without due notice is not practical. They consider that the provisions need to be balanced with an element of notice.[194]

The North Burnett Regional Council submission states:

> *These parts of the bill seek a return to arrangements prior to the Industrial Relations (Transparency and Accountability of Industrial organisations) and Other Acts Amendment Act 2013.*
>
> *There has been no justification provided by the State Government as to why it is necessary to return to such arrangements and how such a change will assist in supporting the principle objects of the legislation.*

[192] Mareeba Shire Council Submission 1024: 2
[193] Mareeba Shire Council Submission 1024:
[194] Mackay Regional Council Submission 1019: 3-4

> *The current arrangements reflect in the main those provided federally within the Fair Work Act 2009 (Cth), which appropriately recognises the balance between an Employers ability to operate its business without undue influence and disruption and the employee's right to representation by industrial organisations. A removal of the current provisions as proposed by this Bill will mean different Right of Entry Arrangements to that of Private Sector Employers across all of Australia.*
>
> *The potential impact of the proposed changes is unnecessary disruption to the provision of services to the community.*[195]

The LGAQ noted that, whilst the proposed amendments/omissions do restore the provisions operating under the Act prior to it having been amended, they consider that the former provisions present problematic outcomes. They identified the following concerns:

- *Firstly, the proposed amendments removing the obligations noted above mean that there is no obligation on an authorised industrial officer to give advanced notice to the employer prior to seeking entry to the employer's workplace. Because of the nature of security arrangements in local government workplaces, where a person whom is authorised to grant security permission on behalf of the employer to an authorised industrial officer is not available at the time the authorised industrial officer decides to attend to the workplace, it is not always the case that an authorised industrial officer can, practically, gain access that Council workplace. Advance notice allows arrangements to be made in advance of the authorised industrial officer's attendance so that these situations do not arise.*[196]
- *Secondly, the power provided under current subsection 373(13) of the IR Act is one that allows local governments to protect employees and industrial officers from unsafe circumstances. The power is limited to employer's duties under the Work Health and Safety Act 2011 (Qld) which decreases the liability of a health and safety incident occurring in the workplace. It is a great concern that removing s 373(13) may put industrial officers at risk of injury while on local government property and expose councils to litigation if an injury occurs. Such situation is further exacerbated where the unannounced attendance of an authorised industrial officer leads to the industrial officer entering a workplace before the employer can provide the industrial officer with a proper safety induction.*[197]

The LGAQ advised:

> *We have never had any major issues between unions and councils in relation to the right of entry when proper respect was shown from both sides. The only time there has ever been any major anxiety is when an individual union organiser might just rock up on the day and make some outrageous demands which the council simply cannot meet for practical reasons or is seen to be interrupting the business of the council at a time when it cannot be interrupted. Most union organisers do pay proper respect and contact councils in advance to give that appropriate notice. As I said, our position would be that we would favour the retention of the 24-hour notice. We think it is a good, courteous thing to do. We do not have any major issues with the reduction of the level of bureaucracy and red tape that goes with it in terms of the production of forms having to cross tables, but we think that the 24-hour notice does not cause any disruption to the union movement.*

[195] North Burnett Regional Council Submission 1013: 2
[196] LGAQ Submission 1027: 16
[197] LGAQ Submission 1027 16

> *We cannot see how it can in any way, shape or form minimise or prevent them doing their union organisation or member organisation, but what it can do is cause tension, which is unnecessary, to develop between an employer and a union organiser where tension is probably not necessary. In relation to the right of entry we would like to see the recommendation amended so that 24-hour's minimum notice does apply.*[198]

The AWU's submission supports rescinding the current right of entry provisions and replacing them with those that existed prior to the election of the former government. They stated that:

> *The current provisions were introduced simply to cut off union members from the support and representation of their union officials, contrary to the standards that have generally prevailed within Australia and that are recognised through international conventions and treaties.*
>
> *At its most fundamental level, "right of entry" is not just a union official's right to enter a site, but is also a worker's right to have access to industrial representation (including prospective industrial representation) within their workplace.*
>
> *The previous provisions worked well and did not interfere with the functioning of service delivery.*[199]

The Services Union also supported the right of entry provisions contained in clauses 28 and 29.[200]

The issue of issue of privacy was raised in respect to both access to employees names in relation to the union encouragement provisions and the access to employees time and wages records. These privacy issues are considered in sections 3.19 and 3.20 of this report.

3.16 Committee comments – Right of entry

The Committee noted that the provisions were generally supported by stakeholders, with exception to the requirements regarding notice.

The non-government Members considered that there was a need for courtesy when right of entry was to be invoked. They considered that a 24 hour notice provision would be appropriate unless an issue was urgent. The non-government Members considered that the proposed provision was open to abuse by the extreme elements in some unions.

The non-government Members of the Committee do not support unfettered rights of entry. The non-government Members of the Committee are concerned by the inconsistency between the proposed provisions and those which currently exist in the *Fair Work Act 2009*. The non-government Members of the Committee are of the view that a notice period of 24 hours, per the *Fair Work Act*, is appropriate before entry. The non-government Members of the Committee are cognisant there may be exigent circumstances which may necessitate entry; however, they are concerned that such provision for this has been heavily abused in the past and would be open to abuse in the future. The non-government Members of the Committee are of the view that all parties should show proper mutual respect; they do not believe an unfettered right of entry shows respect for employers. The non-government Members of the Committee are of the view that retention of the 24 hour notice period would maintain courtesy between the two parties.

[198] Mr Goode, Public Hearing Transcript 25 May 2015: 41
[199] AWU Submission 917: 2
[200] The Services Union Submission 1015: 3

It was the government Members view that the introduction of a 24 hour notice period unfairly tips the scales in favour of the employer and could and had, in the past, sometimes allowed unscrupulous employers to rectify issues such as defective equipment or unsafe practices and denying that such issues existed in the first place, hence not achieving the desired purpose of 'right of entry'.

The Committee noted the comments from both the LGAQ and unions that in most cases no issues arose and the parties were able to work well together, and as a result believe that unions and employers should be able to maintain this collaboration.

3.17 Transitional arrangements (Clause 33)

Clause 33 provides transitional arrangements for those modern awards and modern certified agreements made. Ten modern awards and seven modern certified agreements have been made to date under the modern award and agreement framework that will require particular consideration.

Clause 33 inserts a new Part 20. The transitional provisions address how the Commission will deal with modern awards made prior to commencement of the Bill ('relevant modern awards') and pre-modernisation awards that were part way through the award modernisation process. Provision is also made for the small number of certified agreements that were made under the modern industrial instrument system introduced in 2013 and therefore subject to certain content restrictions. Such agreements may be given a new nominal expiry by reference from the date the Commission varies the relevant modern award under this Chapter 20. Part 20 contains proposed new sections 839 to 857. The explanatory notes detail:

> *The Bill's transitional arrangements will require the Commission to review and vary those modern awards made prior to the suspension of the award modernisation process to (1) remove the previously mandated clauses, and any ancillary provisions; and (2) return particular provisions that were removed through the modernisation process (i.e. provisions relating to union encouragement, union delegates, industrial relations training, and TCR).*
>
> *For any other provisions that were contained in a relevant pre-modernisation award but were omitted or changed during the modernisation process, the Commission must reconsider the omission or change in light of the amended framework for award modernisation, the Queensland Employment Standards (QES) and the submissions of the parties.*
>
> *The Commission also has the power to increase the number of awards covering an industry or occupation where the making of the relevant modern award resulted in a significant reduction in the number of awards covering the industry or occupation.*
>
> *A new nominal expiry date, set at three months following the varying of the relevant modern award, will be applied to those certified agreements already made in connection with a modern award. Bargaining for a new agreement is taken to have commenced from the date of the variation of the underpinning relevant modern award. An agreement will continue to operate as a nominally expired agreement while bargaining for a new agreement occurs.*
>
> *The Bill provides for a facility to vary a modern certified agreement already made by regulation.*
>
> *The Bill provides that the Commission will be unable to certify any further agreements following the introduction of the Bill unless the relevant modern award has been reviewed and varied.*

> *The transitional arrangements also provide that, where the Commission had started to modernise a pre-modernisation award but no modern award has been made, modernisation will be resumed under the amended arrangements. For the avoidance of doubt the transitional provision make clear that such resumption is a continuation of the current award modernisation process.*
>
> *In relation to individual flexibility arrangements, although the IR Act will no longer mandate a clause for insertion in modern industrial instruments facilitating their usage, the transitional arrangement confirms that an individual flexibility arrangement that has already been made continues to operate; and an individual flexibility arrangement may be brought to an end by the parties, in accordance with the existing provisions.*[201]

The Committee asked the department to elaborate on the reasons for the transitional arrangements. The department advised:

> *The transitional arrangements are setting up a process whereby the commission can look at those modernised awards made under the 2013 act changes and then look at how they can be changed to align with the new industrial relations framework which is proposed under these amendments, which focus on removing the restrictions around non-allowable and permitted matters. So the aim is to say, 'All right, those were the awards that have been made over the last year and a half now. There's a new regulatory framework here which removes some of those restrictions,' so the commission is given a power through those transitional provisions to have a look at those awards. There are certain matters that can be reinserted into the awards which are set out in the transitional provisions. Then there are a number of matters that the commission is to have regard to in determining whether or not matters should be put into the awards and the parties can make submissions in relation to that. That is set out very much at pages 14 and 15 of the explanatory notes, which explain with regard to variations those matters that must be inserted and then highlight a number of other matters that the commission can consider as to whether they should be inserted into an award.*
>
> *Once those modernised awards under the previous system are looked at, and then under this proposed set of amendments relooked at by the commission, then the parties who have had new agreements made under the current act can recommence bargaining. They are given 90 days from the remodernised award—another 90 days—in which to start bargaining and make a new agreement. Those transitional provisions, as I said, only refer to those 10 modernised awards and the seven agreements that have been made under the existing modernised provisions*[202]

3.17.1 Proposed new section 840

The explanatory notes detail:

> *New section 840 identifies the key purposes of Division 2. Division 2 is required because the Commission has already made a number of modern awards (defined as 'relevant modern awards') under the framework of the pre-amended legislation. Division 2 requires the Commission to review these awards to ensure the content of the awards is consistent with the amended legislation.*[203]

[201] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 3-4
[202] Dr Blackwood, DJAG, Public Departmental Briefing Transcript 20 May 2015: 2-3
[203] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 14

3.17.2 Proposed new section 841

The explanatory notes state:

> *New section 841 identifies the circumstances when the Commission must review and vary relevant modern awards under Division 2. The Commission must review and vary the award as soon as possible, when the Minister gives the Commission a variation of award modernisation request under section 140CA, recommencing the process. The Commission is required to review and vary the award as soon as possible after it receives the request. In relation to how the process is undertaken, the Commission must carry it out in accordance with 140CC. Section 140CE and Chapter 5A, Part 3 do not apply for this purpose. While the Commission must have regard to any particular details contained in the award modernisation request, nothing in this new section 841 is intended to change the process used by the Commission to modernise awards under the pre-amended legislation. Subsection (4) makes it clear, that the award modernisation process (see section 140C), under which a relevant award was made, continues, but for the avoidance of doubt such award will be reviewed and varied by the Commission.*[204]

3.17.3 Proposed new section 842

The explanatory notes state:

> *New section 842 sets out the requirements on the Commission for the review and variation of a relevant modern award. Firstly, it lists at subsection (1)(a) the provisions that must be removed from a relevant modern award, being, the provisions previously required to be included as a result of the operation of repealed sections 71M, 71MA and 71 MB. These dealt with the subject matters of consultation/major organisational changes, dispute resolution and individual flexibility arrangements and their mandated form was prescribed by the IR Regulations.*
>
> *The Commission must also remove any provision ancillary to these provisions. The example provided is clause 8.2 of the Queensland Public Service Officers and Other Employees Award that provides an "individual dispute resolution procedure" and was ancillary to the dispute resolution clause inserted by operation of section 71MA.*
>
> *In regards to the variation of a relevant modern award, matters the Commission must insert into the relevant award, where such matters provided for in pre-modernised instrument include provisions about:*
>
> - *union encouragement;*
> - *union delegates;*
> - *industrial relations education leave or trade union training leave;*
> - *right of entry;*
> - *prevention and settlement of disputes, including employee grievance procedures*
> - *termination, change and redundancy.*

[204] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 14-14

> *These particular terms are used because they have specific meaning within the context of the pre-modernisation awards, forming the subject matter headings in the awards, and therefore do not require defining in the Bill. The Commission, in undertaking this exercise, may amend the provisions – this power is necessary not only because of the introduction of the QES and the modern award objectives (which did not apply to pre-modernised awards) but also because the Commission may need some degree of flexibility where there was more than one relevant pre-modernisation award. The Commission shall also have regard to the submissions of the parties when undertaking this exercise.*[205]

MBRC raised no objections to the proposal to reinstate previously non-allowable content and organisational restructure conditions. They consider that this will not substantially affect either MBRC or their staff as these conditions were preserved through a legally-binding letter agreed to between the council and its staff.[206]

The Services Union advised that the prohibitions in the previous legislation significantly compromised the capacity of employees and their representatives to bargain. With regard to the MBRC agreement, they advised that the MBRC sent a letter to staff setting out all conditions removed from the agreement by operation of the legislation would be maintained on an individual contract basis but lost if a yes vote was not delivered. The Services Union provided the Committee with a copy of the correspondence sent to Council employees. A copy of this correspondence is included in Appendix D. The Services Union considered that it would not be unreasonable to characterise Council's stance as threatening and intimidating and the result of the vote was that an unfair agreement was agreed which created a two tier wages and conditions agreement.[207]

They consider that:

> *No agreements made since 1 October 2014 have been fairly bargained as employees have been effectively forced to trade off conditions for future employees in order to maintain their current conditions albeit in the form of individual contracts. This is completely unfair. Employees and their representatives are entitled to bargain in a fair bargaining environment.*[208]

3.17.4 Proposed new section 843

The explanatory notes state:

> *New section 843 give the Commission the power to consider other variations to the relevant modern award, where such a matter was not reflected (or adequately reflected) in the modern award but were contemplated by the pre-modernisation award or awards. The reference to 'pre modernisation award' is chosen expressly to limit the scope of such variations. It is not intended to be a revisiting of the award's terms in its entirety and new claims, not provided for in the pre-modernisation award should not be considered. It is anticipated that it will allow the Commission to re-consider, by reference to the amended Act, such issues as allowances, hours of work, spread of hours and pay classifications, where the relevant award has omitted these or provided for them in a different manner. The Commission will consider the submissions of the parties when reviewing the award in accordance with this provision.*[209]

[205] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 14-15
[206] MBRC Submission 323 : 2
[207] The Services Union Submission 1015: 2
[208] The Services Union Submission 1015: 2
[209] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 15

3.17.5 Proposed new section 844

The explanatory notes state:

> *New section 844 gives the Commission the power under the award modernisation process to increase the number of modern awards covering an industry or occupation (or common group of employees) where there was a significant reduction in the number of modern awards and the Commission considers it appropriate. The Commission must consider a submission made by a party covered by the relevant modern award about whether to increase the number of modern awards covering the industry or occupation. In relation to how the number of awards is achieved, subsection (4)(a) makes it clear that the relevant modern award's coverage is reduced (ie. to cover a particular cohort/s of employees within that industry and occupation). Subsection 4(b) then provides that any coverage which has been excised from that "parent" relevant modern award must be provided for in one or more additional modern awards (ie. To cover the remaining cohort/s of employees in that industry or occupation). Subsection 5 makes clear that these additional modern awards are then taken to be (or deemed to be) "relevant modern awards" for all other purposes. This is to enable the Commission to then undertake the review and variation process under Division 2 but having regard to the new coverage arrangements.*[210]

The LGAQ submission noted that the shift to a single government industry awards was welcomed by Councils as it simplified the award regulation of employment obligations and responsibilities and has paved the way for greater equity in employment for local government employees. They consider that the new modern award is seen by Councils as assisting them in improving their capacity to remove the regulatory and administrative complexity of applying significant numbers of disparate award arrangements to distinct operational areas in a manner that addresses and balances the various interests and needs of contemporary local government work.[211] The LGAQ also advised the Committee that:

> *The reasoning for the single local government award is that it reflects the contemporary Award structure which exists for the Local Government sector across most of Australia.*[212]

LGAQ also advised the Committee that the new Queensland Local Government Industry Award – 2014 creates a consolidated uniform pay structure for all local government employees, and this has led to an increase in pay for many classifications of work in local government, whilst at the same time no employee is made worse off.[213] They noted that there were instances where allowances applying materially to the same disability were replicated and applied differently across many different pre-modernisation awards. They advised that allowances which were rolled into the 'Local Government Industry Allowance' are an example of this.[214]

The Services Union delegate, who was also a local government employee, at the Committee's hearing advised the Committee that the consolidation of allowances has seen many employees take home wages decrease. These included the loss of locality allowance, fifth week annual leave provisions, job security and major change notification. They advised during the recent negotiations for an agreement in their workplace saw a campaign to drive down wages, conditions and limit employees' capacity to be involved in issues that impact their work.[215]

[210] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 15
[211] Submission LGAQ Submission 1027: 3
[212] Correspondence to FAC from LGAQ dated 26 May 2015: 5
[213] Correspondence to FAC from LGAQ dated 26 May 2015: 3
[214] Correspondence to FAC from LGAQ dated 26 May 2015: 3
[215] Ms MacDonald, Public Hearing Transcript 25 May 2015: 16

The LGAQ acknowledged that there was the removal from the Queensland Local Government Industry Award – 2014 of 'Locality Allowance' and additional week of annual leave for some employees in some geographical areas, which existed under a past consent arrangement under former Federal local government awards. However, these specific entitlements were subject to separate hearings before the QIRC where the merits of their continued inclusion were debated at length and in detail.[216]

The TSIRC pointed out that the additional annual leave was in their view unfairly administered to a particular group who were remunerated in accordance with the formal Federal Local Government Officers Award 1998.[217]

The Mareeba Shire Council noted that their understanding of this provision allows for multiple modern awards to apply to local government. They advised that they work with employees as a whole and to have multiple awards applying to the workforce unnecessarily complicates matters for employees and the employer. They considered that this is one part of the previous changes that Council saw as favourable for both employees and employer. They advised that under previous negotiations there have always been discussions with employees and unions regarding equalising the different awards applying to local government employees and they consider it makes sense to have all local government employees on the same award. They indicated that it would be their preference that one award apply to all local government employees to provide equity across the workforce.[218]

The Mackay Regional Council advised that they viewed the industrial relations framework under which it operates, namely its Certified Enterprise Agreement and the Award that underpins it, as critical to providing flexibility to be able to adapt to change. They argued that any new Enterprise Agreement needed to move away from the traditional way Councils operated and structure towards being able to compete with industry general but at the same time deliver fairness to staff.[219]

They noted that they supported the concept and development of a single Award to cover all local government operations. They considered that this was seen as a streamlining process and an opportunity to overhaul and modernise a number of historic awards.[220]

Mackay Regional Council advised that they supported combining a number of allowances, within the new Modern Award. They consider that the application and claiming of allowances is often a dispute point between employer and employee and this helps to take away a conflict point.[221]

They consider that any move back to a complicated and complex multi-award system would be a backward step. They recommend that any necessary changes should be made to the single Award rather than returning to the old framework.[222]

[216] Correspondence to FAC from LGAQ dated 26 May 2015: 3
[217] Correspondence to FAC from TSIRC dated 26 May 2015: 4
[218] Mareeba Shire Council Submission 1024:
[219] Mackay Regional Council Submission 1019: 2
[220] Mackay Regional Council Submission 1019: 3
[221] Mackay Regional Council Submission 1019: 3
[222] Mackay Regional Council Submission: 1019: 3

The TSIRC advised the Committee that in their opinion the modern award is a significant step in creating employment conditions that celebrate the diversity of their workforce. They advised that the implementation of a single modern award has seen a significant positive change in terms of moving away from the traditional and segregated "white" and "blue" collar workforce to a harmonious and productive work environment. They consider that the change is more cost effective in term of finance and payroll administration and enables transparency and respect between industries and specialisations.[223]

The LGAQ confirmed that re-trialling the question of the number of Modern Awards to apply in local government is cause for concern amongst Councils. They stated:

> *It is difficult not to conclude that re-trialling the question of the number of Modern Awards to apply in Local Government pursuant to a new s844, would only likely lead to a different outcome where the current Minister, by variation to the Award Modernisation request, heavily influenced that decision by requesting or directing a different outcome to occur.*
>
> *In such case, LGAQ would argue that such outcome is clearly not about 'restoring fairness' or "restoring independence to the Commission". Given the significance of Award Modernisation to the Local Government sector, and consequently the broader communities they serve, such intervention will significantly undermine the credibility of the QIRC to be seen as an independent body which can make decisions based on equity, good conscience and the substantive merits of the case, not only for persons immediately concerned, but more importantly, for the community as a whole.*[224]

The Services Union, which represents large numbers of local government employees, advised that it agrees with the proposed amendment to allow for an increase in the number of modern awards for local government. They advised that the Award modernisation process placed unnecessary emphasis on reducing the number of local government awards and there was significant opposition. They advised that there are good reasons for more than one Award in local government and this should be reviewed.[225]

They advised that for officers of local government, the award modernisation process has meant that they have had a number of allowances removed altogether. They advised that in some work places employees are being paid different rates for doing the same job due to a two tiered wage system.[226]

The Services Union considers that Certified Agreements made since 1 October 2014 have not been genuinely bargained. They stated that:

> *Instead employees have been effectively forced to trade off conditions for future employees in order to maintain their own current conditions albeit in the form of individual contracts.*[227]

The LGAQ acknowledged:

> *It is true to say that despite a number of unions not liking the outcome of the single Queensland Local Government Industry Award – 2014; it has enormous support from all Queensland local governments, outside of Brisbane City Council.*[228]

[223] Correspondence to FAC from TSIRC dated 26 May 2015: 3
[224] LGAQ Submission 1027:
[225] The Services Union Submission 1015 : 1
[226] Ms McDonald, Public Hearing Transcript 25 May 2015: 23
[227] Correspondence to FAC from The Services Union dated 26 May 2015: 4
[228] Correspondence to FAC from LGAQ dated 26 May 2015: 6

At the Committee's public hearing the LGAQ stressed:

> *The explanatory note suggests that the bill intends to give the commission the power to increase the number of awards covering our industry. The commission has that power already, so the only conclusion that we have reached is that inserting this additional clause is an intention to undermine the independence of the commission and facilitate the commission to increasing the number of awards. There is no evidence referenced in the bill's introduction that the modern award is flawed or that having the single award has disadvantaged employees. If it is the non-allowable matters that are causing concern, the bill could be amended to direct the commission to review the award and reconsider any matter that was not considered during the award modernisation process as a result of it previously being deemed to be non-allowable. The LGAQ and councils would support this direction and willingly participate in the process. Having just spent 12 months of industrial uncertainty and outlaying considerable investment in the award modernisation exercise, councils and staff now find themselves having to go through it all over again. We struggle to understand how that can be in the public interest.*[229]

The department responded that:

> *Wholesale rescinding of awards made by the independent arbitrator, QIRC, is not required as the review and variation process provided in the Bill gives QIRC and the parties to the award adequate parameters around which they can revisit and amend content as appropriate.*
>
> *The review and variation process for modern awards is at new sub sections 840-847, part 20, division 2. Ten modern awards (being the Local Government Industry Award 2014 and nine other state government sector awards) were made prior to the suspension of the award modernisation process and will be subject to this process. These awards are:*
>
> - *Queensland Local Government Industry Award – State 2014;*
> - *Health Practitioners and Dental Officers (Queensland Health) Award – State 2014;*
> - *Legal Aid Queensland Employees Award – State 2014;*
> - *Queensland Agricultural Colleges Award – State 2014;*
> - *Queensland Parliamentary Service Award – State 2014;*
> - *Queensland Public Service Officers and Other Employees Award – State 2014;*
> - *Resident Medical Officers (Queensland Health) Award – State 2014;*
> - *WorkCover Queensland Employees Award – State 2014;*
> - *Tourism and Events Queensland Employees Award – State 2014; and*
> - *Queensland Rail Award – State 2014 (since rendered redundant by the High Court decision that Queensland Rail is in the federal jurisdiction)*
>
> *New section 840 requires that QIRC review a modern award to ensure the content of the modern awards made under the previous framework is varied to be consistent with the amended, less restrictive, framework.*[230]

[229] Mr Goode, Public Hearing Transcript 25 May 2015: 32
[230] Correspondence to FAC from DJAG dated 26 May 2015:

With regard to the single award for local government, the department responded:

> *The Bill extends this provision to any award that had a "significant" change to coverage. This has been the situation in local government industry, where award coverage went from 18 awards covering the industry to one award. This reduction was, in part, driven by the previous Government's Ministerial Award Modernisation Request issued to the Commissioner under section 140C(1) of the IR Act which provided, at paragraph 20, "when undertaking the award modernisation process with regard to the Local Government sector (excluding Brisbane City Council), the Commission is to give consideration to consolidating the Queensland Local Government Officers Award 1998, the Municipal Officer's Award (Aboriginal and Islander Community Councils) Award 2004; and the Local Government Employees (Excluding Brisbane City Council) Award State 2003 (collectively, the Awards) and creating a new modern Local Government Industry Award covering employers and employees subject to those Awards". The Bill allows the Commission to reconsider the matter giving weight to the submissions of the parties, ensuring the safety net for those employees and employers is fair.*[231]

3.17.6 Proposed new section 845

The explanatory notes state:

> *New section 845 confirms that a variation to a relevant modern award under this Part comes into 'operation' the day on which the Commission makes a determination. Therefore it is not intended to have retrospective effect.*[232]

3.17.7 Proposed new section 846

The explanatory notes state:

> *New section 846 sets out the circumstances under which the relevant modern award, as varied, applies to an employer or employee in circumstances where there is a relevant certified agreement in place, or in circumstances where there is no certified agreement in place.*
>
> *For employees covered by a relevant certified agreement, the varied modern award starts to apply once the employees are covered by an agreement which is certified, or a determination which is made, after the varied relevant modern award starts to operate (i.e. once the parties have re-bargained for and certified a new agreement). Until such time as this occurs subsection 3 provides, for the sake of clarity, that the modern award as it stood pre-variation continues to apply.*
>
> *For employees not covered by a certified agreement on the day the modern award is varied (the variation day), the varied modern award starts to apply on the variation day or a later day stated by the Commission.*
>
> *For employees covered by a continuing agreement or determination, or a certified agreement which has not become a continuing agreement under the Act, the varied relevant modern awards will apply in the same way modern awards do that is, by reference to when a new certified agreement is made (i.e. it has prospective application only). The note refers to section 824 which governs this situation.*[233]

[231] Correspondence to FAC from DJAG dated 26 May 2015:
[232] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 16
[233] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 16

3.17.8 Proposed new section 847

The explanatory notes state:

> *New section 847 effect is to bring certain certified agreements to an early (nominal) end. This clause will only apply to the situation where: (1) the Commission made a relevant modern award under the pre-amended legislation for a group of employees, and (2) the Commission also approved a new certified agreement for that group of employees. Because the relevant modern award will be reviewed and varied by the Commission, the legislation brings the new certified agreement to an early (nominal) end so that the parties are able to bargain for a new agreement under circumstances, if they elect to do so, where they are aware of the content of the reviewed modern award. The legislation provides that the new (nominal) expiry date of such an agreement is by reference to the date the modern award is varied by the Commission (i.e the variation date) and a period of 3 month from such time.*
>
> *The following is an example of the effect of a nominal expiry date being reached. For this example, it is a four year certified agreement entered into on 30 December 2014, with a new nominal expiry date (by reference to the variation day) of 30 July 2015. Pay increases under the agreement are annually on 1 July. The new nominal expiry would mean the provisions providing a pay increase on 1 July 2014 and 1 July 2015 would be applicable/continue to operate. The pay increases of 1 July 2016 and 1 July 2017 would not be triggered, despite the agreement continuing to operate in accordance with section 164(2)(a), as the agreement has reached its nominal expiry date.*
>
> *To ensure bargaining for a new certified agreement does proceed, section 847(4) deems:*
>
> - *the requirements of section 143, in relation to the commencement of a period of bargaining, to be have met and satisfied by the proposed parties; and*
> - *the proposed parties to have 'begun negotiations for a proposed certified agreement' (despite any actions or inactions of parties).*
>
> *Having regard to the ability of employers to direct ballot employees for an agreement under section 147A, a "proposed party" for this purpose is taken to also include any employee organisation that could have been bound by the relevant certified agreement in accordance with section 166(2).*
>
> *In relation to the application section 147 (Peace obligation period to assist negotiations) to such agreements, new section 847 does not alter the meaning of 'peace obligation period' for this purpose. In practice, this means the peace obligation period will continue until at least 7 days after their new nominal expiry date. This is despite the "notice of intention" being taken to have given on 'variation day.' Therefore negotiations between the parties for a new agreement may benefit from a longer 'peace obligation period' than prescribed by the legislation as a minimum.*[234]

[234] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 16-17

Proposed new section 847 is as follows:

Division 3 Provisions for certified agreements

847 Change of nominal expiry date for relevant certified agreement

(1) This section applies if—

(a) each prescribed modern award for a relevant certified agreement has been reviewed and varied under division 2; and

(b) the nominal expiry date for the relevant certified agreement is more than 3 months after the variation day.

(2) On the variation day, the nominal expiry date for the relevant certified agreement is taken to be the earlier of—

(a) the day that is 3 months after the variation day; or

(b) if an earlier day is prescribed for the expiry by regulation, the prescribed day.

Note—

See section 164(2)(a) in relation to the continued operation of the relevant certified agreement after its nominal expiry date.

(3) On the variation day—

(a) the requirements under section 143 for a proposed agreement are taken to have been satisfied; and

(b) the parties to the relevant certified agreement are taken to have begun negotiations for a proposed agreement.

(4) For subsection (3)(a), the proposed parties to the proposed agreement are—

(a) each party to the relevant certified agreement; and

(b) an employee organisation that could have been bound by the relevant certified agreement under section 166(2).

(5) In this section—

prescribed modern award, for a relevant certified agreement, means a relevant modern award, or a modern award made under section 844, that applies to all or some of the parties covered by the relevant certified agreement.

variation day means—

(a) if there is 1 prescribed modern award for the relevant certified agreement—the day the commission makes a determination under division 2 varying the prescribed modern award; or

(b) if there is more than 1 prescribed modern award for the relevant certified agreement—the day the commission makes a determination under division 2 varying the last of the prescribed modern awards for the relevant certified agreement.

The TSIRC advised the Committee that their first ever Certified Agreement was certified by the QIRC on 5 February 2015. The nominal expiry date of the agreement is 30 Jun 2017. The agreement is a negotiated collective agreement between Council and 337 employees. They advised that 85.6 percent of the workforce voted in the ballot, with 98.25 percent voting in favour of the agreement.[235]

TSIRC advised that:

> *After many years of unrest in the industrial relations arena, both staff and Council have now together achieved a sense of certainty, founded on trust and common understanding that Council's greatest assets are its staff. Rapport has improved immeasurably and Council is finally on its journey to becoming an employer of choice; a principle objective in its Corporate Plan 2014 – 2019.*

[235] Torres Strait island Regional Council Submission 517: 1

> *In turbulent and uncertain financial times (as all levels of Government have experienced and navigated over the past many years since the global financial crisis and subsequent downturn in the local, national and international economies), any certainty that can be achieved is greatly accepted and assists those entities in turn providing greater certainty to its workforce who in turn are more motivated to proactively serve the public. Council has already begun transitioning fixed term contract staff to permanency under the Certified Agreement. Council, like many other Queensland Local Governments, has in the past been through forced redundancies where staff morale hit an all-time low; a prospect that up until introduction of the Bill seemed but a distant memory.*[236]

TSIRC noted that they are concerned about the financial impact of having to restart the process. They advised:

> *…the requirement for local government to once again return to the negotiating table with staff within three months of such a variation being announced by the commission may result in a total inability of council to budget in accordance with the Local Government Act for unforeseen financial implications. Our concern with introducing or varying the modern award midway through the financial year would require commitment by government to support implementation through increased funding to local government to allow for any increases in human resource costs. It is anticipated for staff consultation costs, as well as system implementation costs for reconfiguring of our payroll systems, a conservative figure of around $200,000 is estimated for this exercise.*[237]

TSIRC is affected by section 847 which requires that the nominal expiry date for the certified agreement is three months from variation date. TSIRC submit that:

> *It is principally submitted by Council that proposed section 847 be omitted from the Bill and that employer organisations that have Certified Agreements in place and are respondent to current pre-variation Modern Awards, continue to apply the nominal date of expiry as certified by the QIRC, with varied Modern Awards only to apply upon expiry thereafter. It is submitted that as the maximum term of Certified Agreements is sufficiently restricted by the Act, there is little scope for abuse by employer organisations and instead provides sufficient time for them to recalibrate their financial and operational affairs for informed change.*[238]

The MBRC is also seeking an amendment to the transitional provisions which sets the nominal expiry date at three months after the QIRC review and variation of the relevant modern award applying to agreements already made in connection with a modern award.[239]

They advised that MBRC has a certified agreement in place which was agreed to under the modern award provisions. Voting for this agreement was finalised on 28 November 2014 with a 92.2 percent vote in favour of the agreement. The agreement was certified on 22 December 2014 and has an expiry date of 30 June 2018. The first pay increase under the agreement was backdated to 1 July 2014.[240]

[236] Torres Strait island Regional Council Submission 517: 2
[237] Ms Ahwang, Public Hearing Transcript 25 May 2015: 44
[238] Torres Strait island Regional Council Submission 517: 3
[239] MBRC Submission 323: 1
[240] MBRC Submission 323: 1

The MBRC advised the Committee that in order to include the non-allowable entitlements the Council provided all staff, who were employed by Council at the time that the agreement was certified, a legally binding letter which secures every non-allowable entitlement they enjoyed from the former agreement. They noted that they could not have that in the agreement because these items were not allowed to be included under the legislative framework, so they created a letter that guaranteed those non-allowable matters.[241]

The Committee queried what cost was involved in exploring how to make effectively that non-allowable content legally enforceable. MBRC advised that they received legal advice to ensure that what they were putting in place was binding.[242]

MBRC advised the Committee that in order to get the agreement passed by their staff they presented the legally binding letter as part of the package to be negotiated. They advised that they went to great lengths to have detailed presentations to ensure that the whole structure was understood.[243]

MBRC agreed that the process would have been easier if non-allowable content could have been included in the certified agreement.[244]

MBRC submitted that, whilst it recognises the government's desire to amend the industrial relations system, it is concerned that the transitional provisions allow the early termination of a legally binding agreement. They consider that this impacts on whatever decisions have been made by both council and employees in the knowledge that the agreement was in place.[245]

The MBRC submission states that it recognises that:

> *…on face value it may appear that the implications of s847 will benefit our staff by allowing them to negotiate for conditions not available under the modern award. However, this is not correct in that those conditions are already secure for our staff. All Council staff who voted in the EBA process have a legally binding letter which secures every non-allowable entitlement they enjoyed from our former EBA. This includes union training leave, generous redundancy provisions, organisational change provisions as well as provisions related to home depots and positive employment relations. Furthermore in EBA3, every staff member maintained their existing classification levels and increments and access to RDO arrangements.*[246]

They advised the Committee that:

> *We are one of only four councils, as I understand it, that has an EBA certified under the modern award, and we believe that our staff are uniquely disadvantaged by this bill. The work that we undertook to develop an EBA package which protects and supports our staff will simply be blown away if this bill comes into force, and I would just like to outline why. Firstly, when our council went to vote, in excess of 90 per cent of our workforce voted for our EBA; that is, it was an unprecedented 92.2 per cent who voted in favour of the EBA that was put before them. Not only does this bill, in our view, disrespect the choice our staff freely made, but it also impacts on whatever personal decisions they have made, given the assurance that the EBA was guaranteed to be in place until 30 June 2018.*

[241] Mr Hitzman, Public Hearing Transcript 25 May 2015: 33
[242] Mr Hitzman, Public Hearing Transcript 25 May 2015: 38
[243] Mr Hitzman, Public Hearing Transcript 25 May 2015: 38
[244] Mr Hitzman, Public Hearing Transcript 25 May 2015: 38
[245] MBRC Submission 323: 2
[246] MBRC Submission 323: 2

> *In our view, this strikes at the heart of the basic legal principle that binding agreements between parties are certain and not subject to change other than by agreement between the parties.*[247]

They stressed that they can see no reason why their agreement should not be allowed to run its term until 30 June 2018.[248]

3.17.9 Proposed new section 848

The explanatory notes state:

> *New section 848 makes it clear in light of the legislative intent around section 847 that such relevant certified agreements cannot have its nominal expiry date (either old or new) extended by application to the Commission under section 168 of the IR Act.*[249]

3.17.10 Proposed new section 849

The explanatory notes state:

> *New section 849 creates an ability for a regulation to be made to vary a relevant certified agreement. This facility will allow the certified agreement to be varied to address matters not appropriately dealt with currently, such as organisational change. Such provisions will take effect from the date the regulation is notified or where the regulation states a later date, from that date. In practice, a regulation will continue to operate as long as the relevant certified agreement is in operation (i.e. until terminated or replaced) or until the regulation is repealed.*[250]

Proposed new section 849 is as follows:

849 Regulation may vary relevant certified agreement

(1) A regulation may vary a relevant certified agreement in the way stated in the regulation.

(2) The variation takes effect from the day the regulation commences or, if the regulation states a later day, the later day.

(3) This section applies subject to chapter 2A, part 3, of the amended Act.

The Services Union indicate their support for proposed new section 849. They state that this support is because some of the agreements which have been made since 1 October 2014 contain provisions that are so unreasonable that no reasonable person could allow them to remain even for a few months. They consider that the provision will allow agreements which have provisions that could be described as unfair to be immediately remedied on a case by case basis.[251]

The AMWU submission raises what they consider to be a technical issue with respect to proposed new section 849.

[247] Mr Hitzman, Public Hearing Transcript 25 May 2015: 33
[248] Mr Hitzman, Public Hearing Transcript 25 May 2015: 33
[249] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 17
[250] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 17
[251] The Services Union Submission 1015: 2

They advised:

> *The AMWU notes that this proposed provision is confined to modern agreements which fall within the definition of a "relevant certified agreement". In accordance with the proposed s839 a relevant certified agreement is a certified agreement that is a modern industrial instrument and certified by the Commission before the commencement. The AMWU further notes, as outlined above, the rationale for this facility is to ensure matters such as organisational change can be addressed by way of variations to this class of agreement.*
>
> *The AMWU is concerned that the proposed provision, as it currently stands, may be interpreted and applied to extend beyond matters envisaged by the government. In particular, we are concerned that the provision may be applied in a way which provides an unfettered capacity to vary agreed outcomes arrived at between employees, their unions and employers (as opposed to ameliorating the damage caused by the Newman LNP government's "non-allowable matters"). It is on this basis that the AMWU respectfully proposes that the scope in which a Regulation may be issued in this circumstance should be particularised within s849. The AMWU acknowledges that the proposed provision is a transitional provision which only relates to a small group of agreements and has come about through extraordinary circumstances, but nevertheless greater constraints must be included within the provision.*[252]

The UFUQ submission also submitted that the Bill ought to be amended to omit or amend proposed new section 849. They considered that legislators ought to be reluctant to reach into agreements which have been made or legislate powers to directly and unilaterally vary the terms of such agreements. If such a power were to be seen as acceptable by legislators, and used as such, then parties to agreements would have diminished certainty when negotiating and operating under such agreements.[253]

The UFUQ accepts that the policy intent is designed to redress a specific set of circumstances which is valid and in the public interest. However, they are concerned about the mechanism of using statutory regulation as proposed in that section. They considered that:

> *If the state government wishes to provide beneficial terms to compensate for the unusual and undue constraints impacting on those few agreements, they ought to be able to do so without taking the step of legislating to allow unilateral variation by government regulation.*[254]

They suggested that if proposed new section 849 is to be included, then it should be amended to clarify that a variation can only provide additional beneficial terms or to include provision that were otherwise non-allowable and where the outcome passes a 'no disadvantage' test. They consider that the only variations allowed by law should be variations specifically designed to redress the bargaining disadvantages arising from the restrictive laws introduced in the previous Parliament.[255]

[252] AMWU Submission 500: 7
[253] UFUQ Submission 970: 5
[254] UFUQ Submission 970: 6
[255] UFUQ Submission 970: 6

QTU also identified their concerns with regard to proposed new section 849. They stated:

> *In principle, parliament ought not to have the capacity to unilaterally vary a Certified Agreement by way of Regulation. This potentially opens up the floodgates to allow other sections to be overridden by way of Regulation. Should the government require an enabling provision to enact or reinstate beneficial conditions which were lost as a result of the Award Modernisation process, the better approach would be to use other mechanisms such as Ministerial Directives.*[256]

The LGAQ also voiced their concern that agreements could be varied by regulation. They advised:

> *There is a provision in the bill that talks about the ability by regulation for an agreement in place to be further amended, and I think that is another element of real concern that agreements entered into, even under a remade bill, could still be subject to regulatory change. So that is begging the question of the independence of the system and employers and employees to be able to negotiate not only those agreements but also issues that they may have at any point in time in terms of employment matters with the confidence that it will be dealt with independently by the QIRC.*[257]

The department responded that:

> *New section 849 (clause 33) creates an ability for Government to make a regulation to vary a modern certified agreement. This provision is made to address an unique circumstance arising as a result of the previously restrictive legislative framework. Its potential use is limited to only the seven certified agreements in the public and local government sectors made prior to the introduction of the Bill. While the broad scope of the regulation making power has raised concerns with some stakeholders, including within the employee organisations, the regulation making facility is considered a necessary interim measure. The facility is limited to only those modern certified agreement made up to the introduction of the Bill. Given the unique circumstances surrounding the negotiation of those particular modern agreements and the Government's objective to restore conditions that have been lost, this provision is considered appropriate. The regulation-making power will be available only as long as the original certified agreement is in operation. It cannot be utilised for continuing agreement or a new modern agreement made after the introduction of the Bill.*[258]

3.17.11 Proposed new section 850

The explanatory notes state:

> *New section 850 creates a restriction on certification of agreements or the making of an arbitration determination under section 150, in certain instances where there is a relevant modern award. In such instances the Commission must refuse to certify such agreements until such time that the Commission has the opportunity to review and vary the awards.*[259]

[256] QTU Submission 919: 5
[257] Mr Hoffman, Public Hearing Transcript 25 May 2015: 36
[258] Correspondence to FAC from Director-General, DJAG, dated 26 May 2015: 5
[259] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 17

Proposed new section 850 is as follows:

> **850 Restriction on certification of agreements or determination of arbitration**
>
> (1) This section applies if—
>
> (a) a relevant modern award has not been reviewed and varied by the commission under division 2; and
>
> (b) after the commencement, an agreement is proposed under chapter 6 that would cover all or some of the parties covered by the relevant modern award.
>
> (2) The commission—
>
> (a) must refuse to certify the proposed agreement; and
>
> (b) may not make an arbitration determination under section 150.
>
> (3) This section is taken to have had effect on and from the day of introduction into the Legislative Assembly of the Bill for the amending Act.

The Fraser Coast Regional Council highlighted their concern that:

> *…the Bill contains specific amendments to the IR Act that which cause significant concern to Council and WBWC which would undermine staff confidence in Council and WBWC and the extensive negotiation and bargaining process which has been undertaken. Both staff at Council and WBWC have supported the agreements, which are three year agreements, ceasing on 15 March 2018 and have been awaiting a pay increase since 1 July 2014. It would be damaging to both Council and WBWC with an overwhelmingly majority of staff from both organisations supported the agreements in their entirety for the agreements not to be certified in QIRC.*
>
> *If the Bill were enacted in a relevantly unamended form, concern is raised that the following outcomes may occur for Council and WBWC:*
>
> *I. The certification of the agreements might be voided by the retrospective application of s850; or*
>
> *II. The certification of the agreements, may be caught by the provisions of s847 which will see an early the nominal expiry date applied to the agreements, possibly being as early as three months after the variation date.*[260]

Section 850, which would likely apply in this instance, requires that the QIRC must refuse to certify a proposed agreement if the relevant modern award has not been reviewed and varied by the Commission. The Council is concerned that they have already significant resources and their staff have not received a wage increase since 1 July 2013. Their submission seeks to enable their agreements to be certified and that the agreements be allowed to run for the duration of the period contained in the agreements.[261]

[260] Fraser Coast Regional Council and Wide Bay Water Corporation Submission 1037: 3
[261] Fraser Coast Regional Council and Wide Bay Water Corporation Submission 1037: 3

With regard to the nominal expiry date of a modern certified agreement made prior to introduction, the department responded:

> *Only seven modern agreements have been certified under the legislation's previously more restrictive bargaining regime. There are four local government agreements and three public sector agreements. These are:*
>
> - *Moreton Bay Regional Council Certified Agreement 2014;*
> - *Mareeba Shire Council Certified Agreement 2014-2017;*
> - *Somerset Regional Council Certified Agreement 2015;*
> - *Torres Strait Island Regional Council Certified Agreement 2015;*
> - *QFleet Certified Agreement 2014;*
> - *Queensland Agricultural Training Colleges – Certified Agreement 2014; and*
> - *WorkCover Employing Office – Certified Agreement 2014*
>
> *Upon the variation of the underpinning modern award these agreements will be given a new nominal expiry date three months from the variation date. Bargaining for a replacement agreement is taken to have commenced from this date. This approach is considered necessary to ensure parties to those agreements are not disadvantaged compared to other workers who are due to bargain in the amended and open-content framework following the review and variation of the modern award.*[262]

3.17.12 Proposed new section 851

The explanatory notes state:

> *New section 851 sets out, for the avoidance of doubt, what happens to incomplete award modernisation process (that is, a process of modernising a particular award or awards that commenced prior to the commencement of the Bill, but where no modern award was made). Such awards will not continue in the award modernisation process by reference to the pre-amended Act but instead shall be subject to the IR Act, as amended by the Bill. Any reference to the Full Bench for the making of a modern award (such as in the case of the "Blue Collar" Award) is ended. The effect being that it will revert to the Commission's conference process to be reconsidered a fresh.*[263]

Proposed new section 851 is as follows:

Division 4 Other matters

851 What happens to incomplete award modernisation process

(1) This section applies if, before the commencement, an award modernisation process was started under section 140C.

(2) If the commission had started to modernise a pre-modernisation award before the commencement but no modern award was made—

(a) the commission must continue to modernise the pre-modernisation award under the amended Act; and

(b) any reference of the matter to the full bench ends on the commencement.

(3) If the commission had not started to modernise a pre-modernisation award before the commencement, the modernisation process must be conducted under the amended Act.

(4) For this section, the process for modernising a pre-modernisation award starts when the commission releases an exposure draft of the proposed modern award.

[262] Correspondence to FAC from DGAG 26 May 2015: 5
[263] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 17

The QNU is seeking the amendment of section 851 to remove the requirement for any award that has not been modernised to be modernised.

The QNU advised that the inclusion of this provision presents a difficult situation for their union in respect to the *Queensland Health Nurses and Midwives Award – State 2012*. They advised:

> *We commenced the very difficult and time-consuming process of modernising this award in 2013 in accordance with the requirements of s140B of the Act and with the assistance of the Queensland Industrial Relations Commission (QIRC). This was despite the fact that the QIRC had only just made the award in 2012 by consent of the parties and following extensive negotiations and hearings.*
>
> *Award modernisation also impacts on enterprise bargaining because the Act creates a situation whereby workers currently covered by a certified agreement must finalise the modernisation of their award consistent with the terms of the Act before they can commence bargaining.*
>
> *An existing certified agreement becomes a 'continuing agreement' if the agreement reaches its nominal expiry date and the relevant pre-modernisation award for the agreement has not been modernised under the relevant provisions of the Act (s140B). A continuing agreement (as defined under s824(2) of the Act) will be extended by up to one year beyond its nominal expiry date. The government may then provide a wage increase to employees covered by the 'continuing agreement' by regulation.*
>
> *The parties cannot commence bargaining for a replacement agreement more than 60 days before the nominal expiry date of the current agreement and must not seek to take any protected industrial action that may offend the extremely narrow 'relevant industrial action' provisions of the Act [s148(3)].1 If this group of workers do offend such provisions they will be subject to a conciliation period that extends for 14 days before being referred to arbitration if the conciliation fails. The arbitration period for a matter is then limited to 90 days.*
>
> *These arrangements do not recognise the 'no fault' situation of a group of workers covered by a certified agreement being converted to the status of a 'continuing agreement' because it was not possible to conclude the award modernisation process in the time available. This denies the affected employees their entitlement to collective bargaining for a replacement agreement through no fault of their own and subjects them to an automatic extension and an associated wage increase by regulation.*[264]

The QNU further advised that they are currently in a situation where they are without a modern award and unable to commence bargaining until the end of 2015. They argued that the timeframes and constraints placed upon workers through the award modernisation process are unnecessary, unreasonable and unworkable and therefore are seeking an immediate cessation of the modernisation process in relation to their award.[265]

[264] QNU Submission 1038: 5-6
[265] QNU Submission 1038: 6

The department responded:

> *A number of stakeholders, including the Queensland Nurses Union, have raised the continuation of award modernisation as an issue, citing the delay in bargaining as a significant concern. While the continuation of award modernisation is ultimately a policy matter for Government, there is benefit in completing the award modernisation process at a practical level. Award modernisation is a QIRC-led process of reviewing and rationalising State awards to ensure these awards continue to provide a fair and contemporary safety net of terms and conditions for employees and employers. The amended legislation will continue to provide for this process and it is envisaged that the process will quickly recommence upon the passage of the Bill and with the release of a new Award Modernisation Ministerial Request.*[266]

3.17.13 Proposed new section 852

The explanatory notes state:

> *New section 852 confirms that any existing individual flexibility agreements entered into or under the pre-amended Act (by way of an industrial instrument in place) continue to operate despite the repeal of section 71MB on commencement.*[267]

3.17.14 Proposed new section 853

The explanatory notes state:

> *New section 853 is to address where an arbitration has been commenced (but no determination made) prior to the amended Act and where section 831 has application (i.e it will not be a modern instrument). Section 853(1) makes it clear that the content of such agreement, where determined by Commission or where agreement is reached by the parties and certified by the Commission, can include a provision mentioned in repealed chapter 15, part 2 (for example a contracting provision, an employment security provision and other subject matters contemplated by section 691C). The agreement however, if arbitrated, will be subject to section 149D, as amended by this Bill. This will mean that the reference to 'financial position considerations' in connection with the exercising of the Commission's powers will not apply.*[268]

3.17.15 Proposed new section 854

The explanatory notes state:

> *New section 854 is to address where there is a relevant modern award or awards, reviewed and varied by the Commission and a proceeding was commenced (but not completed) for the making of a certified agreement, prior to the amending Act. Section 831 does not apply in such circumstances. Section 854 confirms that the amended Act will apply for the purposes of certification of the agreement or where an arbitrated determination is made. This will mean that the content restrictions in the pre-amended Act (non-allowable content, and certain required content) will not apply.*[269]

[266] Correspondence to FAC from DJAG 26 May 2015: 3
[267] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18
[268] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18
[269] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18

3.17.16 Proposed new section 855

The explanatory notes state:

> *New section 855 confirms that amended section 319 (which contains the requirements for legal representation) will not apply to proceedings commenced but not finalised prior to the Bill commencing.*[270]

3.17.17 Proposed new section 856

The explanatory notes state:

> *New section 856 makes it clear that the effect of repeal of Chapter 15, Part 2 (which operated to deem certain provisions of industrial instruments as having no effect or limited effect) will mean that the provision or such part of the provision will again operate, provided it is still in force on commencement.*[271]

3.17.18 Proposed new section 857

The explanatory notes state:

> *New section 857 provides for a transitional regulation-making power in relation to this Bill to allow for a saving or transitional provision to be made by way of regulation subject to the requirements of this section. This power has a 'sunset' or 'automatic expiry' of 2 years after the date of commencement of the Bill.*[272]

3.17.19 General comments

The UFUQ advised the Committee that they considered it would be incongruous and unfair to allow the ten modern awards to continue to operate without further review to address issues arising, such as the removal of provisions, inclusion of mandatory content, amalgamation of awards and other matters.[273] With regard to the seven certified agreements, they advised that these agreements have been made with underpinning modern awards and it is evident that the agreements and the relevant awards have been made under unfair and inflexible legislation. They are supportive of the policy and legislative intension to allow those instruments to be revisited by the parties under new legislative parameters in order to be fair to all concerned.[274]

The UFUQ noted, however, that the transitional arrangements the clause is not mandating the inclusion of provisions about a particular matter, if the pre-modernisation award did not include such subject matter. They considered that the existence of various subject matters in the pre-modernisation award would have arisen from its original inclusion by the QIRC. They consider that e in making the original order, a meritorious case would have had to have been put forward.[275]

[270] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18
[271] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18
[272] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18
[273] UFUQ Submission 970: 4
[274] UFUQ Submission 970: 5
[275] Correspondence to FAC from UFUQ dated 26 May 2015: 2

The AWU submission supported the transitional arrangement amendments. They advised:

> *The AWU provided detailed submissions to the Commission pressing that no member be disadvantaged during the arbitration of the Local Government Award. Unfortunately the conditions in the new award were reduced which also reduced the safety net for the purposes of the no disadvantage test when bargaining with councils. It is unfortunate that some certified agreements which would not have met the no-disadvantage test under the old award have since been certified. The consequence of this has been that many members have been disadvantage. The AWU notes that following the re-making of the Local Government Award, all existing agreements will expire within 3 months and allow bargaining in a more balanced manner.*[276]

Councils who provided submissions iterated their concern that they had undertaken award and certified agreement negotiations in good faith under the industrial relations regime as it currently stands and the proposed amendments mean that this effort is wasted.

The LGAQ stated:

> *The LGAQ and member Councils express their strongest possible objections to the proposed Sections 847 and 849 of the Bill which effectively amend or have potential to amend certified agreements that are still in force and have been entered into willingly by councils and staff or unions. The high level of disdain for and rejection of these transition provisions extend across Local Government and not merely to those councils affected by the provisions.*
>
> *The capacity of a third party (who is not a party to the agreement) to, post-certification of an agreement, arbitrarily cut-short an agreement which has been freely entered into and struck in accordance with the prevailing Queensland laws is totally repugnant to the very construct of enterprise bargaining. Of equal repugnance is the capacity of that third party to, at their discretion, amend in any way they so choose a provision of an agreement and subsequently bind the parties to the agreement to that amended provision regardless of their agreement or otherwise with the amendment.*
>
> *A fundamental principle in Industrial Relations that bargains struck lawfully and voluntarily will be honoured by the affected parties should be recognised and respected. If third parties can regulate to change agreements that have been struck and agreed to by employers and workers in accordance with the enabling law, then all future bargaining will be approached with scepticism as to their level of certainty and necessary compliance.*
>
> *It opens the door to a view by employers that expiry dates to an agreement no longer need be respected and can be changed at any time by a third party without regard for the consequence for the employer. It also facilitates an environment of threat, either real or perceived, to councils that failure by Council to agree to a demand by another party will result in that party simply seeking legislative direction for the Council to comply.*[277]

The Mareeba Shire Council noted that they recently entered into an Employee based Certified Agreement and 76 per cent of the staff voted to adopt the agreement. They noted that less than 20 per cent of staff are union members.

[276] AWU Submission 917: 2
[277] LGAQ Submission 1027: 12

The Fraser Coast Regional Council and the Wide Bay Water Corporation (WBWC) advised the Committee that their negotiations commenced in late 2014 and involved considerable resources from both entities to reach an agreement. They noted:

> *The agreements were voted up by the majority staff with 71% of Council staff and 82% of WBWC staff that voted in support of the respective agreements. The agreements were submitted to the Queensland Industrial Relations Commission (QIRC) for certification on 17 April 2015 (Council) and 5 May 2015 (WBWC). Following confirmation from the union parties to the agreement that they would not sign the agreements, the agreements were submitted as employee agreements under S147(A) of the IR Act, and are now awaiting certification. Both agreements were submitted prior to the proposed Bill being announced.*
>
> *Council and WBWC have been working with the QIRC through the certification process to certify the agreements and have made appropriate concessions based on the advice from QIRC.* [278]

The AMWU supported the transitional provisions. In particular, they supported the provisions that address what they consider to be:

> *…the injustice experienced by local government employees who have relevant certified agreements approved by the QIRC under the Newman LNP government's unjust scheme.*[279]

The LGAQ highlighted their concern at the requirement for the QIRC to revisit the current modern award in both scope and content on the grounds that it is placing Councils in a further state of industrial limbo and operational inertia while it occurs. They consider that:

> *…the single industry award and its contents were determined by the independent commission and there was considerable participation, input and investment from affected parties.*[280]

At its public hearing, the Committee canvassed what impact the proposed amendments would have on Councils. The LGAQ advised that considerable time and effort is expended by all parties in reaching an agreement to take to staff. They advised:

> *…there is an enormous operational cost to the organisation and considerable investment into that exercise by employees within both council and representing the staff and, for that matter, unions.*[281]

In addition to the effort expended in reaching agreement, the LGAQ advised that subsequent to agreements being reached, Councils and employees are then able to plan their financial costs going forward. They noted that having to begin the whole bargaining process again means they are unable to do this.[282]

The LGAQ iterated their concern that deeming the agreements null and void and having to start again also impacts on the integrity of the system.[283]

[278] Fraser Coast Regional Council and Wide Bay Water Corporation Submission 1038: 2
[279] AMWU Submission 500: 7
[280] Mr Goode, Public Hearing Transcript 25 May 2015: 32
[281] Mr Goode, Public Hearing Transcript 25 May 2015: 35
[282] Mr Goode, Public Hearing Transcript 25 May 2015: 35
[283] Mr Hoffman, Public Hearing Transcript, 25 May 2015: 36

The LGAQ highlighted that the explanatory notes and the transitional provisions do not make reference to Councils who have invested significant time and effort into bargaining that have yet to have their agreements certified. They advised that there are Councils currently before the Commission on agreements which have been voted upon favourably but are yet to receive certification and there are Councils who have finalised their bargaining and who are about to vote but have been stopped by the Bill.[284]

3.18 Committee comments – Transitional arrangements

The Committee noted that the transitional arrangements only apply to those awards and agreements that have been modernised prior to the suspension of the award modernisation process. The Committee also noted that the process only applies for any other provisions that were contained in a relevant pre-modernisation award but were omitted or changed during the modernisation process, the Commission must reconsider the omission or change in light of the amended framework for award modernisation, the Queensland Employment Standards (QES) and the submissions of the parties.

The non-government Members argued that it was unfair to force those organisations who already had agreements in place prior to the introduction of the legislation to recommence negotiations. They argued that evidence from two of the councils, in particular, showed that there was extensive support for these agreements from employees. They suggested that those organisations with agreements already in place should be allowed to have those agreements continue. They considered that Councils had made decisions based on the Agreements already made. The non-government Members were opposed to the retrospective nature of these provisions and did not accept that there were sufficient safeguards in place to allow the legislation to proceed.

The non-government Members noted that the Council received legal advice that a legally binding letter, as opposed to a Memorandum of Understanding (MOU), is enforceable, and allows employees to retain their negotiated rights.

The government Members argued that employees had voted in favour of these agreements in circumstances where the legislation allowed them limited options. They argued that the requirement that MBRC had to agree a separate side agreement including non-allowable content was evidence that it should included in the formal agreement and therefore should be re-negotiated. The government Members were also concerned about the enforceability of the separate legal agreement negotiated by the Moreton Bay Regional Council.

The government Members also considered that it was not fair to accept that high positive votes were indicative of the full agreement of the employees in those areas due to the restrictive legislative arrangements in place. They considered that non-allowable matters were not available under the system at the time. The government Members questioned whether result of the vote would have been the same had employees had the option under the legislation to achieve a different outcome. Whilst the Committee agreed that it would be preferable that the Councils and their employees did not have to go through the process again, the non-government Members considered that the transitional provisions provide the fairest option.

Government Members recognised, however, the significant efforts undertaken by the four Councils to date, in reaching certified agreements, and of other Councils who were engaged in the process prior to the Bill being introduced. They strongly urge the Minister to provide every assistance possible to these Councils in order to address any impacts arising from the amendments proposed in this Bill.

[284] Mr Goode, Public HearinggTranscript 25 May 2015: 33

Government Members also acknowledged the various concerns raised by unions regarding the transitional arrangements, particularly noting issues raised, for example by Together and the QNU, around the timing of respective award modernisation processes. In regard to these matters, the government Members again strongly urge the Minister to work with all parties involved.

3.19 Privacy issues

The issue of issue of privacy was raised in respect to both access to employees names in relation to the union encouragement provisions, and the access to employees time and wages records.

The reintroduction of the ability for union encouragement provisions led the Committee to question whether privacy considerations had been taken into account. The Committee asked the department whether the Privacy Commissioner had been consulted about the provision of private information about new employees to industrial organisations. The department responded:

> *The way in which those provisions are drafted is consistent with the information privacy principles and in particular I think, as we have done previously, they are in line with information privacy principles 2, collection of personal information, and 11, disclosure within the Information Privacy Act 2009. We are guided by that. I do not know that we had a need to do any further consultation, but we work within government and make sure that we are taking action, and that policy was in line with the previous policy and had taken into account the information privacy principles. So we had had a look at the information privacy principles. We did not actually talk this time to the information privacy people but we have previously when we were undertaking this work several years ago.*[285]

The department also advised:

> *The section that has been changed is 691. It is actually removing something that was placed in the act, 691E, which was a prohibition. These amendments remove that prohibition so they just put them back to what they were previously at 2012, when those prohibitions were introduced in a bill at that time. So, yes, it is quite correct to say that what we have done is moved it back to a position which occurred from the 1999 Industrial Relations Act right up to 2012 which did not put any prohibitions around this issue.*[286]

The Committee sought explanation from union representatives at the public hearing regarding access to records. The unions who participated in the hearing stressed the importance of complying with the relevant privacy regimes.

With regard to time and wages inspections, the Committee was advised that unions have access to employee records of both members and non-members for that purpose. The QNU advised the Committee that:

> *We would not want to be looking at those. We seek that on representation on behalf of members—if a member has been underpaid an entitlement and the like. But through access to time and wages, you could have access to that, but we would only seek the information on representing our members. For example, in the last 12 months we have recovered close to $5 million of unpaid entitlements on behalf of our members and the financial year has not even ended. So that is what we are concentrating on doing—actually making sure that our members get the entitlements that they so rightly deserve. So we focus on members, not non members or potential members.*[287]

[285] Dr Blackwood, DJAG Public Departmental Briefing Transcript 20 May 2015: 4
[286] Dr Blackwood, DJAG Public Departmental Briefing Transcript 20 May 2015: 4
[287] Ms Mohle, Public Hearing Transcript 25 May 2015: 19

United Voice advised:

> *Just in relation to the time and wages issues and employee records as opposed to member records, I think there is value in seeing employee records to ensure that people are being paid correctly. Unions have had a role since day dot to protect the interests of all employees. It is a big debate in the union movement about why resources are put into awards and things when, in fact, the beneficiaries of those things are people who are not members of unions.*[288]

The Committee considered the issue of access to new employee information for the purpose of advising them about the union. The representatives were happy to consider opt out provisions provided those electing to opt out could not be coerced in some way to select thatt option. United Voice advised:

> *It depends on how the opt out happens. That would be my only query. If somebody has a genuine objection to talking to somebody from the union then you would respect that. My concern is how an opt out happens, because there is an imbalance in the employment relationship. If an opt out provision is done in such a way where somebody could be pressured to opt out—there are ways that people give across an expectation that, 'We don't really want you to be in the union; we don't want you to be talking to somebody from the union', that would be my concern about that process. If there are names provided and you can approach somebody, at that point they can opt out; they can say to you right there and then, 'Actually, I don't want to have this conversation. I am not interested in joining the union, thank you very much.' Union organisers are quite used to that sort of a response.*[289]

Together advised the Committee that:

> *A related element of the union encouragement provisions goes to the long standing practice of providing information relating to public servants' workplace details. This information is limited to workplace details general already published in the Government Gazette and available under RTI legislation. The inclusion of the clauses relating to this information in Collective Agreements is more for administrative ease than avoidance of privacy legislation.*[290]

Not withstanding this advice, the Committee sought to ensure that there could be no outstanding concerns about privacy. The Committee agreed to invite the A/Privacy Commissioner to a public briefing on Thursday 28 May 2015 in order to seek clarification on the matters relating to privacy raised during the course of the inquiry.

The Committee notified stakeholders who had been advised of the Committee's hearing that it would be holding an additional public hearing on these matters. As a result of this advice, Together and DJAG provided additional written information to the Committee.

Together advised that they had received legal advice in 2012 and on 27 May 2015 in relation to the privacy implications of the union encouragement policy of the state government. They provided a copy of this legal advice for the benefit of the Committee.[291]

[288] Mr Clifford, Public Hearing Transcript 25 May 2015: 20
[289] Mr Clifford, Public Hearing Transcript 25 May 2015: 20
[290] Together Submission 1040 : 3
[291] Correspondence to FAC from Together dated 27 May 2015: 1

This executive summary of the advice states:

1. *In summary, concerns for the possible infringement of privacy legislation in this manner are unwarranted.*
2. *The public sector employee information requested by the Union from public sector agencies is not in breach or conflict with the IPA because:*
   (a) the information sought is available to the Union through other means and therefore, the public sector agency providing the information is not engaging in a 'disclosure' for the purposes of the IPA;
   (b) Information Privacy Principles (IPP) 8, 9, 10 and 11 do not apply where the personal information has been published, or given for the purpose of publication, by the individual; and,
   (c) as per the State Government's Union Encouragement Policy the State Government requires that public sector agencies provide this information to Unions. Pursuant to this, the disclosure of 'routine personal work information' to a Union will likely be for a 'legitimate agency purpose' under guidelines issued by the Information Commissioner.[292]

The department advised policies encouraging union membership is not new to the Queensland public service and union encouragement commitments are contained within most public sector awards, excluding modern awards.[293]

They advised that the Public Sector Industrial and Employee Relations (PSIER) team sit within the department. The PSIER team are the central public sector industrial relations team, providing support to all government agencies and government owned corporations on industrial relations issues. Following the introduction of the *Information Privacy Act 2009* (IP Act), the PSIER team examined the interaction of the IP Act and Information Privacy Principles with industrial instruments and in particular the effect of union encouragement provisions that required employers to provide information of new starters to unions. As part of this process PSIER consulted with unions, agencies and obtained legal advice from Crown Law. This legal advice confirmed the parameters in which an employer is able to release an employee's personal information in accordance with the IP Act.[294]

The department advised that the Bill will return the situation regarding the release of employee information, particularly new employees, to the position that existed prior to the former government's 2012-13 amendments.[295]

The department advised that the PSIER team has been involved in advising on the effects of such amendments and it was considered by the PSIER team that it was not necessary to consult with the Office of the Privacy Commissioner or obtain further legal advice, given the historical involvement of the PSIER team in these matters.[296]

[292] Correspondence to FAC from Together dated 27 May 2015: Attachment 1: 1
[293] Correspondence to FAC from DJAG dated 28 May 2015: 1
[294] Correspondence to FAC from DJAG dated 28 May 2015: 1
[295] Correspondence to FAC from DJAG dated 28 May 2015: 1
[296] Correspondence to FAC DJAG dated 28 May 2015: 1

The A/Privacy Commissioner advised the Committee that the IP Act operates subject to the provisions of other legislation. The Act establishes a general scheme for the handling of personal information in the public sector but recognises that legislation may provide for specific exceptions or, in many cases, tighter restrictions.[297]

The Committee sought advice from the A/Privacy Commissioner about Clause 31 which refers to the right to inspect and request information by an authorised industrial officer. She advised that the way the IP Act operates, is subject to other legislation. Therefore the proposed amendments will override the privacy principles with respect to disclosure in these circumstances. She noted that the privacy principles themselves talk about disclosure being permitted where it is authorised by law. She advised that this provision will be part of the IR Act which is authorised by law and therefore permitted under the IP Act.[298]

The A/Privacy Commissioner noted that the provision is a provision that allows employees to opt out and that there is a provision in the IR Act that prohibits further unlawful disclosure of that information.[299]

The A/Privacy Commissioner agreed with the statements in the legal advice provided by Together that if the information is available by other means or if it is published, it is not a disclosure under the IP Act.[300]

The Committee sought information regarding whether any industrial organisations had sought advice on this issue. The A/Privacy Commissioner advised that they had not. However, she stated that their role is to provide advice to public sector organisations and whilst it is about public servants information, they would have to consider whether they were able to give advice if they were asked. She also confirmed that departments had not sought advice.[301]

The A/Privacy Commissioner confirmed that unions are bound by national privacy legislation. She confirmed that her office is bound by the terms of the IP Act, the information privacy principles and the definitions contained in their own legislation. She advised the Committee that the definition of personal information under the IP Act is:

> *Personal information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*[302]

She agreed that:

> *…a person's name would normally be regarded as personal information, but then the information privacy principles talk about when that information is available and when it can be disclosed. There are a lot of instances in which that information is disclosed. Public servants routinely have their names disclosed in email communications and their official correspondence to external parties.*[303]

[297] Ms Mead, Public Briefing Transcript 28 May 2015: 2
[298] Ms Mead, Public Briefing Transcript 28 May 2015: 2
[299] Ms Mead, Public Briefing Transcript 28 May 2015: 2
[300] Ms Mead, Public Briefing Transcript 28 May 2015: 3
[301] Ms Mead, Public Briefing Transcript 28 May 2015: 3
[302] Ms Mead, Public Briefing Transcript 28 May 2015: 3
[303] Ms Mead, Public Briefing Transcript 28 May 2015: 3

She agreed that the name, the location and the position description and phone number is not information touching upon the personal affairs of the individuals but is information about the public roles of employees in the public sector. She advised:

> *It is about the nature of the information and the sensitivity of the information concerned. As well as being responsible for information privacy, we are also responsible for right to information and the release of information, and that is our view in that instance as well. We do routinely release public servants' names, their job descriptions and their phone numbers, although not routinely their mobile phone numbers. That is information that is classified as routine work information and, as I think the legal advice identified, we do have a guideline relating to that.*[304]

The Committee sought the A/Privacy Commissioner's view on whether it is in accordance with privacy principles that public sector employees at the commencement of their employ, would see their personal information given to an external third party organisation without them being given the opportunity to provide consent, either written or oral, as to the provision of that personal information to the third party external of government. She advised that it relates to if it is:

> *…authorised by law and because this is part of an award and chief executives are required to comply with these provisions, under the privacy principles we would say that the disclosure is permitted. There are aspects of implementation that individual organisations might undertake with respect to making people aware at the time of their appointment that would be of assistance.*[305]

Subsequent to the hearing the Committee asked additional questions to the A/Privacy Commissioner in writing. A copy of the questions and responses are contained in Appendix E.

3.20 Committee comments – Privacy issues

As canvassed earlier in the report, the non-government Members of the Committee have significant concerns regarding the privacy and protection of public sector workers' personal information. The non-government Members of the Committee reiterate their position that public sector workers should be given the option to either opt-in or opt-out when it comes to unions having access to their personal information. The non-government Members of the Committee regard it as a significant breach of employees' rights to privacy and freedom of association. The non-government Members are concerned that neither the Privacy Commissioner nor the Queensland Council of Civil Liberties were consulted on these provisions of the bill. The non-government Members of the Committee remain firmly of the view the government has demonstrated a blatant disregard for workers' rights and protections when it comes to their personal information and believes that such deliberate contempt is an egregious and overreaching act of government. The non-government Members of the Committee believe that public sector workers should have the right and freedom to choose whether to associate or not associate with a union. The non-government Members of the Committee remain very concerned there are no mandated protections for the private information of public sector employees whose private information would be given to unions without the consent of employees. The non-government Members of the Committee believe public sector employees should be given, at a minimum, advice their private information will be provided to unions and the right to opt out of that information being provided. However, the non-government Members of the Committee believe that the more appropriate course of action would be the reverse where a public sector employee would proactively engage with a union of their choice having made an informed judgment about whether or not they wish to be a member.

[304] Ms Mead, Public Briefing Transcript 28 May 2015: 4
[305] Ms Mead, Public Briefing Transcript 28 May 2015: 4

Government Members were satisfied with the advice from a number of sources, including from the A/Privacy Commissioner, that the proposed amendments do not breach the Information Privacy Act. They were also satisfied that the appropriate actions had been taken by the department, through its liaison with the Public Sector Industrial and Employees Relations team, both when the union encouragement provisions were in place prior to 2012, and again in the preparation of the amendments currently under consideration, to ensure compliance with the Act. They particularly noted that the information provided to unions about new employees is information which is already available in the public domain; that new employees are notified that this information will be provided to the unions; and that there is an opportunity for employees to request that it not be provided if that is their wish.

Government Members note that unions are bound by National Privacy Regulations and, as such, are accountable under Commonwealth law, which overrides any state legislation. They also noted that the Queensland Privacy Commissioner has no jurisdiction over unions.

3.21 Other amendments (Clauses 35 and 36)

Clause 35 amends Schedule 5 to omit the definitions for 'employer notice' 'entry notice' and 'non-allowable provisions, relevant industrial instruments and TCR provision' and inserts a definition of 'relevant industrial instrument'.[306]

Clause 36 provides a Schedule 1 that amends certain legislation listed in it as follows[307]:

- The *Industrial Relations Act 1999* is further amended to make a number of minor omissions being the omissions of section 89(2), section 176(3A) and the heading at Chapter 15, Part 1 at clauses 1, 3 and 4 respectively.
- Clause 3 amends section 140CE(1)(b) to insert after 'relates' the additional words "*on a stated day determined by the commission, having regard to section 824*" – this is to provide clarification around the Commission's powers to make a modern award and in particular the process of how a modern award is made and when it applies.
- *Industrial Relations Regulation 2011* is amended to omit 7A-7C, being certain required content for modern industrial instruments prescribed by regulation and Schedule 1AA.

The Committee asked the department to explain why the amendments to the Act and the regulations have been included in the schedule as opposed to appearing as general clauses in the Bill. The department explained:

> *That was a choice made by the Office of Parliamentary Counsel in relation to drafting. They were changes that were made later in the day prior to the tabling, so they house them in this schedule. In relation to the regulation changes, given that we are removing the requirement on certain required content—so the mandatory provisions for dispute resolution, consultation and individual flexibility arrangements—OQPC has also agreed to do the amending of the regulation in this bill. Effectively, stakeholders have one place that they can understand the changes that are being made.*[308]

3.22 Committee comments – Other amendments

The Committee is satisfied that these amendments are of a technical nature.

[306] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18-19
[307] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*: 18-19
[308] Ms Jacobs, Transcript 20 May 2015: 11

4 Examination of the *Industrial Relations (Restoring Fairness) and other Legislation Amendment Bill 2015 – Other issues*

A number of submissions received by the Committee included recommendations for further amendments. Due to time constraints, the Committee has not considered these issues. However, it has included a summary of the issues to allow the Minister an opportunity for further consideration of the issues raised.

The Committee notes that a comprehensive review of Queensland's IR laws and tribunals was publically announced by the Minister on 17 March 2015, in line with the Government's priorities announced in the 2014 State Labor Policy Platform. The government will establish an Industrial Relations Reference Group including academics, government and union representatives to undertake a wider review of the State's industrial relations laws – which were last comprehensively reviewed in 1998. This review will make recommendations to the Government for legislative reform for introduction in the first half of 2016.[309]

The department advised:

> *It is noted that some submissions are on matters not contemplated in the Bill although dealt with in the Act generally. These matters include: the removal of arrangements for high income guarantee contracts for high income senior employees and senior health service employees; the administrative powers of the Queensland Industrial Relations Commission (QIRC), the protected action ballot order requirements, and payroll deductions provisions particular to Queensland Health.*[310]

Together stated that while the Bill goes a long way to meeting the government's election commitments, in the interests of undoing the previous government's ideological attack on Queensland workers and restoring fairness to Queensland's industrial relations laws, they recommend the following further amendments:

- Removal of Chapter 6A of the Act and associated provisions
- Amend section 828 to remove the nexus between the right to bargain and the existence of a Modern Award
- Remove section 143(3A) which restricts the timing of negotiations
- Omit section 149C(1)(c) which prohibits the QIRC from backdating any arbitrated pay outcomes
- Amend or remove sections of the Act that unreasonably prohibit the right to take industrial action
- Remove the capacity for Certified Agreements to be amended by regulation.[311]

The QNU also seeks the removal of section 143(3A). They considered that this section places artificial constraints around the bargaining process and additional time is necessary.[312]

The QNU submission also draws attention to what they consider to be inconsistencies between sections 51A(2)(e) and 51(C)(1) of the *Hospital and Health Boards Act 2011* and section 71CB of the IR Act.[313]

[309] Minister Pitt Ministerial Media Release 23 April 2015: 1
[310] Correspondence to FAC from DJAG 26 May 2015: 2
[311] Together Submission 1014: 3-6
[312] QNU Submission 1038: 7

United Voice similarly supported further amendments to remove the prohibition on negotiating a new Certified Agreement unless a Modern Award is in place and the provisions relating to the timing of negotiations.[314] They also support amendment of section 149C(1)(c).[315]

The AWU submission identifies their concerns with the restrictions included in other sections. However, it is not clear which sections they intended should be amended. They stated:

> *The AWU is concerned that restrictions on bargaining found at sections 148(b) and 149A, 149B, 149C(c), 149D(2) which reduce the ability of members to fully exercise their one right to take protected industrial action and influence bargaining have remained. As such these provisions should be replaced with the provisions which were in place prior to the LNP amendments. A further series of changes to achieve the position that was in existence prior to the election of the LNP should not be controversial and will assist the parties in bargaining following the making of the new modern awards.*[316]

The QTU noted that they are:

> *…aware that the Bill forms part of a broader review into the Act and as such, does not address important issues for example High Income Contracts, Protected Action Ballots, Right of Entry Notices, Union Disclosure and Financial Register requirements and Financial Management training. The QTU note that a further review of the Act will be forthcoming as part of Labor's commitment to workplace relations.*[317]

The QTU recommended the following be considered[318]:

- omitting sections 140F and 140J to remove the nexus between Award Modernisation and Certified Agreements. They consider that as the Act currently stands it is necessary for a modern award to be agreed prior to beginning bargaining of a new Certified Agreement. They also recommended the reinstatement of former sections 126, 127, 128 and 130 of the previous Act in order to recreate the successful and appropriately considered review process which was previously conducted by the QIRC.[319]
- omitting section 176 in relation to protected action ballots. This section requires that 50 percent of the membership cast a vote. The large union membership numbers and the fact that the membership is spread across the state has led to significant difficulties in relation to timeframes and whether the Electoral Commission Queensland is adequately resourced to perform the task in accordance with the provisions in a timely manner.
- Omitting section 149C(1)(c) which suppresses the ability of the Commission to grant an interim wage increase prior to Full Bench determination of a matter at arbitration.
- Omitting sections 828 and 829 which provide for a one year extension of Certified Agreements pending modernisation of Awards. They considered that there is potential that the process will not be completed before the extension expires and it would be better to allow continuing agreements to operate to expire three years after the nominal expiry date unless it is replaced by another Certified Agreement or terminated.

[313] Submission QNU: 8
[314] Submission, United Voice: 4
[315] Submission, United Voice: 9
[316] Submission AWU: 2
[317] Submission QTU: 2
[318] Submission QTU
[319] Submission QTU: 4

- Protections for high-income senior employees as per Chapter 6. They noted their concern that employees who accept a high-income guarantee contract are excluded from certain protections and rights under the Act, which notably include employment security and access to the unfair dismissal provisions. They consider that there is a genuine conflict of interest where the employer is also the legislator, enabling the unilateral implementation of the wages and conditions of a group of employees under the pretence that there is a system of fair and collective bargaining.

The QNU submission also seeks the removal of the arrangements for high-income senior employees from the Act. They noted that the with the creation of individual contracts for senior nurse positions, it is unclear how nurses and midwives covered by a certified agreement can act in higher positions and this can create impediments to progressing to higher levels because of the associated loss of industrial protection and tenure.[320]

The ASMOFQ submission highlights their disappointment that the Bill does not reverse the high-income guarantee contract provisions.[321]

QTU also noted that the imposition of "performance based, fixed term contracts" on principles and deputy principals was announced with no consultation with the QTU in April 2013. They advised that there is no evidence that imposing insecure employment on school leaders would have any positive impact on schools and more likely lead to more unstable school leadership.

With respect to the protections for high-income senior employees, the Committee noted the Minister's comments that:

> *The government is committed to ending unreasonable and unfair contracts for doctors and reinstating the right for all doctors to collectively bargain. We will do this by repealing the LNP's 2013 amendments which mandated contracts for all senior medical officers, SMOs, and precluded SMOs from rights to unfair dismissal under the act. The government will look to make amendments that restore the rights of SMOs to have a say in their industrial conditions and negotiate important changes collectively without the fear of unilateral changes to their contract.*[322]

The Committee considers that this issue could also apply equally to teachers, nurses and other officers.

The Australian Chamber of Commerce and Industry (ACCI) identified that the 2012 amendment contained in the *Public Service and Other Legislation Amendment Bill 2012* altered the administrative arrangements for the QIRC and the Industrial Court. ACCI considers that as far as industrial tribunal are concerned, it is important that the responsibility for the exercise of their defined powers is held by its head. They consider that the QIRC arrangements should be more consistent with those of the Queensland Supreme and District Courts, with the President retaining overall responsibility for the administration of the Commission and other Commission members responsible to the President for delegated administrative roles as required.[323]

[320] Submission, QNU: 9
[321] Submission ASMOFQ: 8
[322] Queensland Legislative Assembly, Hon C Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships, Introduction, *Parliamentary Debates (Hansard)*, 7 May 2015: 507
[323] Submission, ACCI

United Voice also considered that all the provisions in relation to the right to take industrial action should be reviewed and recommended that the sections of the Act that unreasonably prohibit the right to take industrial action be removed.[324]

4.1 Committee comments – Other Issues

The Committee draws the Minister's attention to the other issues raised by stakeholders.

The non-government Members of the Committee noted that with the exception of the ACCI that all of these matters have been raised by unions. This suggests that, as has been confirmed by comments in union submissions, that unions had sufficient time to consider the Bill. This stands in stark contrast to the very limited time afforded to other stakeholders, in particular, the 77 Councils that represent 100 per cent of Queenslanders.

The non-government Members noted the inconsistencies between the FW Act and the proposed amendments with regard to high income guarantee contracts. The current provisions set the threshold in line with the FW Act and the non-government Members of the Committee do not support the changes.

Government members disagreed with non-government Members regarding consultation timelines. They argued that no evidence had been provided to the Committee to suggest that unions had been provided with detail about the Bill at an earlier point that the LGAQ, and that it could not be inferred that because ACCI was the only submitter to raise other issues, the unions had been given preferential treatment. It was the view of government Members that all parties were operating under the same constraints in terms of the time available to respond to the Bill.

Government members noted the request by ASMOFQ, Together, QNU and the QTU regarding the removal of Chapter 6A of the Act and associated provisions, related to high income guarantee contracts (HIGC). They also noted that the Minister had flagged, in his introduction of the Bill, that the government would repeal the LNP's 2013 amendments which mandated contracts for all senior medical officers, SMOs and precluded SMOs from rights to unfair dismissal under the act. It was the government Members' view that the issues raised by ASMOFQ in particular, regarding the impact on public safety of retaining Chapter 6A, warranted this amendment occurring under the bill currently under consideration, rather than through a later review of the Industrial Relations Act.

Government members strongly encourage the Minister to address the other issues raised by stakeholders on a case-by-case basis.

5 Compliance with *Legislative Standards Act 1992* – Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles (FLPs) 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 examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

[324] Submission, United Voice: 10

The explanatory notes state:

> *The Bill raises possible infringements of Fundamental Legislative Principles (FLP) regarding Legislative Standards Act 1992 (Qld) s4(2)(a) – having regard to the rights and liberties of individuals; and Legislative Standards Act 1992 (Qld) s4(2(b) – having sufficient regard for the institution of Parliament.*[325]

This report makes reference to the former Scrutiny of Legislation Committee (SLC). By way of background, two reviews conducted by the Electoral and Administrative Review Commission (EARC) in 1991 and 1992 recommended Queensland replace its then Committee of Subordinate Legislation with a Scrutiny of Legislation Committee with an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).

The *Legislative Standards Act 1992* saw FLPs enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a new SLC to 'examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation'.

A review of Queensland's Parliamentary committee system in 2010 led to the abolition of the dedicated SLC if favour of the current system of portfolio-based committees that have operated since mid-2011. Pursuant to section 93 of the *Parliament of Queensland Act 2001* it is now the role of each portfolio committee to consider any FLP's issues contained in Bills and subordinate legislation within its portfolio area. The Committees are assisted in this work by a dedicated secretariat which performs a very similar role to the former SLC by examining bills and subordinate legislation for FLP compliance.

The considerable body of work generated by the former SLC and its predecessor Committee regarding FLP issues remains a valuable source of information for the current portfolio committees when considering bills and sub-ordinate legislation. Similarly, the Office of Parliamentary Counsel (OQPC) frequently references the findings of the former SLC in its work *Fundamental Legislative Principles: The OQPC Notebook*, a very detailed and evolving examination of FLP issues.

5.1 Rights and liberties – Section 4(2)(a) *Legislative Standards Act 1992* – Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 33, section 847 provides for early termination of certain certified agreements which potentially lessens the rights of individuals in that particular certified agreement. This is because, by operation of the legislation, those agreements will be provided with an earlier nominal expiry date than that originally negotiated and agreed between the parties. It is possible that some employees may receive conditions under a new negotiated certified agreement that are 'less' than those provided in the earlier agreement.

Clause 33, section 849, is a Regulation making power to include a provision in a modern certified agreement which may also impact the rights and liberties of individuals in that it may work to alter a previously agreed provision in a current agreement.

[325] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*:

The explanatory notes state that:

> *It is considered that the amended framework for modern certified agreements provided for under the Bill will result in fairer bargaining outcomes because the restrictions and qualifications previously imposed on content permissible in a modern certified agreement are removed. The provision of a facility to vary a relevant certified agreement by regulation is considered appropriate as an interim measure before the parties can bargain for an agreement under the new framework without content restrictions.*
>
> *The provision to impose a new nominal expiry date will have very limited scope in that it will apply only to the small number of certified agreements that have been made under the modern industrial instrument system introduced in 2013. On balance, it is considered preferable to bring those agreements to an early nominal expiry and allow the parties to re-bargain without the artificially imposed constraints on content, rather than to allow those agreements to continue.*
>
> *The new nominal expiry date is not by reference to the commencement of the Bill but will occur 3 months from the date the Commission varies the relevant modern award. A new agreement can only be certified following the nominal expiry of the current agreement. It is considered 3 months is a reasonable minimum period to allow the parties to consider the terms of the varied award and to negotiate a new agreement to present to the Commission for certification.*[326]

5.2 Committee comments

The non-government members of the Committee do not believe the potential breach of fundamental legislative principles is justified. There are seven certified agreements impacted by the proposed changes and the non-government members of the Committee believes this small number makes it possible for the government to propose amendments so as not to disadvantage the Councils and employees and to ensure the continued validity of these certified agreements. The non-government Members believe the proposed amendments are unfair where both parties have, in good faith, negotiated and endorsed a certified agreement and believe the proposed amendments will only serve to ensure continued uncertainty for employers and employees.

The explanatory notes state the changes will apply to only a small number of certified agreements. The government Members of the Committee considered, on balance, and given the Government's election commitments and objectives of the Bill, the potential breach is justified in the circumstances. However Government members reiterate their strong view that the Minister should work with those organisations who already have certified agreements in place, to assist them in the transition process.

5.3 Rights and liberties – Section 4(3)(g) *Legislative Standards Act 1992* – Does the Bill adversely affect rights and liberties, or impose obligations retrospectively?

Section 4(3)(g) of the *Legislative Standards Act 1992* (the LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

[326] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*:

Clause 33, section 850, under subsection (3) provides that this section is taken to have had effect on and *from the day of introduction* into the Legislative Assembly of the Bill for the amending Act.

The explanatory notes state:

> *While those cohorts who have a modern agreement would otherwise be free to continue to bargain and seek certification for agreements struck, it is considered appropriate to halt the certification of agreements and by consequence, stop bargaining under the current restrictive regime, until the amendments proposed in the Bill are considered for passage. It will also ensure that the parties and the Commission will have the benefit of considering the content of the relevant modern award, as reviewed and varied, before commencing bargaining.*[327]

5.4 Committee comments

Due to the expected limited number of agreements this would apply to, the Government's election commitment, and the objectives of the Bill, the Committee was divided on whether to accept that on balance that the potential breach is justified in the circumstances.

The non-government Members of the Committee do not believe the potential breach of fundamental legislative principles is justified. There are seven certified agreements impacted by the proposed changes and the non-government members of the Committee believes this small number makes it possible for the government to propose amendments so as not to disadvantage the Councils and employees and to ensure the continued validity of these certified agreements. The non-government Members of the Committee believe the proposed amendments are unfair where both parties have, in good faith, negotiated and endorsed a certified agreement and believe the proposed amendments will only serve to ensure continued uncertainty for employers and employees.

Government members argued that, given the Government's objective of restoring conditions which had been lost under the previous Government, the potential breach was justified. However they reiterated their strong view that the Minister should work with those organisations who already have certified agreements in place, to assist them in the transition process.

5.5 Amendment of an Act only by another Act – Section 4(4)(c) *Legislative Standards Act 1992* – Does the Bill allow or authorise the amendment of an Act only by another Act?

Clause 33, section 857 provides a transitional regulation-making power.

A Bill should only authorise the amendment of an Act by another Act.[328] A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The SLC's approach to Henry VIII clauses was that if an Act is purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament.[329] The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- To facilitate immediate executive action;
- To facilitate the effective application of innovative legislation;

[327] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*:
[328] *Legislative Standards Act 1992*, section 4(4)(c).
[329] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 159.

- To facilitate transitional arrangements;
- To facilitate the application of national scheme legislation.[330]

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.[331]

Of note, proposed section 857, subsection (1)(b) states: *"A regulation (a transitional regulation) may make provision of a saving or transitional nature for which this Act does not make provision or sufficient provision".*

The SLC has stated that it is 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 this 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.[332]

In the context of urgent legislation, the SLC had indicated that a transitional regulation-making power may have had sufficient regard to the institution of Parliament if it was subject to –

(a) a 12 month sunset clause; and

(b) a further sunset clause on all the transitional regulations made pursuant to the transitional regulation-making power.[333]

The explanatory notes state:

> *Given the complexity around the transitional arrangements, including how employees are transitioned from modern awards made within the framework of non-allowable and required content to the varied modern awards made within the new framework, it is considered that such a power is appropriate to facilitate and manage the risk of issues arising after commencement.*
>
> *This power has a 'sunset' or 'automatic expiry' of two years after the date of commencement of the Bill. Having regard to the Minister's temporary suspension of the award modernisation process until the Bill is in effect, as well as the likelihood that the Ministerial Request may allow the Commission greater time in which to complete the award modernisation, a two year transitional regulation-making power is considered appropriate.*
>
> *The Bill contains a provision (s.849) allowing a regulation to vary a modern certified agreement made to include additional provisions. The provision is limited to only those modern certified agreement made up to the introduction of the Bill. Given the unique circumstances surrounding the negotiation of those particular modern agreements and the Government's objective to restore conditions that have been lost, this provision is considered appropriate.*[334]

[330] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 159.

[331] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 159; Alert Digest 2006/10, page 6, paras 21-24; Alert Digest 2001/8, page 28, para 31.

[332] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 161; Alert Digest 1996/3, p.10 and p.19.

[333] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 161.

[334] Explanatory Notes, *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*:

5.6 Committee comments

Notwithstanding the former SLC's objections to the use of Henry VIII clauses, the Committee considered that the limited scope of the regulation making power, and subsequent disallowance powers, provide sufficient regard to the institution of Parliament. The Committee also identified the sunset clause of two years and that this length of time is appropriate in the circumstances.

5.7 Proposed new or amended offence provisions

The following table details the proposed new or amended offence provisions:

Clause	Offence	Proposed maximum penalty
28 31	Replacement s372(3) The employer must not refuse an authorised industrial officer entry to the workplace if the officer complies with subsection (2).	27 penalty units
	Replacement s373(4) The employer— (a) must allow the officer to inspect the record for an employee mentioned in subsection (2)(a) or (b), unless the employee has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and (b) must not allow the officer to inspect the record for an employee who has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and (c) must allow the officer to inspect the record mentioned in subsection (3).	27 penalty units
	Replacement s373(6) A person must not, by threats or intimidation, persuade or attempt to persuade an employee or prospective employee to make, or refuse to make, a written request to the employer or prospective employer that the record not be available for inspection by an authorised industrial officer.	27 penalty units
	Replacement s373(10) A person must not obstruct the officer exercising a power under subsection (8) or (9).	27 penalty units

5.8 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.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it would be helpful if the explanatory notes identified the specific clause being discussed, when identifying the fundamental legislative principles.

Appendices

Appendix A – List of Submissions

Sub #	Submitter	
1	Chris	O'Regan
2	Sally	King
3	Tom	Nugent
4	Monic	Singh
5	Phillip	Vecchio
6	Loris	Gatto
7	Michelle	Richards
8	Gail Michelle	Smit
9	Jenni	Walker
10	Alison	Tupara-Katu
11	Brian Martin	Power
12	Richard T	Brant
13	Carolyn	Brickhill
14	Tim	Lowrey
15	John	Wilson
16	Beverley	Folland
17	Ron	Wadforth
18	Will	Milligan
19	Gordon	French
20	Warwick	Norton
21	Mark	Erian
22	Christian	Grenade
23	Effie	Skoufa
24	Marianne	Cannon
25	William	Langford

26	Barbara	Clifford
27	John	Sheehan
28	Julie	Guy
29	Cassandra	Buckingham
30	Narelle	O'Brien
31	Charlie	Di Bella
32	R	Kenworthy
33	Melissa	Lee
34	Maria	Morrison
35	Sylvia	Martinez
36	Esther	Ringrose
37	Damian	Agius
38	Dhushy	Jayah
39	Greg	Greenaberg
40	Conchita	Abellanosa
41	Nicholas	Thacker
42	Paul	Goulevitch
43	Cathy	Quinn
44	Sharon	Butterworth
45	Nick	Dowse
46	Sheryl	Simpson
47	Megan	Booth
48	Jim	Davies
49	Sharon	Christian
50	Ray	Booker
51	Geoff	Wyvill
52	Michelle	Hart
53	Peter	Wellauer
54	Nick	Phillippa
55	Brad	Phillips

56	Kerry	Lawson
57	Dennis	Richardson
58	Leanani	Richardson
59	Marama	Haggie
60	Graeme	Williams
61	Janet	Pattel
62	Kim	McDavid
63	Stephen	Goldsmith
64	Alexandra	Glauerdt
65	John	Broad
66	A	Hallett
67	Slobodanka	Jelacic
68	Charles	Denaro
69	Adam	Redsell
70	Anthony	Bloch
71	Lynette	Henson
72	Rachel	Bourke
73	Jesse	Musch
74	Ben	Shepherd
75	Kevin	Bale
76	Gina	Robins
77	Max	Wellington
78	Margaret	Evans
79	Belinda	Jacklyn
80	Mark	Constable
81	Bill	Hall
82	Craig	Watson
83	Robert	Edwards
84	John	Woodland

85	Mark	Reed
86	Peter	Kirchmann
87	Darren	Lierkamp
88	Robyn	Gray
89	Paul	O'Driscoll
90	Stephen	Sparrow
91	Ashley	Goodwin
92	Jenny	Hayne
93	Sharon	Thompson
94	Steve	Minns
95	Christopher	Davis
96	Rowena	Martin
97	David	Kraatz
98	Brian	Sinclair
99	Catherine	Furness
100	Andrew	Singh
101	Peter	Gavegan
102	Stephen	Pyers
103	Vikki	Burrows
104	Cecily	Hally
105	Michelle	Wright
106	E	Hetherington
107	Greg	Mulder
108	Sally	King
109	Natalie	Marshall
110	Robert	Parker
111	John	Sweet
112	Wayne	Spedding
113	John	Macpherson
114	Caroline	Mann-Smith

115	Juliet	Jones
116	Pattie	Lopez-Contreras
117	Peter	Nisbet
118	Kelly	Gatehouse
119	Aadarshna Esha	Lovric
120	Ian	Schmidt
121	Chris	Lyon
122	Colin	Morehouse
123	Debbie	Bullock
124	Dianne	Thomas
125	Gillian	Hough
126	Frances	Fordham
127	Allan	Gardiner
128	Natalie	Molattam
129	Michael	Toal
130	Anne	Watt
131	Ken	Ellett
132	Anthony	Guidosteen
133	Wendy	Rowlands
134	Andy	Ryan
135	Kate	MacDonald
136	Natasha	Hayes
137	Greg	Spencer
138	Jessica	Bentleu
139	Debbie	Ellis
140	Heidi	Goleby
141	Angelina	Smolkova-Bismarck
142	David	Mackee
143	Rose	Hrdalo

144	Ash-Lee	Johnson
145	Paul	Smith
146	David	May
147	Darren	Lierkamp
148	Peter	Dennis
149	Debra	Goggan
150	Wayne	Amos
151	James	Loveless
152	Frank	McFadden
153	Donna	Shaw
154	Melanie	Boxall
155	Sharon	Stephen
156	Diane	Webster
157	Renton	Edagi
158	James	White
159	Rebekah	Reynolds
160	Mandy	McDougall
161	Geoffrey	Miles
162	Warren	Lax
163	Dean	Eglington
164	Nicole	Bourne
165	Andrea	Smith
166	Robyn	Newton
167	Joanne	Cullen
168	Steven	Everson
169	Billy	Colless
170	Karen	Marsh
171	Coleen	Ruddy
172	Debra	Hargreaves
173	Mark	Taylor

174	Tim	Burt
175	Lizbeth	Johnson
176	Helen	Jolly
177	Shane	Holt
178	Erica	Mohr
179	Glenn	Cain
180	Cameron	Shearer
181	Matthew	Lozo
182	Glenn	Haworth
183	Lauren	Beaumont
184	Jason	Smith
185	Louise	Marshall
186	Liljana	Stevanovic
187	Carol	Leaman
188	Halina	Zaborszczyk
189	Louisa	Hubbard
190	Dale	Eliott
191	Martin	Lee
192	Sally	Ryan
193	Linda	Leone
194	Sue-Ann	Jensen
195	Robert	Timmins
196	Mercedita	Yu
197	Rosemary	Harkins
198	Tawfik	Shehata
199	Shashidhar	Sunkari
200	Harvey	Wilson
201	Dean	Wooler
202	Caroline	Nicol

203	Omowunmi	Odusote
204	Matthew	Preston
205	Michael	Hansen
206	Lisa	Finocchiaro
207	Eric	Kroll
208	Vicky	Vongxay
209	Greg	Hodges
210	Carleigh	Stapleton
211	Mark	Tosh
212	Mark	Kettley
213	Tony	Stokman
214	Sue	Genders
215	Phil	Coglan
216	Rosemarie	Cox
217	Dayong	Li
218	Siva	Senthuran
219	Colin	Gibson
220	John	van Uitregt
221	Pamela	Batchelor
222	Yogavijayan	Kandasamy
223	Christine	Kerle
224	Michael	Cork
225	Chris	Sims
226	Michelle	Byard
227	A	Hallett
228	Charles	Denaro
229	John	Galt
230	Name withheld	
231	Polash	Adhikari
232	D	Nicholls

233	Alastair	Newton
234	Rhonda	Pedersen
235	Carol A	Le Strange
236	John	Law
237	Bela	Bali
238	Jessica	Fuller
239	Alison	Woodley
240	Sharmaine	Perry
241	John	Fitzgerald
242	Anna	McCormack
243	Louise	Crowther
244	Helen	Conley
245	Angela	Benz
246	Gary	Goodman
247	Simon	Houghton
248	John	Tozer
249	Ross	Harrison
250	Francis	Day
251	Sabita	Desa
252	Craig	Dunn
253	Lynette	Sehl
254	Maree	Armstrong
255	Michael	Augustine
256	John	Orton
257	Bill	Squire
258	Roger	Hawcroft
259	Linda	Welch
260	Robert	Cox
261	Gordon	Carr

262	Brad	White
263	Jim	White
264	Astrid	Waugh
265	Peter	Dunn
266	Natalia	Pavlova
267	Jillian	Bryan
268	Jason	Carmichael
269	Megan	Knight
270	Tanya	Nichterlein
271	Philip	Maher
272	Alan	Peacock
273	Caterina	Ferlito
274	Kate	Flanders
275	John	Jahnke
276	Confidential	
277	Rick	Ehlers
278	Gary	Jones
279	Hiyasmin	Lee
280	Jay	Faldu
281	Paul	Hayes
282	Josie	Huang
283	Jolyon	Bond
284	Denis	Carmody
285	Michael	Hulme
286	Elaine	Ellis
287	Margaret	McDonald
288	Bradley	Keenan
289	Kerry	Tomlinson
290	John D	Cassidy
291	Danielle	Paterson

292	Ann	Ritchie
293	Theresa	Chard
294	Kim	Hartley
295	Edith	Schauble
296	Shannon	Crawford
297	Brad	Martin
298	Wendy	Prasser
299	Sarita Devi	Bnurs
300	Moya	Loneragan
301	Heather	Cochran
302	Michelle	Dioth
303	Dong	Xu
304	Atifur	Rahman
305	Kim	Sunarjana
306	Kerrie	Price
307	Malcolm	Cope
308	Rod	Groves
309	Mark	Phillips
310	Brooke	Liddle
311	Brett	Cullen
312	Carol	Dowling
313	Geoff	Johnston
314	Robyn	Merritt
315	Joanne	Sharp
316	Sharyn	Sires
317	Karen	O'Brien
318	Joy	Brown
319	Audrey	Shamier
320	Moey	Keeble

321	Anna	Maclea
322	Jane	Toohey
323	Moreton Bay Regional Council	
324	Debra	Lawrie
325	Emily and Terry	Nixon
326	Lorrae	Oliver
327	John	Marhin
328	Tony	Collins
329	Lucinda	Ruddell
330	Hayley	Howell
331	Deborah	McIntyre
332	Sharon	Doyle
333	Julie	Bargh
334	Lambros	Halkidis
335	Robert	Buckley
336	Rebecca	Wild
337	Janelle	Kirk
338	Barry	Tewes
339	Trisha	Pollitt
340	Liz	Joshua
341	Francis	Reilly
342	Dhushy	Jayah
343	Peter	Pegg
344	Linda	Kupsch
345	Palani	Thevar
346	Karla	Heath
347	Patricia	Ainge
348	Dan	Siskind
349	Peter	Hodgkison
350	Will	Chong

351	Lachlan	Baldwin
352	Vanessa	Turner
353	Ian	Johnston
354	Therese	Rabbitt
355	Peter	Stone
356	Luke	Moore
357	Patricia	McKay
358	Simon	Houstoun
359	Elham	Reda
360	Bronwyn	Williams
361	Cathy	Hay
362	L	Robinson
363	J	Mayze
364	Simon	Houstoun
365	Graham	Rackley
366	Lachlan	Hurse
367	Dwayne	Simpson
368	Collette	Reeves
369	Rodney	Crow
370	Richard	Leong
371	Gail	Watson
372	Kathleen	Wacker
373	Allan	Zillman
374	Maria	Nieddu
375	Sanita	Nuku
376	Alexia	Browne
377	Sharyn	Steele
378	Jeffrey	Furniss
379	Don	Spencer

380	Darren	Costello
381	Linda	King
382	David	Podetti
383	J	Desmond
384	Tania	Horton
385	Kay Lynette	Stephens
386	David G	Dowling
387	Margaret	Patane
388	Elsie	Rivers
389	Christopher	Turnbull
390	June	Jones
391	Ingrid	Powderham
392	Lance	Maxwell
393	Cheryl	Corcoran
394	Jodie	Keegan
395	Rachel	Heinrich
396	Gillian	Matthew
397	Brendan	Bogel
398	Sharyn	Morrison
399	Glen	Rush
400	Kerri	Milner
401	Richard	Kenworthy
402	Steven	Curd
403	Christine	Radcliffe
404	Gary	Moore
405	Gail	McCosh
406	Alison	Sullivan
407	Cameron	Bright
408	Michael	Moller
409	Rohan	Huguenin

410	Lidia	Almajan
411	Mark	Shirran
412	Geoff	Sillence
413	Wayne	Lindenmayer
414	Brian	Dalton
415	Adrian	Raddatz
416	Sharon	Kirkman
417	Phil	Kyson
418	Michael	Farrington
419	Ian	Gibbons
420	Karen	Buggins
421	Carl	Bindels
422	Robyn	Wallace
423	Cristelle	Mulvogue
424	George	Zantis
425	Christine	Ballaron
426	Willie	Mclean
427	Warren	Thompson
428	Matthew	Schneider
429	Paul	Swinburne
430	Matthew	Griffiths
431	Craig	McInnes
432	Ilaisaane	Tau
433	Moey	Keeble
434	Ajith	Ariyawansa
435	Anne	Tugliach
436	Nathan	Milne
437	Debra	Kerridge
438	Janette	Nixon

439	Samantha	Jeffs
440	Toni	Allen
441	David	Tragen
442	Kathy	Tatzenko
443	Victor	Barletta
444	Richard	Allen
445	Damian	Johnson
446	Bill	Boyd
447	Doug	Moody
448	David	Little
449	Sharmaine	Sallaway
450	Anfwlina	Smolkova-Bismark
451	Colin	Barker
452	Lauren	Gabbott
453	Bernard	Keeffe
454	Dana	Pakrou
455	Chris	MacFarlane
456	Glenda	Steward
457	Ainsley	Milne
458	Deborah	Morrison
459	Irina	Mandic
460	Ivan	Rapchuk
461	Confidential	
462	Berniece	Brandon
463	Helen	Davidson
464	Karen	Devlin
465	Kong	Goh
466	Herby	Halloran
467	P	Kandasamy
468	Debbie	Ellis

469	Nadine	Cluff
470	Phillip	Cameron
471	Ron	Hale
472	Graham H	Bamford
473	David	Smith
474	Ken	Dawes
475	Stephen	Claffey
476	Scott	Caulfield
477	Donna	Johnson
478	Nolene	Zahra
479	Traci	Atfield
480	Bryce	McKay
481	Dominique	Scott
482	Marilyn	McKay
483	Tania	Morris
484	Cheryl	Fernando
485	Lakshman	Jayasekera
486	Amgad	Said
487	Ron	Fletcher
488	Ann	Moore
489	Name withheld	
490	John	van den Eertwegh
491	Anthony	Hade
492	Margaret	Utterson
493	Helen	Lack
494	Khai	Van
495	Judy	Guley
496	Kerry	Mills
497	Julie	Ruth

498	Rohan	Jayasinghe
499	John	Parry
500	Australian Manufacturing Workers' Union	
501	Confidential	
502	Angela	Brennan
503	John	Hine
504	Hayzal	Sahib
505	Denis	Lloyd
506	Angela	Forslund
507	Rodney	Carling
508	Carol	Church
509	Melanie	Spencer
510	Adrian	Adams
511	Ros	Knottenbeld
512	Leanne	Rissman
513	Tina	Cavanough
514	David	Hole
515	Confidential	
516	Brad	Zeller
517	Torres Strait Island Regional Council	
518	Peter	McKenna
519	Kevin	Gorman
520	Suzanne	Sharpe
521	Heather	Munro
522	Cheryl	Yourey
523	Rohan	Samarasinghe
524	Simon	Caligiuri
525	Tom	Giblin
526	Judy	Pamenter
527	Christine	Petrie

528	Lynne	Low
529	John and Helen	de Jong
530	Glen	Hewitson
531	Marc	Morain
532	Mark	Lewis
533	Kristian	Giesenberg
534	Mark	Erian
535	Heather	Russell
536	Ruzenka	Kajim
537	Debra	Cain
538	Johanna	Mostofizadeh
539	Mitchell	Haginikitas
540	Jacob	Paul
541	Paul	May
542	Sharon	Grimley
543	Paul	Edwards
544	Alan	Shepperd
545	Jacinta	Bingham
546	Stephen	Shrubsall
547	Glennis	Whitney
548	Karl	Mortimer-Murphy
549	Peter	Smith
550	Jennifer	Elliot
551	Ken	Loughran
552	Sue	Millard
553	Sophie	Jayamaha
554	Diane	Downey
555	Lene	Wolthers
556	Trent	Rabbitt

557	Leisa	Massey
558	Confidential	
559	Vanessa	Rich
560	Kerri	Christensen
561	Natalia	Sullivan
562	Alicia	Chaplain
563	Julie	Oats
564	Christine	Kuhl
565	Karl	Stevens
566	Bill	Grant
567	Donald	Goldsmith
568	Confidential	
569	Chris	Lockington
570	Helen	Crowley
571	Lynne	Smith
572	Peter	Heaphy
573	Greg	Raboczyj
574	Linda	Ballard
575	Wendy	Prasser
576	Julie	Barker
577	Belinda	Papa
578	Natalie	Kilminster
579	Michael	Loss
580	Sean	Corringan
581	Robert	Thomas
582	Mike	Ran
583	Jeff	Hahn
584	Chris	Chicoteau
585	Preston	Hughes
586	Confidential	

587	Ben	Horner
588	Verne	Hughes
589	Patricia	Parsons
590	Mark	Harvey
591	Jacinta	Hay
592	Heydon	Kufakwame
593	Gizelle	Barnard
594	Nola	Sprake
595	Farai	Nyabanga
596	Pelani	Thevar
597	Raj	Singh
598	Tracey	Newman
599	Glen	Walls
600	Christopher	Harrison
601	R John	Carter
602	Andrew	Cronin
603	Wendy	Wicks
604	Peter	Reay
605	Sheila	Vitellaro
606	Ian	Barber
607	Franko	Roberts
608	Neil	Ford
609	Paul	Clark
610	Rachel	Baker
611	Helena	Low
612	Matt	Hopgood
613	Birgitta	Sigston
614	Gwen	Casey
615	Ann	Baker

616	Cherly	'cGannon
617	Jo	Liesegang
618	Diane	Glen
619	Joanne	Vieritz
620	Robert	Zerner
621	Sherrie	Eveans
622	Caree	Cooke
623	Ian	Lawrence
624	Cam	Auld
625	Susan	Sholtz
626	Jonathon	Lynch
627	Sally	Morgan
628	Gary	Davey
629	Kay	Swenson
630	Kevin	Nunn
631	Thomas	Snow
632	Robert	Cotter
633	Daniel	James
634	Helen	May
635	Ros	Hodges
636	Nora	McCullagh
637	Kate	Sinclair
638	Lynda	Russell
639	Clem	Stubbs
640	Chris	Page
641	Jacinta	Cronin
642	Janine	Bennett
643	Paul	Vaughan
644	Elizabeth	Gooch
645	Jean Mary	Ashford

646	Bonny	Bryen
647	Susan	Warby
648	Melanie	Slowinski
649	Daniel	Endicott
650	Jeffrey	Singer
651	Terry	Keefe
652	Joanne	Charles
653	Byron	Yorke
654	Perri	Weeks
655	Peter	Gregson
656	Lisa	Miller
657	Gary	Miller
658	Mark and Moira	Purcell
659	Laura	Miller
660	Martin	Heck
661	James	Tilleard
662	Robert	Staun
663	Shaun	Newman
664	Jillian	Healand
665	Jannice	Begg
666	Lou	Taylor
667	Rosa	Christian
668	Anne	Keane
669	Jane	Turner
670	Julie	Althaus
671	John	Richards
672	Maree	Ploetz
673	Confidential	
674	Olivier	Ramuz

675	Ken	Stevens
676	Michelle	Ireland
677	Gordon	Higginson
678	Confidential	
679	Sarah	Greasley
680	Name withheld	
681	Alan	Mohr
682	David	Reid
683	Lyn	Edgar
684	Gavan	Sutton
685	Confidential	
686	Nadia	Montague
687	Jos	Hall
688	Diane	Bishop
689	Chris	Ayers
690	Sally	Gardner
691	Melissa	Murray
692	Lawrence	Caruana
693	Rod	Schmidt
694	Vicki	Newman
695	Therese	Fairchild
696	Daryl	Hillgrove
697	Natalie	Marshall
698	Name withheld	
699	Ray	Cox
700	Alex	de Vre
701	Noel	Robertson
702	Wayne	Maccombie
703	R	McLeish
704	Luana	Storni

705	Lyn	Evans
706	Sara	Beach
707	Colin	Meyers
708	Mohammed	Islam
709	Darryl	Nelson
710	Heather	Clayton
711	Troy	Burt
712	Catherine	Binnington
713	Confidential	
714	Graham	Manning
715	Alan	Millard
716	Maria	Harris
717	Daniel	Haim
718	Javier	Paez
719	Kerry	Hobden
720	Jon	Garton
721	Danielle	O'Hanlon
722	Abhishek	Joshi
723	Paul	Swinburne
724	Delia	Lord
725	Confidential	
726	Michelle	Bridge
727	Vanessa	Turner
728	Benedict	Coyne
729	Confidential	
730	Louise	Seymour
731	Confidential	
732	Katrina	Connolly
733	Confidential	

734	Confidential	
735	Name withheld	
736	Lana	Rainsford
737	Augustin	Cabinas
738	Leoni	Emery
739	Ken	Piaggio
740	Nancy	Fenwick-Siddle
741	Name withheld	
742	Wayne	Merchel
743	Confidential	
744	Bruce	Burrow
745	Emma	Lawrie
746	Naomi	Maltry
747	Christopher	Lilley
748	Jill	Scott
749	Melanie	Smith
750	Simon	Maltry
751	Anne	Carlin
752	Name withheld	
753	Debra	Parks
754	Phil	Kingston
755	Brett	Moore
756	Patrick	Glover
757	Peter	Keyes
758	Patricia	Neumann
759	Marilyn	Odger
760	Name withheld	
761	Gary	Irons
762	Confidential	
763	Aaron	Doyle

764	Confidential	
765	Confidential	
766	Michael	Boules
767	Jay	Iver
768	Kurundeniya Seyath Shiromi	Prematunga
769	Hadthika	Ellepola
770	Karen	Warne
771	Lorraine	Fleming
772	Confidential	
773	David	Stewart
774	Andrew	Miller
775	Prasad	Challa
776	Jeffrey	Mott
777	Bob	Baade
778	Rebecca	Konz
779	Susan	Kirwin
780	Henry	Hancock
781	Rebecca	Casey
782	Confidential	
783	Donald	Pitchford
784	Marion	Woods
785	Sandra	MacLennan
786	Robert	Schloss
787	Linda	Jones
788	Confidential	
789	Confidential	
790	Theresa	Martin
791	John	Holmes
792	Confidential	

793	Scott	Bell
794	Chris	Hawkins
795	Erin	Corcoran
796	Yusuke	Ueno-Dewhirst
797	Stephen	Barnes
798	Penny	Burfein
799	Veronica	Macintosh
800	Richard	Rutherford
801	Confidential	
802	Confidential	
803	Thomas	Brodribb
804	Adrian	Hall
805	Maninda	Singh
806	Alan	Millard
807	Confidential	
808	Peter	Elepfandt
809	M	Mitchell
810	Confidential	
811	Michael	Ryan
812	Rodney	Goldsworthy
813	John	Murray
814	Name withheld	
815	Gail	Robertson
816	Name withheld	
817	Ian	Rowe
818	Confidential	
819	Jeannette	Davis
820	Confidential	
821	Caron	Menashe
822	Confidential	

823	Confidential	
824	Confidential	
825	Terry	Steer
826	Alexander	Donald
827	Jason	Brown
828	Suzanne	Chumbley
829	Mark	Jones
830	Colleen	O'Brien
831	Rod	Hurford
832	Samuduni	Wijeyewickrema
833	Confidential	
834	Confidential	
835	Confidential	
836	Peter	Cattach
837	Bernadette	Burke
838	Shirley	Elwell
839	Joshua	Hansen
840	Name withheld	
841	Confidential	
842	John	Maccarron
843	Paul	Beckett
844	Craig	Whitten
845	Confidential	
846	Aye	Phyu Win
847	Peter	Simos
848	Shane	Neisler
849	Kevin	Goldsmith
850	Hesitha	Abeysundera
851	Ruth	Hamdorf

852	Name withheld	
853	Janet	Erskin
854	Frances	Kinnear
855	Shanthi	Kanagarajah
856	Ben	Lawton
857	Debra	Dow
858	Barry	Chamberlain
859	Evan	Woolway
860	Frances	Kinnear
861	Stuart	Luckie
862	Karen	Brown
863	Confidential	
864	David	Whybrew
865	Theo	van Lieshout
866	Tony	Lau
867	Confidential	
868	Silvana	Zbasnik
869	The Emerald Branch of the Australian Labor Party	
870	Phillip	Moon
871	Confidential	
872	Brett	Marshall
873	Denise	Rapkins
874	Diana	Sheehan
875	Benjamin	Shepherd
876	Kenny	Tay
877	Confidential	
878	Michael	Chappell
879	Rachel	Dunn
880	Samantha	West
881	Margie	Seaby

882	Michael	Neaton
883	Matt	Despot
884	Donna	Frey
885	Adrian	Kark
886	Michael	Sinnott
887	Kimberly	Oman
888	Michael	Dowling
889	Confidential	
890	Confidential	
891	Karin	Shepherd
892	Vanessa	Leigh
893	James	Sartain
894	Confidential	
895	Peter	Nisbet
896	Robert	Elliot
897	Rishi	Tandon
898	Confidential	
899	Alison	Finley-Bissett
900	Richardo	Rimando
901	Juan Miguel Roise	Gnecco
902	Confidential	
903	Natasha	Riding
904	Marilyn	Cole
905	Bar Association of Queensland	
906	Nigel	Berkin
907	Anne	Scanlon
908	Confidential	
909	C	Dowling
910	Gillian	Smith

911	Debra	Cleeland
912	Nicholas	Hogan
913	Julie	Goodall
914	Veenu	Mubarak
915	Gayle	Thompson
916	Ken-Soon	Tan
917	The Australian Workers' Union	
918	Moreton Bay Regional Council	
919	Queensland Teachers'Union of Employees	
920	Don	Willis
921	Mike	Young
922	Name withheld	
923	Ian	Mair
924	Charles	Chetcuti
925	Kieran	Hutton
926	Confidential	
927	Charles	Chetcuti
928	The Electrical Trades' Union of Employees Association	
929	Mark	Scott
930	Nichola	Ongnyenovits
931	Susanna	Andrews
932	Christina	Robb
933	Confidential	
934	Garry	Jarvis
935	Diane	Corthorne
936	Emlyn	Creevy
937	June	Hill
938	Phil	Gaffney
939	Lawrence	Lee
940	Dominique	Ginley

941	Confidential	
942	Justin	Oostenbroek
943	Sean	Corrigan
944	Jack	Bliss
945	Joanne	O'Shanesy
946	Greg	Robath
947	Confidential	
948	John	Bradney
949	Nicola	Pullin
950	Australian Sugar Milling Council	
951	Chiara	Lennox
952	Jenny	Elphinstone
953	Confidential	
954	Grant	Giachin
955	Aaron	Donaldson
956	Vikas	Moudgil
957	Bill	Westerman
958	Sheryl	Franklin
959	Confidential	
960	Robyn	Wilkinson
961	Dharmesh	Anand
962	Jeff	Smith
963	Confidential	
964	Queensland Community Services Employees Association	
965	Confidential	
966	Will	Sproul
967	Dan	Goldman
968	Confidential	
969	Mark	Smith

970	United Firefighters' Union Queensland	
971	Confidential	
972	Gwen	Kealy
973	Roberto	Monterrosa
974	Confidential	
975	Confidential	
976	Confidential	
977	Louise	Seymour
978	Jason	Stefanaras
979	Christopher	Stonell
980	Vanessa	Turner
981	Confidential	
982	Daniel	Mehanna
983	Richard	Baer
984	Jeremy	Frazier
985	Beverley	Henderson
986	Veronica	Potts
987	John	Hall
988	Alex	Cavdarski
989	Chamber of Commerce and Industry Queensland	
990	Jozef	Syktus
991	Elizabeth	Simpkins
992	Francesca	Troxell
993	Peter	Iu
994	Alistair	Houston
995	Greg	Ernst
996	Daniel	Mehanna
997	Charles	Hamilton
998	Alan	Hewett
999	Confidential	

1000	Maria	Grimaldi
1001	Tablelands Regional Council	
1002	Maryllen	Edwards-Burgett
1003	Julie	Perrett
1004	Dee	Sargent
1005	Kate	Sinclair
1006	Australian Salaried Medical Officers' Federation Queensland	
1007	Helen	May
1008	Suzon	Fuks
1009	Tim	MacDonald
1010	Michele	Hardy
1011	Marianne	Cannon
1012	Confidential	
1013	North Burnett Regional Council	
1014	Together Queensland	
1015	The Services Union	
1016	Queensland Council of Unions	
1017	Bev	Cameron
1018	Lisa	Watson
1019	Mackay Regional Council	
1020	Anthony	Bloch
1021	Maureen	Rayment
1022	United Voice Queensland	
1023	John	Woodland
1024	Mareeba Shire Council	
1025	Dominique	Kuong
1026	Australian Industry Group	
1027	Local Government Association of Queensland	
1028	CFMEU	

1029	Geoffrey	Wallace
1030	Robyn	Wallace
1031	Australian Chamber of Commerce and Industry	
1032	Anne	Heard
1033	Michael	Hart
1034	Lydia	Excell
1035	Simon	Wells
1036	Queensland Law Society	
1037	Fraser Coast Regional Council	
1038	Queensland Nurses' Union	
1039	The Service Union (2nd)	
1040	Together Queensland (2nd)	

Appendix B – Officers appearing on behalf of the department at public departmental briefing – Wednesday 20 May 2015

Witnesses
Dr Simon Blackwood, Deputy Director-General, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General
Ms Candice Jacobs, Director, Industrial Relations, Department of Justice and Attorney-General
Mr Tony James, Executive Director, Private Sector Industrial Relations, Office of Fair and Safe Work Queensland, Department of Justice and Attorney- General

Appendix C – Witnesses appearing at public hearings – Monday 25 May 2015

Witnesses – Session 1 – 9:00am to 10:05am
Mr John Battams, President, QCU
Mr Nick Behrens, General Manager, Advocacy, CCIQ
Dr Sandy Donald, Public Health Delegate, Together Queensland
Ms Thalia Edmonds, Industrial Advocate, QTU
Mr John Martin, Research and Policy Officer, QCU
Dr Stephen Morrison, State President, ASMOFQ
Ms Jo O'Shanesy, Communities, Child Safety and Disability Services Delegate, Together Queensland
Dr Suzanne Royle, State Vice President, ASMOFQ
Mr Alex Scott, Branch Secretary, Together Queensland
Mr John Spreckley, Senior Industrial Officer, UFUAQ
Mr Michael Thomas, Director (Observer), Together Queensland
Dr Christopher Turnbull, State Management Committee Member, ASMOFQ

Witnesses – Session 2 – 10:10am to 11:20am
Ms Katelyn Allen, Industrial Officer, AMWU
Mr Michael Beak, Ambulance Delegate and Paramedic, United Voice
Ms Lorin Both, Industrial Officer, QNU
Mr Ashley Borg, Senior Industrial Officer, CFMEU
Mr Michael Clifford, Public Sector Coordinator, United Voice
Mr Des Hardman, Health Delegate – Medical Imaging, United Voice
Ms Rosenne Huskie, Industrial Officer, CFMEU
Ms Kate MacDonald, Mackay Resident, Local Government Employee and Vice President The Services Union Local Authorities Industry Committee, The Services Union
Ms Beth Mohle, State Secretary, QNU
Ms Vonnie Semple, Industrial Officer, QNU
Mr Mark Taylor, Brisbane Resident, Local Government Employee and Delegate, The Services Union

Ms Jennifer Thomas, Assistant Secretary, The Services Union
Dr Liz Todhunter, Research and Policy Officer, QNU
Ms Barbara Turomsza, Education Delegate and School Cleaner, United Voice

Witnesses – Session 3 – 11:25am to 11:55am
Mr Shane Budden, Manager Advocacy and Policy, QLS
Mr Michael Fitzgerald, President, QLS
Mr Jim Murdoch QC, Bar Association of Queensland

Witnesses – Session 4 – 12:05pm to 1:00pm
Mr Shaun Blaney, Senior Industrial Advisor, LGAQ
Mr Tony Goode, Workforce Strategy Manager, LGAQ
Mr Daryl Hitzman, Chief Executive Officer, Moreton Bay Regional Council
Mr Greg Hoffman, General Manager, Advocacy, LGAQ

Witnesses – Session 5 – 1:10pm to 1:30pm (by teleconference)
Ms Dania Ahwang, Chief Executive Officer, Torres Strait Island Regional Council
Ms Bree Lloyd-Hannah, Human Resources Manager, Torres Strait Island Regional Council
Ms Julia Marcus, Legal Counsel, Torres Strait Island Regional Council

Appendix D – Copy of correspondence sent to MBRC staff provided by The Services Union

ATTACHMENT 1

Office of the CEO

Moreton Bay Regional Council

Enquiries	Geoff Owen-Turner
Direct Phone	(07) 3480 6291
Our Ref	GOT/bb
Date	14 November 2014

The following letter will be posted to all council staff on Friday 14 November 2014

MBRC's Proposed Enterprise Bargaining Agreement (EBA3)

As you may be aware, the Moreton Employment Group (MEG) has been meeting to negotiate a new Enterprise Bargaining Agreement (EBA3).

The Council has decided it is now appropriate to invite employees to vote on the proposed EBA3. **Voting for the proposed EBA3 will occur from Tuesday 25 to Thursday 27 November 2014.**

The proposed EBA3 and accompanying explanatory notes are available on Embarc and at depots. I encourage you to read these documents at your earliest convenience.

The proposed EBA3 provides for a wage increase of 2.6% backdated to 1 July 2014. You will receive your back pay in the first pay period in December 2014. Further wage increases tied to the annual CPI, as outlined in EBA3, will take effect on 1 July 2015, 2016 and 2017.

Changes to the *Industrial Relations Act 1999* now prohibit the inclusion of the following clauses from EBA2 into EBA3 as they contain non-allowable content as prescribed by the Act:

- Clause 2.4 Redeployment and Redundancy
- Clause 6.1 Trade Union Training Leave
- Clause 6.8 Operational Employees Home Depot
- Clause 6.10 Positive Employment Relations – How Council deals with Unions
- Schedule 4 Managing organisational change – Redundancy payments and process

During negotiations for EBA3, I made a commitment to maintain these existing terms and conditions for all existing employees. Accordingly, all existing employees will be provided with a letter that legally binds Council to maintain these terms and conditions for the term of EBA3.

It is important to note that all commitments given in this letter are contingent on EBA3 being voted up by the majority of employees on 28 November 2014.

Council is keen to see EBA3 voted up. If this does not occur the matter will proceed to conciliation and arbitration by the Queensland Industrial Relations Commission. Conciliation and arbitration will result in a lengthy process where council cannot guarantee existing terms and conditions and back pay to 1 July 2014.

If you have any questions please do not hesitate to contact members of the management team below:

- Bill Halpin – Director Community & Environmental Services (07) 5433 2499
- Geoff Owen-Turner – Manager Human Resources (07) 3480 6291
- Michael Ham – Manager Operations (07) 5433 2663
- Brenda Barwin – HR Operations Manager (07) 3480 6899

I ask for your support in a **YES vote** for EBA3.

Yours sincerely

Daryl Hitzman
Chief Executive Officer

Appendix E – Copy of responses to questions to the A/Privacy Commissioner

Given that 691E was only a new addition in the past 2 years and prior to this time a section the same as the proposed Clause 31 existed, do you have any concerns that the Bill as it stands will impact the objectives of the Information Privacy Act 2009?

The Office of the Information Commissioner (**OIC**) does not consider the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 (**Bill**) will impact on the objects of the *Information Privacy Act 2009* (**IP Act**). The primary object of the IP Act is to provide for:

- the fair collection and handling in the public sector environment of personal information; and
- a right of access to, and amendment of personal information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access or allow the information to be amended.[1]

The IP Act operates subject to the provisions of other Acts.[2] The Act establishes a general scheme for the handling of personal information in the public sector, but recognises that legislation may provide for specific exceptions or greater prohibitions.

Are you satisfied that appropriate safeguards are in place should this bill be passed to ensure that the handling of private information is carried out appropriately?

The Bill provides for personal information to be disclosed to authorised industrial officers in specified circumstances.[3] By omitting existing section 691E, the Bill removes the prohibition on public servants' personal information being disclosed to a third party in accordance with an industrial instrument.[4] OIC considers these disclosures of personal information are permitted under the privacy principles as they are authorised by law.[5]

However, other privacy principles will continue to apply to public sector agencies. For example, the privacy principles provide that an agency must take all reasonable steps to ensure that an individual is advised if it is the agency's usual practice to disclose personal information to another entity.[6] The application of other privacy principles and good privacy practices are matters that agencies will need to consider during implementation of the Bill.

Do you consider that your office has a role in ensuring appropriate safeguards are in place or a role in providing guidelines to ensure compliance with privacy?

One of OIC's objectives is to assist Queensland public sector agencies to achieve compliance with the privacy principles. This includes providing independent expert advice and assistance to agencies. The Information Commissioner's functions under the IP Act include issuing guidelines about any matter relating to the Information Commissioner's functions, including guidelines on how the IP Act should be applied and on privacy best practice generally.

[1] Section 3 of the IP Act.
[2] Section 5 of the IP Act.
[3] Clause 31.
[4] Clause 32.
[5] Information Privacy Principle 11(1)(d) and National Privacy Principle 2(1)(f).
[6] Information Privacy Principle 2 and National Privacy Principle 1.

The department has advised the Committee that advice was sought from the Public Sector Industrial and Employee Relations (PSIER) team – the central public sector industrial relations team providing support to all government agencies and government owned corporations on industrial relations issues – about the Union Encouragement Guidelines. This occurred at the time the Information Privacy Act was being introduced, at which time the PSIER consulted with numerous unions, agencies and also obtained legal advice from Crown Law; and again in 2011. The PSIER team also advised government when section 691E was introduced in the IR Act, placing restrictions around the release of personal information to unions. They were again involved in advising government on the effects of the current proposed amendments. Given this context, do you consider that, in addition to the consultation with PSIER, the Privacy Commissioner should also have been consulted in the development of the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015?

OIC was not consulted in relation to the Bill. OIC often provides advice to agencies about privacy matters arising from policy proposals and projects, both through our enquiries service and the dedicated privacy team. However, there is no requirement for agencies to consult OIC on such matters. OIC is independent of executive government.

Do you believe that the proposed Union Encouragement policy is in line with the definition outlined by the Commonwealth's Fair Work Ombudsman?

I note that OIC has had a very short timeframe in which to respond to the Committee's questions and that we are not familiar with background matters or related policies. It is not clear from the information provided what definition is being referred to. Based on the Committee's questions during yesterday's public hearing, we assume it may be the Commonwealth Fair Work Ombudsman's definition of personal information which references the Commonwealth privacy legislation. The IP Act contains a definition of personal information, which is relevant for matters in the Queensland public sector environment. However, I note that the definition in the Commonwealth legislation is similar to the Queensland IP Act. We are unable to comment further on these matters.

The Committee understands that binding agreements are in place regarding the handling of public servants' information. Are you aware of these agreements and have you sighted what information has being provided in these agreements?

OIC is of course aware of general agreements such as certified agreements under industrial relations legislation which deal with a range of issues, including disclosure of limited information about public servants. However, we are not aware of any agreements specifically relating to the handling of public servants' information, for example, between government entities and industrial organisations.