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

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

### Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Jarrod Bleijie MP

#### Title of the Bill

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

#### Objectives of the Amendments

The objectives of the amendments are to effect changes of a technical drafting nature, to clarify the operation of new provisions, to provide for further minor changes arising out of the consultation process to improve the operation of the Bill and to include amendments recommended as a result of scrutiny of the Bill by the Finance and Administration Parliamentary Committee.

#### *Certification of employer-employee certified agreements*

Included in the Bill are minor clarificatory amendments to new section 147A arising out of consideration of the submissions made by the Local Government Association Queensland to the Finance and Administration Parliamentary Committee. The Committee has subsequently recommended that the Bill be amended in respect of the issue raised.

Local Government Association Queensland submitted that there may be practical difficulties when an agreement is made with employees directly under new section 147A, having regard to the requirement at existing section 156(1)(c) for an agreement to be '...signed by or for all the parties' to be certified by the Queensland Industrial Relations Commission (QIRC).

An amendment to the Bill at section 147A (6A) is made to address this. This change relates specifically to the signing of an agreement.

***Further changes as a result of appointment of 'appeals officers'***

Included in the Bill are clarificatory changes and changes to improve the operation of the Bill arising from the consultation process and in consideration of the ability for members of the QIRC to be appointed as 'appeals officers' for the purposes of the *Public Service Act 2008*.

Amendments include that the appointment of appeals officers are to be made by the Governor in Council and clarification that new section 214A of the *Public Service Act 2008* does not apply to appeals officers.

Reference 'to the chief executive of the Public Service Commission' in section 686(1)(a) of the *Industrial Relations Act 1999* is also removed and section 208 (Decision on appeal) of the *Public Service Act 2008* is further amended so that the appeal decision is provided by the appeals officer to the parties to the appeal and the commission chief executive officer.

***Membership of the Public Service Commission***

Included in the Bill are minor amendments to section 45 of the *Public Service Act 2008*.

Section 45 of the *Public Service Act 2008* establishes the membership of the Public Service Commission. The *Public Service Act 2008* currently provides for the Commission to consist of the following persons:

- Chairperson
- Commission Chief Executive
- Those Chief Executives responsible for:
  - *Industrial Relations Act 1999*
  - *Parliament of Queensland Act 2001*
  - *Statutory Bodies Financial Arrangements Act 1982*
- And at least 3 other persons appointed by the Governor in Council as Commissioners

The membership of the "other persons" appointed by the Governor in Council as Commissioners expires on 30 June 2012. The Chair of the Commission has indicated that the membership of these "other" persons appointed as Commissioners is no longer required to conduct the business of the Commission.

The Commission in the past has had up to 5 "other persons" holding appointment at the same time.

### **Alternative Ways of Achieving Policy Objectives**

Amendment of the Bill is required to properly give effect to the relevant policy objectives.

### **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles.

### **Estimated Cost for Government Implementation**

The implementation of the amendments to the *Public Service Act 2008*, by not continuing with the “other persons” as appointed Commissioners, will deliver savings of remuneration sitting fees to government of \$30,000 per additional Commissioner.

### **Consultation**

The Public Service Commission and the Department of the Premier and Cabinet have been consulted and are in agreement with this action.

Officers of the Office of the Queensland Parliamentary Counsel have been consulted, and have indicated that these urgent amendments are minor in nature and can be progressed as amendments during consideration of the Bill in detail.

## **Notes on Provisions**

Clause 1 amends clause 7 to insert a new 6(A) at section 147A of the *Industrial Relations Act 1999*, clarifying that if the commission is satisfied a valid majority of the employees approved the agreement, section 156(1)(c) does not apply to the extent it requires the commission to be satisfied the agreement is signed by or for all the parties.

Clause 2 inserts a new clause 26A to omit section 45(b) and 45(d) of the *Public Service Act 2008* the reference to ‘chief executive’. Section 45 establishes the composition of the membership of the Commission. The reference in section 45(b) to the chief executive of the *Industrial Relations Act 1999* is no longer required as a Commissioner, as the effect of the

Machinery of Government change transferring the Public Sector Industrial Employee Relations Unit to the Public Service Commission, makes the Commission Chief Executive the Chief Executive responsible for public sector industrial relations issues. Section 45(d) is no longer required as the Chair of the Commission has indicated that the membership of other persons appointed as Commissioners is no longer required to conduct the business of the Commission.

Clause 3 amends clause 31 to omit at section 88A the reference to 'commission chief executive' and replace with 'Governor in Council.'

Clause 4 amends clause 47 so that the appeals officer who made the decision is responsible for providing a copy of the decision to the parties to the appeal and the commission chief executive.

Clause 5 inserts new clause 51A to insert a new section 214A(2A) to clarify that this section does not apply to appeals officers. A note is included in this section referencing the new section 88A(6)(b), which confirms that section 337 of the *Industrial Relations Act 1999* applies to the exercise of jurisdiction of a member of the QIRC under the *Public Service Act 2008*.

Clause 6 amends clause 58 to correct the title.

Clause 7 amends section 686(1)(a) of the *Industrial Relations Act 1999* to omit the reference to 'to the chief executive of the Public Service Commission' so that it is clear that the *Industrial Relations Act 1999* does not apply to an appeal made under the *Public Service Act 2008* and that appeal cannot be heard by the QIRC under the *Industrial Relations Act 1999*.

Clause 8 amends the Schedule (Minor and consequential amendment) to make further minor and consequential amendments as a result of the amendment to section 45(b) and 45(d) of the *Public Service Act 2008*.

Clause 9 amends Schedule (Minor and consequential amendment) to make further minor and consequential amendments as a result of the amendment to section 45(b) and 45(d) of the *Public Service Act 2008*.