
Restoring Fairness for Government Workers Bill 2013

Explanatory Notes for the Private Members Bill the Restoring Fairness for Government Workers Bill 2013

Title of the Bill

Restoring Fairness for Government Workers Bill 2013

Objectives of the Bill

The objectives of the *Restoring Fairness for Government Workers Bill 2013* are to restore the industrial conditions that were negotiated between the State Government and public sector employees and their unions. These conditions were removed in the *Public Service and Other Legislation Amendment Bill 2012* without any form of consultation and through amendments introduced during consideration in detail.

The Bill seeks to restore agreed industrial conditions in enterprise bargaining agreements including provisions that protect against contracting out, employment security provisions, organisational change provisions and termination, change and redundancy provisions.

There is no fairness in a legislative framework that allows for agreed industrial conditions to be overridden at the stroke of a pen.

The Bill also makes changes to allow the Queensland Industrial Relations Commission to remain as the 'layperson's court'. The Queensland Industrial Relations Commission (QIRC) was established as a forum where workers and union advocates operate on a level playing field with their employers. Allowing for greater legal representation in the QIRC as legislated in the *Public Service and Other Legislation Amendment Bill 2012* advantages employer organisations with greater financial capacity.

Changes are also made to rescind the removal of provisions in relation to Protected Action Ballot Orders and Ministerial intervention in industrial disputes made in the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

Alternative Ways of Achieving Policy Objectives

Legislation is required to ensure that these objectives are achieved.

Consistency with Fundamental Legislative Principles

The legislation is consistent with fundamental legislative principles.

Estimated Cost for Government Implementation

There will be no costs associated with implementation of the Bill.

Consultation

Consultation has occurred with unions.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 provides the Act's short title.

Act as amended

Clause 2 sets out that Part 2 amends the *Industrial Relations Act 1999*.

Amendment of s 3 (Principal object of this Act)

Clause 3 omits Section 3 (p) which sets out that when wages and employment conditions are determined by arbitration the financial position of the State and the State's fiscal strategy or the employer's financial position be taken into account.

Part 2 (Amendment of Industrial Relations Act 1999)

Amendment of s 89 (When this division applies)

Clause 4 removes section 89 (2) of the *Industrial Relations Act 1999*. Section 89(2) allows for negotiated conditions in relation to the termination of employment to be disregarded for most of the public sector (other than for example police and staff in Government Owned Corporations).

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

Clause 5 makes changes to section 104 of the *Industrial Relations Act 1999* to restore the meaning of engaging in conduct for a prohibited reason to ch 4 from changes made in the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

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

Clause 6 omits section 144(4A) of the *Industrial Relations Act 1999* that removes the application of subsections 2(c) and (3) to an agreement proposed to be made with employees under section 147A.

Omission of s 147A (Employer may ask employees to approve proposed agreement being negotiated with employee organisation)

Clause 7 omits Section 147A of the *Industrial Relations Act 1999* which allows the employer to ask employees to approve a proposed agreement being negotiated with the employee organisation bypassing unions.

Amendment of s 149 (Arbitration if conciliation unsuccessful)

Clause 8 omits section 149(5)(c)(ii) of the *Industrial Relations Act 1999* which requires the Queensland Industrial Relations Commission in the event of arbitration to consider the State's financial position and fiscal strategy and the financial position of the public sector entity or the employer's financial position. Clause 8 also omits Section 149(11) which defines a public sector entity for the purposes of that Section.

Amendment of s 156 (Certifying an agreement)

Clause 9 omits part of Section 156(1)(a) of the *Industrial Relations Act 1999* which is consequential to the amendment by clause 7 as it refers to Section 147A.

Amendment of s 174 (Protected industrial action)

Clause 10 omits Section 174(3A) of the *Industrial Relations Act 1999* which includes conditions for protected industrial action changed in the *(Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* further referred to in Section 176.

Replacement of ss 175–177A

Clause 11 omits Sections 175-177A of the *Industrial Relations Act 1999* and inserts the sections that existed prior to the *(Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* to restore previous conditions for protected industrial action.

Omission of ch 6, div 6A (Termination of protected industrial action by Minister)

Clause 12 omits Chapter 6, division 6A of the *Industrial Relations Act 1999* which provides the Minister with powers to terminate protected industrial action.

Amendment of s 182 (Penalty provisions)

Clause 13 omits Section 182(d) and (f) of the *Industrial Relations Act 1999* which defines penalty provisions as Section 181D(3) and Schedule 4, Section 9(4) respectively.

Amendment of s 183 (Penalties for contravening penalty provisions)

Clause 14 omits Section 183(6A) and (7A)- of the *Industrial Relations Act 1999* as consequential amendment to amendments by clauses 12, and 11, and 15 respectively.

Omission of ss 186 and 187

Clause 15 omits Sections 186 and 187 of the *Industrial Relations Act 1999* as consequential amendments for the same reasons as in clause 14.

Amendment of s 285 (Conducting a secret ballot)

Clause 16 omits Section 285(1), note- which is consequential to clause 19 and inserts Section 285(5) and Section 285(6) as it existed in the *Industrial Relations Act 1999* prior to changes in the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

Amendment of s 319 (Representation of parties)

Clause 17 restores parts of Section 319 of the *Industrial Relations Act 1999* which sets out where legal representation is available in the QIRC. Section 319 includes requirements that the QIRC is satisfied that parties are adequately represented prior to allowing for legal representation. This is important to ensuring the future of the QIRC as a 'layperson's court'.

Omission of ch 8, pt 7 (Other matters)

Clause 18 removes Chapter 8, Part 7 of the *Industrial Relations Act 1999* where it sets out that the treasury chief executive may give the members of the commission a briefing about the State's financial position and fiscal strategy at any time.

Omission of s 664A (Interference with protected action ballot or secret ballot conducted by commission etc.)

Clause 19 omits Section 664A of the *Industrial Relations Act 1999* which was inserted in the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

Omission of ch 15, pt 1 hdg (General)

Clause 20 removes Chapter 15 Part 1 heading from the *Industrial Relations Act 1999* as part of rescinding the new Chapter 15 Part 2 introduced in amendments in consideration in detail in the *Public Service and Other Legislation Amendment Bill 2012*.

Omission of ch 15, pt 2 (Particular provisions of industrial instruments)

Clause 21 rescinds Chapter 15 Part 2 of the *Industrial Relations Act 1999*.

Chapter 15 Part 2 removes agreed industrial conditions between employers and employees including termination and redundancy provisions, contracting provisions, employment security provisions and organisational change provisions. This impacts on all employees who are a part of a Government entity as defined in the Act. This captures employees other than Local Government, the police service (other than certain employees mentioned in the *Police Service Administration Act 1990*), and employees in Government Owned Corporations.

Insertion of new ch 20, pt 16

Clause 22 inserts a new Chapter 20 Part 16 to the *Industrial Relations Act 1999* which sets out the transitional provisions for the *Restoring Fairness for Government Workers Act 2013*.

Omission of sch 4 (Provisions for protected action ballots)

Clause 23 omits Schedule 4 of the *Industrial Relations Act 1999* which sets out provisions for protection action ballots introduced in the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

Amendment of sch 4A (Application of this Act to prescribed Hospital and Health Services and their employees)

Clause 24 omits Schedule 4A, sections 12A, 22B and 32 to 37 as consequential amendments to the changes being made by clauses 7, 11, 12 and 23.

Amendment of sch 5 (Dictionary)

Clause 25 omits certain Schedule 5 definitions which are redundant because the provisions in which the definitions are being used are being repealed.

Part 3 Amendment of Public Service Act 2008

Act amended

Clause 26 sets out that this part amends the *Public Service Act 2008*.

Amendment of s 23 (Application of Act to public service offices declared under a regulation)

Clause 23 reinstates the previous Section 23 (3) of the *Public Service Act 2008* which provides that an application provision cannot reduce an employee's overall conditions unless the reduction arises from a change in employment and the change was sought by the employee.

Amendment of s 53 (Rulings by commission chief executive)

Clause 28 removes the new subsection 53(baa) of the *Public Service Act 2008*. This subsection provided the Commission Chief Executive with the power to make a ruling about remuneration and conditions of employment of public service conditions. This effectively allows for the removal of agreed industrial conditions with the stroke of a pen.