

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

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Curtis Pitt MP Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships

Short title

The short title of the Bill is the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015

Policy objectives and the reasons for them

The amendments to be moved during consideration in detail maintains the Government's priority for ensuring there are no statutory individual contracts for workers covered by industrial instruments articulated in the Queensland Labor State Policy Platform 2014.

The objectives of the amendments to be moved during consideration in detail are to:

1. remove high income guarantee contract and related provisions from the *Industrial Relations Act 1999* (IR Act) and the *Hospital and Health Boards Act 2011* (HHB Act); and
2. restore rights and entitlements that were removed from employees who were placed on high income guarantee contracts, in particular the rights of SMOs to bargain collectively and access unfair dismissal;
3. make a number of minor, technical and consequential amendments to ensure the policy objectives of the Bill are achieved.

The amendments in relation to the removal of statutory individual contracts were foreshadowed by the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships upon the introduction of the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 on 7 May 2015.

Achievement of policy objectives

In 2013, the IR Act was amended to include a new Chapter 6A – Arrangements for high-income senior employees (HISE). Chapter 6A provides the conditions under which a HISE may be employed under a statutory individual employment contract, known as a high-income guarantee contract (HIGC). An HISE subject to a HIGC is removed from the provisions of the IR Act that relate to award coverage, collective bargaining, and unfair dismissal. The Queensland Employment Standards (QES) apply to a HISE.

The HHB Act was also amended to facilitate the use of the IR Act provisions for individual employment contracts for senior health service employees (SHSE). Queensland Health's senior doctors (SMOs and visiting medical officers (VMOs)) were designated as SHSEs and moved onto individual contract arrangements during 2014.

The Queensland Labor State Policy Platform 2014, at section 4.35, provides that “Labor will ensure there are no statutory individual contracts for workers covered by industrial instruments”.

The entire Chapter 6A: Arrangements for high-income senior employees will be repealed from the IR Act. Any other references to high-income employees and related terms will be repealed from other parts of the IR Act and regulation. Corresponding repeal of similar contract provisions in the HHB Act will also be made.

The amendments to be moved during consideration in detail make clear that the repeal of the provisions relating to HIGCs does not amount to termination of employment or entitle any affected employee to compensation.

The amendments include provisions in both the IR Act and the HHB Act that make it clear the high-income guarantee contract retains force as a common law contract. A transitional provision will ensure that an employee who is a party to a HIGC does not have any claim for damages, compensation or any other legal or equitable remedy given the change from HIGC to common law contract.

With the removal of sections 194-196 (that part of Chapter 6A) no further amendments are required in the IR Act to achieve the restoration of rights and entitlements that were lost to high-income senior employees as a result of the 2013 legislative changes. Section 75 of the HHB Act, which excludes certain types of matters and proceedings (industrial matters under the IR Act and judicial review applications) for SHSE, will be repealed.

It is proposed that the employment framework for SMOs will become:

- Queensland Employment Standards
- A modern award for resident medical officers (RMOs) and SMOs
- A new certified agreement for SMOs and RMOs with common terms and conditions for each cohort group (generally referred to as MOCA4)
- A mechanism to deal with individual benefits
- Individual private practice agreements.

For VMOs, it is proposed that their current high-income guarantee contract will transition to a common law contract. VMOs are not subject to award coverage.

The transitional arrangements for SMOs provide for the continuation of current entitlements under their respective HIGC contracts as common law contracts; the termination of those common law contract arrangements upon the settlement of MOCA 4; and transition to the new employment framework from the effective date of MOCA4.

The transitional arrangements will clarify that the Queensland Industrial Relations Commission is to include consideration of the pre-modernised awards for SMOs when reviewing and varying the Residential Medical Officers Modern Award (as is required under section 842 of the Bill). This transitional arrangement will ensure a single award for doctors is made at the time the existing modern award for junior doctors is reviewed; and enable the certification of MOCA 4 to proceed.

An amendment to the HHB Act will prescribe that industrial instruments prevail over HEDs to the extent of any inconsistency, other than where the HED contains terms and conditions more favourable than the industrial instrument.

The transitional arrangements also include a provision whereby a party may make an application to the QIRC to enliven the former medical officers certified agreement (MOCA3) in the event MOCA4 bargaining becomes protracted. The effect of such an application would be that MOCA3 entitlements would prevail over the interim common law contract arrangements established for SMOs from the date of the legislative amendments.

An additional amendment is proposed relating to the operation of a certified agreement. Section 164(3) of the Industrial Relations (Fair Work Act Harmonisation No.2) and Other Legislation Amendment Bill 2013 was introduced under the former government to expire agreements three years after their nominal expiry (unless terminated sooner or replaced by another certified agreement). The award modernisation process will be extended beyond December 2015, therefore to avoid any unintended consequences that may arise because of this delay, it is proposed that section 164(3) be removed. In doing so section 164 will be returned to as it was prior to the changes made on 17 October 2013 by the former Government.

In addition to the new amendments proposed for introduction during consideration in detail, a minor amendment is required to make clear that redundancy provisions superior to those in the QES can be included in a modern award or certified agreement. This amendment is in accordance with the Government's objectives for the amendment Bill.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by legislative amendment.

Estimated cost for government implementation

There are no direct funding implications with the introduction of the amendments. However, it is noted that the transition from current individual employment contracts for SMOs to a collectively bargained agreement may have cost implications to the Government.

Consistency with fundamental legislative principles

The amendments to be moved during consideration in detail are generally consistent with fundamental legislative principles. Potential breaches of the fundamental legislative principles are addressed below:

The early termination of the SMO contracts raises a possible infringement of the *Legislative Standards Act 1992* (Qld) section 4(2) (a) - having sufficient regard to the rights and liberties of individuals; and the regulation-making power (Henry VIII) raises a possible infringement of the *Legislative Standards Act 1992* (Qld) section 4(2) (b) - having sufficient regard for the institution of Parliament.

In regard to the early termination of the SMO contracts, this is an essential requirement for the transition from employment regulated by an individual contract to employment arrangements provided for in a collectively bargained industrial agreement certified by the Queensland Industrial Relations Commission. It is noted that the termination of the contract, which will occur only upon the making of a new collective agreement (MOCA4) or upon the return of a formerly bargained collective agreement (MOCA3). It is noted that a ballot of employees is required for the certification of an agreement.

In regard to the regulation making power (Henry VIII), this is considered necessary given the complexity around the transition process from individual contract to collectively bargained employment framework.

Consultation

The policy objectives of these amendments were announced in the Queensland Labor State Policy Platform 2014. No further public consultation has been undertaken.

Further consultation has been undertaken with Together Queensland Ltd and the Australian Salaried Medical Officers Federation Queensland (ASMOFQ). Both organisations are registered industrial organisations in Queensland with industrial coverage of senior medical officers.

The Australian Medical Association (Queensland), which represents VMOs, was consulted and has provided no opposition with respect to the proposed changes.

The Local Government Association of Queensland and TAFE Qld were consulted. Both organisations utilise contractual arrangement for some high income senior employees. Both organisations advised that, should the IR Act be amended as proposed to remove the high-income contract arrangements, relevant contracts in the local government sector and TAFE Qld will continue in force as common law contracts. In regard to local government sector, the amendments make clear that those employees the subject of existing contracts remain exempted from the Local Government Modern award coverage as is contemplated by Clause 4.2 of that award.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complimentary to legislation in the Commonwealth or other State jurisdictions.

Notes on provisions

Chapter [insert number]

Part [insert number]

Clause [insert number] [insert explanation]

Schedule [insert number]

[Insert explanation]