Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012

Explanatory Notes

Policy Objectives

The *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* (the Bill) amends the *Industrial Relations Act 1999* (the IR Act) to modernise the law to reflect certain key aspects of the Commonwealth industrial relations regime, and to require the Queensland Industrial Relations Commission (QIRC) to give consideration to the prevailing economic conditions when determining wages and employment conditions. In addition, the Bill amends the *Public Service Act 2008* to allow members of the QIRC to hear public service appeals.

Reasons for the Bill

The IR Act has been the primary legislation that regulates the industrial relations system in Queensland.

From 1 January 2010, Queensland referred its private sector industrial relations powers to the Commonwealth and consequently the State's industrial relations jurisdiction was reduced to approximately 245,000 workers employed almost exclusively in the State public service and local government, including the Brisbane City Council and local government owned corporations. The power to determine industrial relations entitlements through awards and certified agreements remains with an independent tribunal - the QIRC.

The State's industrial relations jurisdiction is now concentrated on the public sector. The major employers are state and local government entities, funded from public revenue. Therefore, it is considered appropriate to amend the IR Act to recognise the importance of prevailing economic conditions. In particular, a requirement on the QIRC to consider the financial position of the State and individual public sector entities, the State's fiscal strategy and

public revenue when decisions are made on wages and other entitlements. As the IR Act now applies almost exclusively to the public service and local government, there is little merit in retaining two distinct bodies to deal with public sector employment disputes. The government will refocus the Public Service Commission away from a regulatory function towards a public sector efficiency agenda.

Achievement of the Objectives

To achieve the objectives of the Bill, a number of amendments to the IR Act are required. Specifically the Bill will:

1. require the QIRC to 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 by arbitration;

2. for local government, local government owned corporations and parents and citizens associations, require the QIRC to give consideration to the financial position of the employer;

3. provide a process whereby the treasury chief executive may brief the QIRC about the State's financial position, fiscal strategy and related matters;

4. introduce a power for the Minister to make a declaration terminating industrial action if the Minister is satisfied that the action is threatening the safety and welfare of the community or is threatening to damage the economy;

5. introduce an arrangement modelled on the Commonwealth's Protected Action Ballot Order regime to clarify and strengthen the employee balloting process for the taking of protected industrial action in connection with a proposed certified agreement;

6. introduce a specific process for an employer to directly request employees to approve a proposed certified agreement; and

7. provide that QIRC members are able to be appointed as appeals officers under the *Public Service Act 2008* for the purpose of dealing with the review of certain decisions which affect public service employees.

Alternative Ways of Achieving Objectives

As the matters being addressed in the amendments are contained in the IR Act and Public Service Act, it is not possible to achieve the required outcomes except by direct amendment of that legislation.

Estimated Cost for Government Implementation

There are no financial considerations aside from indirect benefits of a more efficient industrial relations system.

Consistency with Fundamental Legislative Principles

The Office of Queensland Parliamentary Counsel has raised the following Fundamental Legislative Principles.

Legislative Standards Act 1992, s 4(3)—whether legislation has sufficient regard to the rights and liberties of individuals

The draft Bill contains 2 amendments to the IR Act that limit an employee's "right to strike".

Termination of industrial action by the Minister

The draft Bill allows the Attorney-General to make a declaration terminating protected industrial action if satisfied the action threatens the safety and welfare of the community or threatens to cause significant damage to the economy. If such a declaration is made, the matter must be arbitrated by QIRC if it has not been settled after a 21-day conciliation period.

The amendments mirror provisions in the Federal *Fair Work Act 2009* (the FW Act) where declarations are made subject to similar criteria by the Minister as the person responsible for the effective functioning of the legislation. Given that these provisions are already in place federally this amendment simply brings the legislation in line with federal provisions that apply to Queensland private sector employees thus achieving greater consistency across jurisdictions. It is expected that the Minister would exercise caution in employing this power and that such declarations would only be made in extreme cases where it was considered in the public benefit to take such action. The high thresholds before Ministerial intervention is permitted under the amendment also fetter inappropriate use of this power. In addition the Minister is required to take various steps to

best ensure that parties affected by the declaration are informed that industrial action must cease and is no longer protected.

Protected action ballot order regime

In the context of industrial action taken in relation to negotiation of a proposed certified agreement, the draft Bill requires a protected action ballot to be conducted by employees, or an employee organisation. To a significant extent, the proposed arrangements mirror the provisions that exist in the federal IR legislation.

A protected action ballot order must first be obtained from the QIRC and a postal ballot of employees must be conducted by the Electoral Commission of Queensland. Consistent with the federal regime, the costs associated with the ballot will be met by the State of Queensland.

The Bill ensures that once an order approving the balloting of employees has been obtained, there is a clear process for how voting may occur and when a ballot can be considered successful. The changes are not intended to modify the philosophy or underlying policy intent of the IR Act in relation to supporting enterprise bargaining, rather the intent is to ensure that balloting processes are consistent, fair and transparent.

Creation of new offences and civil penalties

If the Attorney-General makes a termination declaration in relation to protected industrial action, the Attorney-General may give directions aimed at reducing or removing the relevant threat to the economy or safety and welfare of the community (see new s 181D). Failure to comply with such a direction is not an offence but attracts a civil penalty (27 penalty units for an individual or 135 penalty units for a corporation). The proposed offence provision is consistent with the existing penalty regime in the IR Act and is necessary to ensure that the direction(s) of the Attorney-General are complied with. Furthermore, similar offence provisions exist in the Fair Work Act and any declaration issued by the Attorney-General is subject to judicial review.

Legislative Standards Act 1992, s 4(4)—whether legislation has sufficient regard to the institution of Parliament

The draft Bill contains a transitional regulation-making power in relation to particular amendments being made to the IR Act (protected action ballots and the insertion of new section 147A).

The usual FLP protections have been included (ie sunsetting of any transitional regulation and the head of power itself) and an attempt has

been made to limit the scope of the regulation-making power. Given the extremely short time available for the policy development and drafting of this Bill, OQPC agrees that the provision is appropriate to manage the risk of issues arising after commencement.

Consultation

There has been no community consultation on this proposal. The Public Sector Commission, Queensland Treasury and Trade and the Department of Premier and Cabinet have been consulted and support the Bill.

Consistency with Legislation of the Commonwealth or another State

Ministerial declarations to terminate industrial action

The FW Act allows the federal Minister at section 431 to make a declaration terminating industrial action if the Minster is satisfied that the action is threatening or would threaten the safety and welfare of the community or damaging the Australian economy or an important part of it. To date, the Federal Minister has not sought to use this power.

The IR Act does not currently contain a similar provision giving the Minister the power to make a declaration terminating industrial action. The Bill amends the IR Act to include a section modelled on section 431 of the FW Act. This will bring the IR Act in line with the FW Act which applies to Queensland employees in the private sector. The provisions of section 431 of the FW Act already apply to Federal and Victorian public service workers. It is anticipated that this power would only ever be utilised in relation to industrial disputes in essential services where there is a real threat to public safety and welfare or to the economy.

Employee balloting process for the taking of protected industrial action

Currently the IR Act does not regulate the process for the balloting of employees about matters giving rise to proposed industrial action in support of certified agreement negotiations. By contrast the FW Act contains a number of regulatory provisions; for example it requires that a Protected Action Ballot Order be obtained, has provisions which stipulate how voting may occur (in person or by post) and specifies when a ballot can be considered a successful ballot (for instance, where more than 50 per cent of votes need to be cast in favour of the industrial action for industrial action to then be taken). Under the FW Act expenses of any ballot are met

by the Commonwealth (through the Australian Electoral Commission) unless the negotiating party that initiated the ballot elects to have someone other than the Australian Electoral Commission conduct the ballot (in which case the party meets costs).

The Bill amends the IR Act to include provisions similar to those in the FW Act so as to ensure that there are greater safeguards and accountabilities built into the balloting process for the taking of industrial action in connection with the making of certified agreements. The amendments additionally provide that balloting should occur by post and be conducted by the Electoral Commission Queensland.. The cost of the ballot is to be met by the State.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 provides that this act may be cited as the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

Commencement

Clause 2 provides that Part 4 Amendment of the *Public Service Act 2008*, Part 5 Minor and consequential amendments and the schedule commence on 1 July 2012. All other parts commence on the date the amendment Bill receives assent.

Part 2 Amendment of Industrial Relations Act 1999

Act Amended

Clause 3 provides that this part amends the *Industrial Relations Act 1999* (the Act).

Amendment of s 3 (Principal object of this Act)

Clause 4 inserts a new sub-section 3(p) to provide that a principal objective of the Act is to ensure that when wages and employment conditions are determined for the public sector that the financial position of the State, the relevant public sector entity and the State's fiscal strategy are taken into account. When wages are determined other than in the public sector, the employer's financial position is to be taken into account. This amendment to the object of the IR Act has been introduced to reflect the requirement for the QIRC to consider the public interest when arbitrating in accordance with s149(5)(c).

Amendment of s 104 (Meaning of *engaging in* conduct for a *prohibited reason* for ch 4)

Clause 5 amends section 104(1)(g) to also prescribe that a person engages in conduct for a prohibited reason if the person engages in or threatens to engage in the conduct because another person has participated in, proposes to participate in or has proposed to participate in a protected action ballot. An example of the effect of this provision when read in conjunction with other relevant provisions is that an employer is prohibited from dismissing an employee for taking part in a protected action ballot on industrial action in the making of a certified agreement. Further, clause 5 distinguishes between a protected action ballot, made under section 176 and schedule 4, and a secret ballot such as that made under section 285.

Amendment of s 144 (What is to be done when an agreement is proposed)

Clause 6 inserts a new sub-section 144(4A) to provide that where an employer and 1 or more employee organisations are parties to an agreement and an employer asks employees to approve an agreement by

voting for it (proposed section 147A) that certain requirements no longer apply. These are the requirements to inform employees that an employee organisation can represent them in negotiations and to give the employee organisation a reasonable opportunity to represent the employee in negotiations. This is because the agreement is no longer an agreement between an employer on the one hand and an employee organisation on the other hand, but it is an agreement between an employer and employees.

Insertion of new s 147A

Clause 7 inserts a new section 147A 'Employer may ask employees to approve proposed agreement being negotiated with employee organisation' to provide that where an employer and 1 or more employee organisations are parties to a proposed agreement, an employer may directly ask employees to approve it. Such requests may not be made until after the peace obligation period for the making of the agreement has ended. While the employer may chose how to conduct the vote, the employer must comply with the provisions of section 144(2)(a) and (b) when asking the employees to vote on the agreement so that, in the event the agreement is approved by the employees, there is no need to conduct a further vote prior to certification. If a valid majority (see Schedule 5: Dictionary) approves the making of the agreement it may be submitted to the QIRC for certification and the agreement is taken to be an agreement made between the employer and the employees. If a step was taken in compliance with requirements under the Act by the employer in negotiating the agreement with a relevant employee organisation, then that step is taken to comply with the requirement as it applies to the agreement between the employer and employees. A relevant employee organisation may be bound by the agreement where the requirements of section 166(2) are satisfied. If the QIRC is arbitrating the making of the agreement this provision ceases to operate. The election by an employer to put a proposed agreement to employees under this provision does not, in itself, breach the good faith provisions of section 146.

Amendment of s 149 (Arbitration if conciliation unsuccessful)

Clause 8 amends section 149(5) to prescribe the things that are to be considered by the QIRC as part of the public interest in arbitrating the making of an agreement.

For matters involving a public sector entity (as defined by the section) these things include: (1) the State's financial position; (2) the State's fiscal

strategy; and (3) the financial position of the relevant public sector entity (e.g. Queensland Police Service or Department of Education). In matters involving an employer that is not a public sector entity, the employer's financial position is to be considered (e.g. in a matter involving the Brisbane City Council, the financial position of the Council would be considered). The likely effects of a determination on the economy and the community are also to be considered in all matters.

For each thing the QIRC is required to report on their findings and the evidence or other material on which their findings are based. This amendment does not change the effect of Section 27B 'Content of statement of reasons for decision' of the *Acts Interpretation Act 1954*

There is a definition of public sector entity for the purpose of this provision. The definition distinguishes between the public sector on the one hand, and local government, local government-owned corporations and parents and citizens associations on the other hand.

In addition, section 149(5)(c)(ii) has been amended to remove the reference to '…industry generally and on the particular enterprise or industry concerned' and these matters are no longer relevant when the QIRC is arbitrating under s149.

The transitional arrangements provide that the new requirements in relation to section 149 only apply to matters which have been referred to arbitration in accordance with section 149(a), (b) and (c) of the Act after the commencement of the section.

Amendment of s 156 (Certifying an agreement)

Clause 9 amends section 156(1)(a) (which deals with certain things that the QIRC must be satisfied have been done before certifying an agreement) to insert a note to see section 147A(6).

Amendment of s 174 (Protected industrial action)

Clause 10 inserts a new sub-section 174(3A) to provide that certain industrial action taken after the peace obligation period is protected from legal action only where the provisions of proposed sections 175, 176 and 177 are complied with.

Replacement of ss 175—177

Clause 11 omits current sections 175, 176 and 177, replaces them with new sections and inserts a new section 177A. These sections deal with industrial action in relation to a proposed agreement.

Section 175 prescribes requirements for industrial action taken in response to industrial action by another negotiating party and provides that written notice of the intended industrial action must be given to all negotiating parties. An employer may give notice by taking other reasonable steps.

Section 176 prescribes requirements for other industrial action (i.e. not action taken in response to other industrial action) taken by an employee organisation or by employees. The industrial action must be authorised by a protected action ballot conducted in accordance with proposed schedule 4. The industrial action must be authorised by a protected action ballot if a protected action ballot order has been made by the QIRC in relation to the proposed action, and the action that was voted on was the action taken. For a ballot to authorise the action, at least 50% of eligible employees must vote and 50% of valid votes cast must approve the industrial action. The industrial action must start within 30 days or a longer period if extended by the QIRC of not more than an additional 30 days. The industrial action must not start before the peace obligation period has ended. This provision allows steps to be taken in preparation for the taking of protected industrial action (e.g. applying for a protected action ballot order, balloting of employees). Notwithstanding these steps, the protected action may only commence after the expiration of the peace obligation period. Written notice of the intended industrial action must be given to all other negotiating parties but this may not be given until after the results of the ballot are declared.

Section 177 prescribes requirements for other industrial action (i.e. not action taken in response to other industrial action) taken by an employer and provides that 3 working days written notice of the intended industrial action must be given to all negotiating parties. Notice may also be given by taking other reasonable steps.

Section 177A prescribes that the written notice must state the nature of the action to be taken and the day it will start.

Insertion of new ch 6, div 6A

Clause 12 inserts a new Division 6A 'Termination of protected industrial action by Minister' to prescribe the circumstances and procedures under

which the Attorney-General may terminate protected industrial action in relation to a proposed certified agreement. The division generally reflects provisions and ministerial powers already existing under the Federal *Fair Work Act 2009*.

Section 181B prescribes that the Attorney-General Minister may make a written declaration terminating industrial action if satisfied that it is threatening or would threaten to damage the economy, community or part of the economy or is threatening or would threaten the safety and welfare of the community or part of it. The termination declaration must be published in the gazette and takes effect on the day it is made.

Section 181C prescribes that the Attorney-General must inform the QIRC and ensure parties to the proposed certified agreement are made aware of the termination declaration.

Section 181D prescribes that once a termination direction has taken effect, the Attorney-General may give written directions to stated employees who will be covered by the agreement or employer or employee organisation parties to it to take or not take stated actions if satisfied the direction is reasonably directed to reducing or removing threats, damage or danger from industrial action. Under sections 182 and 183 of the Act as amended by this Bill, persons not complying with a direction are liable to a maximum penalty of 135 penalty units ($13500) for corporations and 27 penalty units ($2700) for an individual.

Section 181E prescribes that once a termination direction takes effect during the post-industrial action negotiation period (as defined, up to 42 days after the termination declaration is made) the QIRC has the power to conciliate the matter to help parties reach agreement as if section 148 applied. Orders made by the QIRC using its powers under section 148 must not be inconsistent with the termination declaration or any direction given by the Attorney-General. This section ensures that although the QIRC can take steps to conciliate the dispute under section 148, it cannot do anything inconsistent with both the declaration and directions.

Section 181F prescribes that if the matters at issue in negotiation for the agreement have not been settled at the end of the post-industrial action negotiation period the QIRC must determine the matter by arbitration as quickly as possible as if section 149 applied.

Amendment of s 182 (Penalty provisions)

Clause 13 inserts new penalty provisions. These are failure to comply with a direction of the Attorney-General (s181D(3)) and failure to allow the Electoral Commission of Queensland access to a workplace to give notice or conduct a protected action ballot (schedule 4, section 9). Persons not complying with those provisions are liable to a maximum penalty of 135 penalty units ($13500) for corporations and 27 penalty units ($2700) for an individual.

Amendment of s 183 (Penalties for contravening penalty provisions)

Clause 14 inserts new sub-sections 183(6A) and (7A) to prescribe who may make applications for orders imposing a penalty for two new contraventions prescribed by this Bill. For section 181D(3) applications may be made by the Attorney-General, parties to a proposed certified agreement or another person prescribed by regulation. For schedule 4, section 9 applications may be made by an employee whose employment will be covered by the proposed agreement, an employee organisation who was an applicant for a protected action ballot order or another person prescribed by a regulation.

Insertion of new ss 186 and 187

Clause 15 inserts new sections dealing with protected industrial action.

Section 186 provides that industrial action is taken to be properly authorised by a protected action ballot if a person engages in or organises industrial action in good faith and reliance on the declared results of the ballot even though it later becomes clear the action was not authorised by the ballot or the decision to make the order was set aside on appeal.

Section 187 provides that a technical breach of provisions in schedule 4 on protected action ballots does not affect the validity of a protected action ballot order, an order, direction or decision of the QIRC or Electoral Commission of Queensland or a protected action ballot.

Amendment of s 285 (Conducting a secret ballot)

Clause 16 deletes section 258(5)-(8) in light of new section 664A ‘Interference with protected action ballot or secret ballot conducted by commission etc’ and inserts a note into existing section 285(1) to provide

that proposed new section 664A 'Interference with protected action ballot or secret ballot conducted by commission etc.' should be considered. For the sake of clarity, section 285 has no connection with the protected action ballot order regime provided for at section 176 and schedule 4 of the Act.

Amendment of s 320 (Basis of decisions of the commission and magistrates)

Clause 17 amends section 320(5) to provide that decisions made by the QIRC on arbitration of the making of certified agreements under section 149 are to be based not on the public interest as described in section 320(5), but must take into account the public interest as prescribed in section 149(5)(c).

Insertion of new ch 8, pt 7

Clause 18 inserts a new Chapter 8 'Industrial tribunals and registry' Part 7 'Other matters' section 339AA 'Government briefing about State's financial position etc.' to prescribe that the treasury chief executive may give a briefing to the QIRC about the State's financial position, fiscal strategy and related matters at any time. The briefings are to be open or otherwise available to the public. This briefing is for information purposes only and there is no link between the briefing and any other proceedings before the QIRC.

Insertion of new s 664A

Clause 19 inserts a new section 664A 'Interference with protected action ballot or secret ballot conducted by commission etc.' to prescribe offences and penalties in relation to resisting, obstructing, threatening or intimidating anyone taking part in a protected action or secret ballot or falsely voting in such a ballot. A maximum penalty of 40 penalty units ($4000) is prescribed for any person guilty of such an offence.

Insertion of new ch 20, pt 13

Clause 20 inserts a new Chapter 20 'Other transitional provisions' Part 13 'Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012'.

Section 780 inserts definitions for the purposes of Part 13, being 'amending Act', 'commencement and 'previous section 175'.

Section 781 provides that the amendments to section 149(5) apply only to arbitration of matters which starts on or after the commencement of that section. Arbitration is defined as starting when any of the existing requirements under section 149(1)(a), (b) or (c) are first satisfied.

Section 782 provides that the certified agreement industrial action provisions of the Act as they existed before commencement of this Bill continue to apply to industrial action for which notice had been given under those existing provisions.

Section 783 provides that a declaration made by the Attorney-General to terminate industrial action under section 181B does not apply to protected industrial action if notice of the intended action was given under the previous section 175, prior to the commencement of Division 6A.

Section 784 provides that a regulation may make savings or transitional provisions necessary to allow or facilitate the transition of provisions from the pre-amended Act to the amended Act in respect of the making or certification of agreements under new section 147A 'Employer may ask employees to approve proposed agreement being negotiated with employee organisation' or for protected action ballots. This section and any transitional regulation made under it expire 2 years after commencement.

Section 785 provides that the amendment of the *Industrial Relations Regulation 2011* by the amending Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Insertion of new sch 4

Clause 21 inserts a new Schedule 4 'Provisions for protected action ballots'. The schedule prescribes procedures and criteria in relation to applications for protected action ballot orders (PABO) and protected action ballots .

Section 1 states the purpose of the schedule. Under section 176, industrial action by employees in relation to a proposed certified agreement is not protected industrial action unless the action has been authorised in advance by a protected action ballot. The schedule establishes a process that enables employees to choose, by ballot, whether they wish to engage in particular industrial action once negotiations for the agreement have begun.

Section 2 inserts a definition for the schedule of protected action ballot order.

Section 3 provides that applications for a PABO may be made to the QIRC by an employee organisation that is a negotiating party or an employee who is a negotiating party. Subsection (4) makes it clear that an application can only be made by an employee organisation on behalf of its members. The application must state the group of employees to be balloted (i.e. the employees who will be bound by the agreement) the question to be asked in the ballot, including the nature of the proposed industrial action.

Section 4 provides that where a certified agreement already binds employees an application for a PABO may be made no earlier than 30 days before the nominal expiry date of the existing agreement.

Section 5 provides that within 24 hours after the application is made the applicant must give a copy of the PABO application to the employer of employees to be balloted and the ECQ.

Section 6 provides that the QIRC must as far as is practicable decide a PABO application within 2 working days after it is made.

Section 7 provides that the QIRC may deal with 2 or more PABO applications relating to employees at the same workplace or same employer if satisfied that dealing with them will not unreasonably delay deciding the applications.

Section 8 provides that the QIRC must make a PABO only if satisfied that three things have occurred. Firstly, that an application has been properly made under section 3. Secondly, that each applicant has been genuinely trying to reach an agreement with the relevant employer. The 'genuinely trying to reach an agreement' requirement only applies in relation to the particular employer to which the application for a protected action ballot relates. Thirdly, actual negotiations for the agreement has begun. The intent of this provision is to ensure that where an employer elects not to bargain, no PABO can be granted. This provision, which is not part of the Fair Work Act, has been introduced to address the decision of the Federal Court in *JJ Richards & Sons Pty Ltd v Fair Work Australia [2012] FCAFC 53*. The PABO must state the name of the applicants, the group of employees to be balloted, the date on which voting closes and the question to be put to balloted employees including the nature of proposed industrial action. In exceptional circumstances the QIRC may state in a PABO that a period of notice of no more than 7 working days must be given before industrial action.

Section 9 provides that as soon as practicable after making a PABO the QIRC must give a copy to each applicant, the relevant employer and the

ECQ. As soon as practicable after the PABO is made the ECQ must notify each employee eligible to vote on the ballot. Notices must include information and be given in the manner prescribed by regulation. An employer who fails to allow the ECQ access to a workplace to give notice, prepare for or conduct a protected action ballot is liable to a maximum penalty of 135 penalty units ($13500) if a corporation and 27 penalty units ($2700) if an individual.

Section 10 provides that where a PABO for employees at a particular workplace or employer has been made and it is proposed to make another PABO for the same workplace or employer, the QIRC may make the PABOs to require that the ballots are held at the same time if satisfied that the level of disruption at the workplace would be reduced and the ballots would not be unreasonably delayed.

Section 11 provides that an applicant for a PABO may apply to the QIRC vary the order or the ECQ may apply to the QIRC vary the order in respect of when a ballot closes.

Section 12 provides that an applicant for a PABO may apply to the QIRC to revoke the order.

Section 13 provides that protected action ballots must be conducted only by the ECQ in accordance with the PABO, the timetable for the ballot and any procedures prescribed by regulation.

Section 14 provides that voting is required to be by post only.

Section 15 provides that as soon as practicable after receiving a PABO the ECQ is to develop a timetable for the ballot in consultation with each applicant and the employer of employees to be balloted.

Section 16 provides that as soon as practicable after receiving a PABO the ECQ must comply a roll of voters for the ballot. The ECQ may give a written voting information direction to either or both the PABO applicant and the employer of employees to be balloted requiring that they supply information names of employees in the group stated in the PABO and any other information reasonably required.

Section 17 provides that an employee is eligible to be on the roll of voters if they are to be bound by the proposed certified agreement to which the ballot relates and on the day the PABO was made the employee was part of the group stated in the order.

Section 18 provides that the ECQ must include or remove an employee's name on the roll of voters if requested by the PABO applicant, the

employee or the employee's employer and if satisfied that the employee is either eligible or not eligible to be included on the roll. A person's name must also be removed from the roll by the ECQ if the person is no longer employed by the relevant employer and removal is requested by the PABO applicant, the employee or the employee's employer. A persons name may be also included or removed from the roll by the ECQ on its own initiative if satisfied about the person's eligibility for the roll or that the person is no longer an employee of the relevant employer.

Section 19 provides that protected action ballot papers must be in the approved form if such form exists.

Section 20 provides that employee's may only vote in a ballot if their name is on the roll of voters for the ballot.

Section 21 provides that a regulation may provide for the qualifications, appointment, powers and duties of scrutineers for a protected action ballot.

Section 22 provides that as soon as practicable after voting closes the ECQ is to declare the results of the ballot and inform each PABO applicant, the employer of employees balloted and the QIRC of the results. The QIRC is to publish the results of the ballot on its website and in any other manner considered appropriate.

Section 23 provides that if the ECQ receives any complaints about conduct of a ballot or it becomes aware of any irregularities, the ECQ must give the QIRC a written report about the conduct of the ballot.

Section 24 provides that the costs of any protected action ballot conducted by ECQ are payable by the State.

Section 25 provides that the ECQ must keep records and documents in relation to a protected action ballot for 1 year after voting closes and in accordance with any other requirements under a regulation. These documents and records are the roll of voters, the ballot papers, envelopes and other documents and

records for the ballot and any other documents prescribed under a regulation.

Amendment of sch 5 (Dictionary)

Clause 22 amends schedule 5 Dictionary to include definitions of new terms introduced into the Act by this Bill.

Part 3 Amendment of Industrial Relations Regulation 2011

Regulation amended

Clause 23 provides that this part amends the *Industrial Relations Regulation 2011* (the Regulation).

Insertion of new ss 10A-10H

Clause 24 inserts new sections prescribing matters that are required to be set down in the Regulation by schedule 4 'Provisions for protected action ballots' of the Act.

Section 10A prescribes the matters to be included in a notice of the making of a protected action ballot order from the ECQ and the ways in which that notice may be given to an employee (as required under schedule 4, section 9(3) of the Act).

Section 10B prescribes information (as part of the procedures that may be prescribed under schedule 4, section 13(2)(c) of the Act) that the ECQ may provide to accompany a ballot paper. This information includes directions and information on how to cast a valid vote.

Section 10C prescribes that information provided (as part of the procedures that may be prescribed under schedule 4, section 13(2)(c) of the Act) under direction of the ECQ for the roll of voters must be accompanied by a written declaration by the applicant or employer as to the completeness, currency and accuracy of the information.

Section 10D prescribes procedures to be followed by the ECQ in the issue of ballot papers (as part of the procedures that may be prescribed under schedule 4, section 13(2)(c) of the Act) including supplying information about closing dates for voting and envelopes for submission of votes.

Section 10E prescribes procedures to issue replacement ballot papers (as part of the procedures that may be prescribed under schedule 4, section 13(2)(c) of the Act). Employees may ask the ECQ to provide replacement ballot papers if no papers were received, the ballot papers were missing from documents received or the ballot papers received were lost, destroyed or spoilt.

Section 10F prescribes procedures for the counting of votes in a ballot (as part of the procedures that may be prescribed under schedule 4, section 13(2)(c) of the Act). The ECQ must admit valid ballot papers and reject informal ballot papers, count the valid and informal ballot papers and record the number of votes in favour and against the question in the ballot.

Section 10G prescribes procedures to be followed in relation to scrutiny of votes (as part of the procedures that may be prescribed under schedule 4, section 13(2)(c) of the Act). The ECQ must deal with any concerns expressed by scrutineers as to validity of votes or errors in the scrutiny of ballot papers.

Section 10H prescribes matters relating to the appointment and functions of scrutineers (as part of the matters that may be prescribed under schedule 4, section 20 of the Act). Scrutineers must be appointed in writing by either the applicant or the relevant employer and must be present at the scrutiny of ballot papers. The total number of appointed scrutineers must not be more than the number of people engaged in scrutiny for the ECQ.

Part 4 Amendment of Public Service Act 2008

Act amended

Clause 25 provides that this part amends the *Public Service Act 2008* (the PS Act).

Amendment of 59 (Public service employees)

Clause 26 amends the note to accommodate amendments to the PS Act allowing for the appointment of more than one appeals officer.

Amendment of s 77(Staff members of the commission)

Clause 27 amends s 77(2) to remove any reference to appeals officer.

Amendment of s 78(staff generally subject to direction by commission chief executive)

Clause 28 amends s 78(2) to remove any reference to appeals officer. S 78(3) is deleted.

Amendment of sh 3, pt5, hdg (Appeals officer)

Clause 29 amends the heading to reflect that the chief executive must appoint one or more appeals officer.

Insertion of new s 88AA

Clause 30 inserts a new section 88AA to define a member of the QIRC to be as defined in the *Industrial Relations Act 1999*, schedule 5.

Replacement of s 88A (Appeals officer)

Clause 31 inserts a new section 88A prescribing that the Public Service Commission (the commission) chief executive must appoint one or more appeals officer. An appeals officer must be a member of the QIRC. Subsection (6) explains that the vice president, a deputy president and a commissioner of the QIRC can be appointed on a part-time basis or, if the person is appointed on a full-time basis, they can enter an agreement to work on a part-time basis (see IR Act, sections 258, 258A and 259). These sections require the instrument of appointment or the agreement to specify the percentage of the full-time basis of a member's position the person is to perform. The purpose of section 88A(6)(a) is to make it clear that, for a member who is working on a part-time basis, any time spent conducting appeals under the PS Act is counted as part of their part-time service.

Omission of s 88B (Acting as appeals officer)

Clause 32 omits section 88B from the PS Act.

Replacement of s 88C (Appeals officer's functions)

Clause 33 inserts a new section 88C to clarify that an appeals officer hears and decides appeals under the PS Act and not under the *Industrial Relations Act 1999*.

Amendment, relocation and renumbering of s 88D (Report on performance of functions)

Clause 34 renames the section 88D as 'Report on appeals' and relocates the section as section 218C with an amendment that the commission chief executive must report on appeals to the Minister.

Insertion of new s 88D

Clause 35 inserts a new section 88D to provide that if an appeals officer has already dealt with a matter while performing their function as a QIRC member then they must not deal with the appeal and inform the commission chief executive why they are not dealing with it.

Amendment of s 88E (Staff members to help appeals officer)

Clause 36 makes minor amendments to section 88E to reflect that more than one appeals officer may now be appointed.

Omission of s 88F (Delegation)

Clause 37 omits section 88F from the PS Act.

Replacement of s 88G (Duty of persons performing appeal functions)

Clause 38 inserts a new section 88G to provide that appeals officers and any other officer assisting them must perform their functions with impartiality and fairness.

Amendment of s 112 (Acting senior executives)

Clause 39 omits this provision.

Amendment of s 193, (Appeals to appeals officer)

Clause 40 omits the words 'to appeals officer'.

Insertion of new sh 7, pt 1, div 1A

Clause 41 inserts a new section 196A to prescribe that appeals under Part 1 of Chapter 7 of the PS Act are heard and decided by an appeals officer

Amendment of s 197 (Starting an appeal)

Clause 42 amends section 197 to provide that appeals are to be given to the commission chief executive. Currently appeals are given to the appeals officer.

Amendment of s 198 (Notice by appeals officer of appeal)

Clause 43 amends section 198 to provide that the commission chief executive gives notice of the receipt of appeal notices to other parties. Currently notice is given by the appeals officer. An administrative process will be established with the Queensland Industrial Relations Commission to facilitate allocation of an appeal to a particular appeals officer.

Amendment of s 201 (Appeal is by way of review)

Clause 44 corrects a reference in section 201(4) to link to sub-section (3).

Amendment of s 204 (Representation of parties)

Clause 45 amends the reference in section 204(3) to reflect that there may be more than one appeals officer appointed.

Amendment of s 206 (Withdrawing an appeal)

Clause 46 amends section 206 to provide that appeals may be withdrawn by giving notice to the commission chief executive and to provide that the appeals officer hearing the appeal gives notice of the withdrawal to other parties.

Amendment of s 208 (Decision on appeal)

Clause 47 inserts a new section 208(4) to provide that an appeals officer must give a copy of a decision on an appeal to the commission chief executive who then gives a copy of the decision to parties to the appeal.

Amendment of s 210 (Decision on appeal is binding on parties)

Clause 48 amends the reference in section 210(1) to reflect that there may be more than one appeals officer appointed.

Amendment of s 212 (Public service employee's entitlements for attending appeal as part of duties)

Clause 49 amends section 212(2) to provide that a public servant's expenses and allowances for attending an appeal as part of their duties is to be decided by the commission chief executive. Currently these matters are decided by the appeals officer.

Amendment of s 213 (Entitlement of non-public service employees)

Clause 50 amends section 213(3) to provide that expenses for non-public service employees attending an appeal is decided by the commission chief executive. Currently these matters are decided by the appeals officer.

Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal)

Clause 51 amends section 214(2) to provide that the costs of an appeal payable by a relevant department or public service office are decided by the commission chief executive. Currently these matters are decided by the appeals officer.

Amendment of s 215 (Jurisdiction of IRC for industrial matters)

Clause 52 amends section 215(3) to reflect that appeals are made under part 1 of the chapter rather than by reference to the appeals officer.

Insertion of new s 218B

Clause 53 inserts a new section 218B setting out the functions of the commission chief executive in dealing with appeals and deals chiefly with communicating matters arising out of an appeal that may affect decision making in the public service.

Renumbering of ch 9, pt 6, hdg (Transitional provision for Public Interest Disclosure Act 2010)

Clause 54 corrects a numbering error that has been identified in the Act.

Renumbering of s 264 (Amendment of regulation by Public Interest Disclosure Act 2010 does not affect powers of Governor in Council)

Clause 55 corrects a numbering error that has been identified in the Act.

Insertion of new ch 9, pt 9

Clause 56 inserts a new Part 9 to the PS Act to provide transitional arrangements as a result of amendments made by this Bill.

Section 281 prescribes relevant definitions of terms necessary because of the amendments.

Section 282 provides that the appointment of the former appeals officer ceases at commencement of this part subject to the need to continue to hear and decide appeals started before commencement of this part.

Section 283 provides that appeals started after commencement of this part in relation to a decision made before commencement of this part are to be heard and decided by a new appeals officer under the PS Act and under provisions applying from the commencement of this part.

Section 284 provides that an appeal started before the commencement of this part is to continue to be heard by the former appeals officer or their delegate under the old appeal provisions. The section also provides for the appointment of a transitional appeals officer.

Amendment of Sch 4 Dictionary

Clause 57 inserts a new definition of ‘member’.

Part 5 Minor and consequential amendments

Act amended

Clause 58 provides a schedule making minor and consequential amendments to the PS Act. These chiefly relate to references to a single appeals officer being amended to reflect new arrangements that allow for more than one appeals officer to be appointed.