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Industrial Relations and Other Legislation Amendment Bill 2022

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Education, Employment and Training Committee

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Education, Employment and Training Committee

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All web address references are current at the time of publishing.

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Abbreviations

ACL	Australian Christian Lobby
AD Act	*Anti-Discrimination Act 1991*
AHRI	Australian Human Resources Institute
AI Act	*Associations Incorporation Act 1981*
AIG	Australian Industry Group
BCA	Business Council of Australia
CC Act	*Crime and Corruption Act 2001*
CCC	Crime and Corruption Commission
CPSU	Community and Public Sector Union
department	Department of Education
FW Act	*Fair Work Act 2009* (Cth)
HR Act	*Human Rights Act 2019*
IEUA	Independent Education Union of Australia – Queensland and Northern Territory Branch
IR Act	*Industrial Relations Act 2016*
LGAQ	Local Government Association Queensland
LS Act	*Legislative Standards Act 1992*
NSW IR Act	*Industrial Relations Act 1996* (NSW)
QCAT	Queensland Civil and Administrative Tribunal
QCU	Queensland Council of Unions
QHRC	Queensland Human Rights Commission
QIRC	Queensland Industrial Relations Commission
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives' Union
QPU	Queensland Police Union
QTA	Queensland Trucking Association
QTU	Queensland Teachers' Union
Respect@Work Report	Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces

Review Report	Five-year Review of Queensland's *Industrial Relations Act 2016* – Final Report
RUSH	Red Union Support Hub
SDA	Shop Distributive & Allied Employees' Association
Together Queensland	Together Queensland, Industrial Union of Employees
TWU	Transport Workers' Union
UFUQ	United Firefighters' Union of Australia, Union of Employees, Queensland
UWU	United Workers Union

Chair's foreword

This report presents a summary of the Education, Employment and Training Committee's examination of the Industrial Relations and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This legislation forms part of the government's response to the Five-year Review of Queensland's *Industrial Relations Act 2016* – Final Report. The Industrial Relations and Other Legislation Amendment Bill 2022 gives effect to many of the recommendations made by that report, in addition to making a number of complementary amendments. It will ensure that the Industrial Relations Act 2016 continues to provide a framework for cooperative industrial relations that is transparent, fair and balanced, and which supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

During its inquiry into the Bill, the committee received submissions, and heard evidence, from a wide variety of stakeholders. Although some stakeholders expressed divergent views about particular provisions in the Bill, there was broad support for many of the policy objectives of the Bill. In particular, stakeholders expressed support for the strengthening of protections against workplace sexual harassment and the provision of greater flexibility in relation to parental leave.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill, participated in the public hearing, or otherwise contributed to our review of this legislation. I also thank our Parliamentary Service staff, the Department of Education, and the Department of Justice and Attorney-General.

I commend this report to the House.

Kim Richards MP

Chair

Recommendations

The committee recommends the Industrial Relations and Other Legislation Amendment Bill 2022 be passed.

The committee recommends that the Minister for Education, Minister for Industrial Relations and Minister for Racing investigate options for addressing the issue of agents who charge a fee to provide representation in the Queensland Industrial Relations Commission (and the Industrial Court).

1 Introduction

1.1 Role of the committee

The Education, Employment and Training Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Education, Industrial Relations and Racing
- Employment, Small Business, Training and Skills Development.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the Human Rights Act 2019
- for subordinate legislation – its lawfulness.[2]

The Industrial Relations and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly and referred to the committee on 23 June 2022. The committee is to report to the Legislative Assembly by 12 August 2022.

1.2 Inquiry process

On 27 June 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill. Thirty-five submissions were received.

The committee received a public briefing about the Bill from the Department of Education and the Department of Justice and Attorney-General on 30 June 2022. A transcript is published on the committee's web page (see Appendix B for a list of officials).

The committee received written advice from the Department of Education (department) in response to matters raised in submissions.

The committee held a public hearing and received a further briefing by the department on 21 July 2022 (see Appendix C for a list of witnesses, and Appendix B for a list of officials).

The submissions, correspondence from the department and transcripts of the briefings and hearing are available on the committee's webpage.[3]

1.3 Policy objectives of the Bill

As set out in the explanatory notes, the Bill's primary objective is to give effect to the Queensland Government response to the recommendations of the Five-year Review of Queensland's *Industrial*

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HR Act), ss 39, 40, 41 and 57.

3 www.parliament.qld.gov.au/EETC

Relations Act 2016 – Final Report (Review Report). The Review Report, government response and other information about the five-year review are available from the Office of Industrial Relations website.

The amendments in the Bill related to the review are intended to:

- strengthen protections against workplace sexual harassment
- support effective representation of employees and employers by registered industrial organisations and maintain the integrity of the registration framework for industrial organisations
- update the Queensland Employment Standards to ensure that Queensland workers have access to entitlements which are equal to or more favourable than the equivalent entitlement under the *Fair Work Act 2009* (Cth) (FW Act)
- empower the Queensland Industrial Relations Commission (QIRC) to set minimum standards for independent courier drivers
- update the collective bargaining framework to ensure access to arbitration by a single Commissioner during enterprise bargaining negotiations, and include equal remuneration as an aspect of good faith bargaining
- remove a number of redundant provisions, including the provisions enabling the recovery of historical employee overpayments by Queensland Health.

The Bill also makes complementary amendments to the *Industrial Relations Act 2016* (the IR Act) and the *Associations Incorporations Act 1981* (the AI Act) to clarify the ability of an entity to represent industrial interests, where the entity is not a registered organisation under the IR Act but is incorporated under the AI Act.

The Bill also amends the:

- *Anti-Discrimination Act 1991*
- *Public Trustee Act 1978*
- Associations Incorporation Regulation 1999.

1.4 Government consultation on the Bill

As set out in the explanatory notes, the independent reviewers consulted with stakeholders and other experts on the issues covered by the Bill during their five-year review of the IR Act.[4] They consulted with groups including employers, registered employee and employer organisations and peak councils, and the legal profession via written submissions and face-to-face meetings.

The department conducted targeted consultation with key stakeholders from industry, government and the legal profession during the drafting of the Bill. This included the distribution of 2 exposure drafts of the Bill for comment.

Community organisations which participated in consultation on the Bill include the Queensland Council of Unions (QCU), the Queensland Nurses and Midwives' Union (QNMU), Together Queensland, the Queensland Teachers' Union (QTU), the United Voice Union, the Australian Workers'

[4] Explanatory notes, p 5.

Union, the Queensland Police Union (QPU), the Australian Manufacturing Workers Union, the Australian Industry Group (AIG), Brisbane City Council, the Chamber of Commerce and Industry Queensland, the Local Government Association of Queensland (LGAQ), the Queensland Trucking Association (QTA), the Queensland Law Society (QLS), the Bar Association of Queensland, and Basic Rights Queensland.[5]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and consideration of the information provided by the department, submitters, and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Industrial Relations and Other Legislation Amendment Bill 2022 be passed.

[5] Explanatory notes, p 6.

2 Examination of the Bill

The IR Act provides an industrial relations framework for Queensland and regulates the state public sector, local government employees and the employees of several statutory authorities. The Bill's primary objective is to give effect to the Queensland Government response to the 40 recommendations of the Five-year Review of Queensland's *Industrial Relations Act 2016* – Final Report. The Bill will give legislative effect to 31 recommendations.

The committee is broadly supportive of the Bill and believes it will help to achieve the primary objectives of the IR Act, providing for a framework for cooperative industrial relations that is fair and balanced, and which supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

The remainder of this section presents the committee's analysis of key aspects of the Bill, highlighting those issues identified as particularly important or contentious during the inquiry process.

2.1 Protections against workplace sexual, sex and gender-based harassment

Clauses 4, 25, 38, 45, 53, 63 and 65 of the Bill propose amendments to Queensland's industrial laws to strengthen protections and expand access to remedies for employees subject to workplace sexual harassment and sex and gender-based harassment. These amendments are intended to deter and eliminate sexual harassment and sex or gender-based discriminatory conduct in Queensland workplaces, and are consistent with the Respect@Work Report and its recommendations.[6]

To achieve these goals, the Bill introduces the prevention and elimination of sexual harassment and sex or gender-based harassment as one of the means by which the main purpose of the IR Act is to be achieved. The Bill also amends the existing definitions of 'sexual harassment' and 'discrimination' in the IR Act, replacing them with those contained in the *Anti-Discrimination Act 1991* (AD Act).[7] This means that sexual harassment under the IR Act will be defined as sexual harassment that would contravene the AD Act or the *Sex Discrimination Act 1984* (Cth).[8]

The Bill's amendment to the definition of 'industrial matter' to include sexual harassment and sex or gender-based harassment will facilitate access to orders, and permit the QIRC to exercise its general conciliation and arbitration powers for sexual harassment and sex or gender-based harassment complaints.[9]

These provisions will ensure that sexual harassment is misconduct for the purposes of summary dismissal and allows wider powers for the QIRC to consider whether a dismissed employee engaged in sexual harassment or sex or gender-based harassment when deciding whether a dismissal was harsh, unjust or unreasonable.[10] The Bill also proposes an amendment which will expand the availability of legal representation in the QIRC in cases involving allegations of sexual harassment or sex or gender-based harassment, subject to leave being granted by the commission.

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6 Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, The Australian Human Rights Commission, 2020.

7 Explanatory notes, p 1.

8 Industrial Relations and Other Legislation Amendment Bill 2022, p 62.

9 Explanatory notes, p 1.

10 Public briefing transcript, Brisbane, 30 June 2022, p 14.

2.1.1 Submitter comments

2.1.1.1 Strengthened protections against workplace sexual, sex and gender-based harassment

Most submitters who posed opinions on protections against workplace sexual, sex and gender-based harassment offered support for those amendments aimed at preventing and eliminating sexual and sex and gender-based harassment. A diverse mix of organisations expressed broad support for these changes, including: the Australian Christian Lobby (ACL);[11] IWD Meanjin;[12] Maternity Choices Australia;[13] the LGAQ;[14] the Independent Education Union of Australia - Queensland and Northern Territory Branch (IEUA);[15] the Transport Workers' Union (TWU) NSW/QLD Interim Governance Branch;[16] Together Queensland, Industrial Union of Employees (Together Queensland);[17] the QCU;[18] the QNMU;[19] United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ);[20] the Shop Distributive & Allied Employees' Association (SDA);[21] Maurice Blackburn Pty Ltd;[22] QLS[23]; and the QPU.[24]

Some of these organisations also offered support for specific amendments relating to workplace sexual, sex and gender-based harassment, including:

- the expansion of the definition of 'industrial matter' to include workplace sexual harassment and sex or gender based harassment; and,
- the associated expansion of the QIRC's powers to make orders appropriate for the prevention or settlement of a dispute.

Although some submitters raised concerns about specific aspects of the amendments relating to workplace sexual, sex and gender-based harassment – detailed below –no submissions opposed them.

2.1.1.2 Review of the AD Act and the IR Act

Several submitters noted the potential for the Queensland Human Rights Commission's (QHRC) ongoing review of the AD Act to impact the IR Act. However, submitters took divergent views of this potential impact. QCU took a positive view, submitting that it anticipated that the QHRC's review will lead to complementary reforms of the AD Act.[25] In contrast, AIG expressed concern that in defining sex or gender-based harassment for the purposes of the IR Act, the Bill both pre-empts the QHRC in

11 Submission 1.

12 Submission 2.

13 Submission 20.

14 Submission 27.

15 Submission 14.

16 Submission 15.

17 Submission 16.

18 Submission 8.

19 Submission 19.

20 Submission 23.

21 Submission 28.

22 Submission 26.

23 Submission 5.

24 Submission 32.

25 Submission 8, p 5.

signalling an intention that the AD Act adopt the definition proposed for the IR Act, and creates the possibility of inconsistency should the AD Act be amended to adopt a different definition.[26] AIG therefore proposed delaying the introduction of a definition of sex or gender-based harassment until the conclusion of the review of the AD Act. Similarly, QLS queried whether the definition of sex of gender-based harassment in the IR Act is premature given the ongoing review of the AD Act.[27]

In its written response to the submissions, the department stated that the Bill 'does not seek to pre-empt or influence the outcome of the AD Act review' and noted that the Bill's definition of sex or gender-based harassment was developed in consultation with the QHRC, drawing on the AD Act's definition of discrimination.[28]

2.1.1.3 Referrals to the Crime and Corruption Commission

In its written submission and evidence during the public hearing, the LGAQ supported the strengthened protections against workplace sexual, sex and gender-based harassment, but noted the potential for some unintended side effects. Specifically, they pointed to a risk that, in establishing sexual harassment or sex or gender-based harassment as a form of misconduct that may allow an employer to dismiss an employee without notice, cl 25 of the Bill may increase the rate at which local governments (and other employers) refer such matters to the Crime and Corruption Commission (CCC) as potential instances of corrupt conduct.[29] According to the LGAQ, this risk exists because the *Crime and Corruption Act 2001* (CC Act) defines 'corrupt conduct' partly by reference to whether such conduct, if proved, would be a disciplinary breach that provides reasonable grounds for termination of a person's employment.[30]

In its written response to submissions, the department confirmed that sexual, sex and gender-based harassment can fall within the definition of corrupt conduct under the CC Act. It explained:

> It is considered that under the current IR Act, if it was proved that an employee had sexually harassed another person within a workplace, then there are currently reasonable grounds for terminating the person's services. The proposed amendment to the IR Act does not change this position. [31]

The department then continued:

> The main issue when determining whether sexual harassment is corrupt conduct usually involves consideration of whether the conduct involves a "breach of trust". This requirement may be satisfied if the conduct occurred where there was a supervisory relationship between the parties.[32]

Committee comment

The committee is generally supportive of the amendments in the Bill aimed at preventing and eliminating sexual and sex and gender-based harassment.

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26 Submission 9, p 26.

27 Submission 5, p 2.

28 Department of Education, correspondence, 19 July 2022, p 14.

29 LGAQ, submission 27, pp 9-11.

30 *Crime and Misconduct Act 2001*, s 15(1)(c)(ii).

31 Department of Education, correspondence, 19 July 2022, p 23.

32 Department of Education, correspondence, 19 July 2022, p 24.

2.2 Pay equity and equal remuneration

Clauses 29, 30 and 31 propose amendments to the IR Act to address pay equity. According to the explanatory notes, the Bill 'introduces a new mechanism to further enshrine equal remuneration (ER) for work of equal or comparable value in collective bargaining'.[33]

As a means of supporting the achievement of gender pay equity, 'the bill brings forward the disclosure of information about the employees to be covered by a proposed agreement to the commencement of the negotiating process, ensuring parties consider gender pay equality from the start'.[34]

The Bill requires negotiating parties to obtain, and disclose early in the bargaining period, information reasonably requested by a bargaining party that is relevant to understanding the gender pay gap of the employees to be covered by the proposed bargaining instrument, including but not limited to:

- the distribution of the employees by gender
- the details of the gender pay gap
- any major factors identified as contributing to the gender pay gap
- if appropriate, the projected effect of the proposed bargaining instrument on the gender pay gap
- any other information relevant to the gender pay gap reasonably requested by another bargaining party
- other information relevant to the gender pay gap prescribed by regulation.[35]

The Minister stated this is a:

> … subtle but important change. By putting these issues to the forefront of the bargaining process supported by data, the equal remuneration principles considerations is likely to feature more strongly throughout the bargaining process and be reflected in final outcome.[36]

In addition, the Bill defines gender pay gap for the purposes of the bargaining instrument as being the difference between the average weekly full-time equivalent earnings of male employees and female employees covered by the proposed instrument.[37]

The Bill proposes that for a multi-employer agreement or project agreement, the QIRC must be satisfied the agreement includes information about the way equal remuneration for work of equal or comparable value is implemented, or is to be implemented, in relation to the employees to be covered by the agreement.[38]

Alternatively, for any other proposed bargaining instrument, the QIRC must be satisfied the instrument contains information about the way the employer has implemented, will implement (if the

33 Explanatory notes, p 13.

34 Department of Education, public briefing transcript, Brisbane, 30 June 2022, p 2.

35 Bill, cl 26.

36 Queensland Parliament, Record of Proceedings, 23 June 2022, p 1691.

37 Explanatory notes, p 18; Bill, cl 26.

38 Bill, cl 29.

instrument is certified or made) or is implementing equal remuneration for work of equal or comparable value in relation to the employees to be covered by the agreement.[39]

The Bill also amends the definition of wage-related information for employees covered by a proposed bargaining instrument or an instrument. Wage-related information currently means information about each of the following matters:

- the distribution of the employees by gender
- the difference between the average weekly full-time equivalent earnings of male employees and female employees covered by the instrument (the gender pay gap)
- any major factors identified as contributing to the gender pay gap
- if appropriate, the projected effect of the instrument on the gender pay gap.[40]

The Bill adds to this definition by requiring 'other information relevant to the gender pay gap prescribed by regulation'.[41]

2.2.1 Submitter comments

A number of stakeholders expressed support for these changes.[42] The QLS advised that it believes these amendments may provide greater efficiency in the resolution of bargaining disputes.[43]

While supporting the amendments, IEUA expressed 'the need for provision of additional educative materials and/or programs for employers, to ensure that the proposed amendments do not become a point of intractable dispute between employees and employers'.[44]

The QCU advised that while it supports these amendments, it noted that 'the focus on the gender pay gap for agreement-making, being the difference between gendered earnings of employees covered by an agreement, will not fully address equal remuneration across an organisation in all cases'.[45] This is because 'the provisions for scope orders under the Act which have permitted bargaining and agreements to be made to apply to different sections of an organisation', such as 'agreements covering the white collar versus blue collar areas of an organisation'.[46] The QCU stated:

> In this example, it is highly probable that the white collar workforce is heavily female dominated, whereas the blue collar workforce is likely to be heavily male dominated due to the ongoing genderisation of many occupations. In this circumstance, an analysis of the gender pay gap within the white collar workforce is possibly not as relevant as what it would be comparing the gap across the whole of an organisation.[47]

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39 Bill, cl 29.

40 *Industrial Relations Act 2016*, s 246.

41 Bill, cl 30.

42 See, for example, submissions 5, 8, 13, 14, 16, 18, 19 and 23.

43 Submission 5, p 7.

44 Submission 14, p 2.

45 Submission 8, p 15.

46 Submission 8, p 15.

47 Submission 8, p 15.

To address this, the QCU recommended the Bill be amended to 'clarify that the gender pay gap for the purposes of agreement making and good faith bargaining orders, is either the gap under the proposed instrument or the gap for all employees within an organisation'.[48]

The QCU supported 'the placement of the onus on the industrial parties to detail how equal remuneration is to be achieved in the agreement itself' rather than through verbal submissions or an affidavit, 'as a strong measure to focus both employers and unions on reviewing and addressing equal remuneration during bargaining and throughout the course of an agreement'.[49] The QCU also noted the requirement for parties to agreements to include specific information setting out how equal remuneration for work of equal or comparable value between men and women workers will be achieved in practice 'creates an enforceable right for employees'.[50]

The LGAQ submitted that from a local government perspective, 'there is no evidence to suggest the provision of the data as it stands does anything other than generate additional work for no return for councils and their workforce' or to 'justify that the supply of the data at the beginning of the negotiation process will lead to better outcomes'.[51]

The LGAQ noted that the explanatory notes accompanying the Bill 'indicate[s] that the information required to be disclosed is only as 'reasonably requested'. However, the language of the proposed statute indicates a requirement the parties 'must' obtain and disclose' without reference to a request'.[52] The LGAQ requested the legislation be amended 'to reflect the intention as expressed in the explanatory memorandum'. [53]

In response to the LGAQ submission, the Department clarified that the Bill:

> … specifies what information the parties must obtain as soon as practical at the start of the negotiations, and also identifies information relevant to the gender pay gap that is reasonably requested by another party that then needs to be disclosed.[54]

In other words, parties are required to disclose the specified types of information at the start of negotiations regardless of whether another party has requested it, and are only required to provide other kinds of information if it is reasonably requested by another party.

2.3 Parental and other leave arrangements

The Bill proposes to update the Queensland Employment Standards to ensure personal and parental leave provisions of the IR Act are aligned with federal standards. This includes the provision of evidence for taking personal and parental leave (cls 6, 7, 11, 12 and 62), flexibility in how unpaid parental leave is taken – including in cases of stillbirth (cls 20 and 21), increasing the age limit for a child from 5 to 16 years of age for the purposes of adoption-related leave or cultural parent leave

48 Submission 8, p 15.

49 Submission 8, p 16.

50 Submission 8, p 16.

51 Submission 27, p 15.

52 Submission 27, p 16.

53 Submission 27, p 16.

54 Department of Education, correspondence, 19 July 2022, p 24.

(cls 8 and 62), and removing language that implies gendered divisions in parental care (cls 8, 10, 11, 12, 15, 18, 19, 22, 23 and 62).[55]

In respect to personal and compassionate leave, the Bill stipulates that personal leave does not include public holidays (cl 62). Transitional provisions to be introduced by the Bill will clarify that this has always been the case unless an industrial instrument provides otherwise (cl 62).

The Bill proposes changes to parental leave which are also aligned with the federal FW Act such as the provision of up to 30 days unpaid flexible parental leave to be taken at any point within the first 2 years of a child becoming part of an employee's family and a right for full-time employees returning from parental leave to request a transfer to part-time work at any time before their child is required to enrol for school.[56]

The Bill proposes updating the language used throughout the IR Act to adopt gender-neutral terms and avoid any implied gender division of parental care. This includes avoiding the use of the term 'maternity leave' and 'her', and instead using terms such as 'long birth-related leave' and 'the employee'.

The Bill proposes expanding access to parental leave by:

- introducing an entitlement to parents of stillborn children to parental leave
- raising the age limit of a child for adoption leave and cultural parental leave from 5 to 16 years.

The Bill changes the evidentiary requirements in relation to sick leave, carer's leave, pregnancy-related leave and birth-related leave, making it easier for employees to access these kinds of leave. The amendments proposed in the Bill will require employees to provide evidence sufficient to satisfy a reasonable person and in some cases, where requested by their employer, a health practitioner's certificate.

2.3.1 Submitter comments

2.3.1.1 Increased flexibility and expanded access to parental leave

The submitters who commented on the Bill's amendments to parental leave provisions expressed support for the increased flexibility and expanded access that these provisions will provide. Organisations that expressed support for these provisions included the QCU (whose submission was endorsed by the QTU, TWU, UFUQ and Community and Public Sector Union (CPSU) in their submissions),[57] the Australian Human Resources Institute (AHRI), IEUA, TWU NSW/QLD Interim Governance Branch, UFUQ, LGAQ, and SDA.[58]

2.3.1.2 The adoption of gender-neutral language

Some submitters expressed divergent views on the adoption of gender-neutral language in the provisions relating to parental leave.

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55 Explanatory notes, p 2.

56 Public briefing transcript, Brisbane, 30 June 2022, p 2.

57 Submissions 15, 17, 23 and 25.

58 Submissions 8, 13, 14, 15, 23, 27 and 28.

Organisations representing employees generally welcomed these changes, as did the AHRI. In its submission, the QPU noted the large proportion of men working in the police service and stated:

> Our union supports these law reforms because the change from overtly gendered language removes barriers that prevent fathers from accessing parental leave. The joy of fatherhood and motherhood is something that our members and all workers in Queensland should be entitled to…
>
> The current wording in the act enforced a culture that saw leave at the birth of a child as something that was more the responsibility of mothers, this is not the case in the workforce and these changes empower the situation people want to see.[59]

A number of other organisations opposed these changes, including the ACL, IWD Meanjin, Fair Go for Queensland Women, the Maternity Consumer Network, Maternity Choices Australia, and the Queensland Coalition for Sex-based Rights.[60]

During the public hearing, the committee asked whether any of the witnesses who objected to the use of gender-neutral language in relation to parental leave could offer examples where the use of such language in the National Employment Standards had led to adverse outcomes in other contexts. None of the witnesses offered such examples.[61]

In its response to submissions, the department noted that the adoption of gender-neutral language in relation to parental leave was recommended by the Review Report to modernise the provisions, ensure consistency with the FW Act, and contribute to gender equality.[62] The department also stated that the objective of the Bill is to improve access to parental leave for all parents, regardless of gender.

2.3.1.3 Scope of the term 'spouse'

In its submission, the Queensland Law Society (QLS) noted its concern that some of the terms used in the Bill and the IR Act are not broad enough to cover all of the circumstances in which someone might need to access parental leave, including due to a stillbirth or death of a child. For example, the provisions refer to an employee's spouse, however, this will not cover circumstances where someone is not a spouse, but otherwise the partner, or is either the biological or intended parent. In each of these circumstances, the QLS notes it is reasonable that this person may need to take leave. The QLS considers that at the very least, the wording of these provisions should be commensurate with the FW Act and include 'de facto partner'.[63]

In its response to written submissions, the department explained that the amendment proposed by the QLS is unnecessary because 'the meaning of "spouse" is defined in the Acts Interpretation Act 1954 and includes de facto partner and civil partner'.[64]

2.3.1.4 Changed evidentiary requirements for leave

The QNMU expressed concern that by allowing employees to provide certificates from health practitioners (not just doctors) to evidence their eligibility for leave, the Bill will allow too broad a

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59 Submission 32, p 2.

60 Submissions 1, 2, 11, 12, 20, and 29.

61 Public hearing transcript, 21 July 2022, Brisbane, pp 8-9.

62 Department of Education, correspondence, 19 July 2022, p 2.

63 Submission 5, p 5.

64 Department of Education, correspondence, 19 July 2022, p 5.

group of people to issue such certificates.[65] The QNMU noted this group would include chiropractors, dentists and other health professions. It recommended that only doctors and midwives should be able to issue such certificates.

In contrast, the QPU supported the changes relating to evidentiary requirements, submitting that they will make the system fair and easier for workers in Queensland.[66]

In its response to written submissions, the department noted that the evidentiary requirements proposed in the Bill are in line with federal legislation and recognise the employees may wish to access health services other than through a doctor.[67] The department also noted that a health practitioner will only be able to issue a certificate that is relevant to their field of practice.

2.4 Empowering the Queensland Industrial Relations Commission to set minimum standards for independent courier drivers

The Bill at cl 66 expands the QIRC's jurisdiction to set minimum entitlements and conditions for independent courier drivers and principal contractors.[68] The provisions are modelled on the *Industrial Relations Act 1996* (NSW) (NSW IR Act).[69] However, the scope of the proposed chapter 10A differs from the scope of the equivalent chapter in the NSW IR Act (this issue is discussed in more detail at the end of this section).

The expansion to the QIRC's jurisdiction is to be achieved by granting the QIRC power to make 'a contract determination covering independent courier drivers, principal contractors and relevant registered organisations'.[70] Section 406B (Who is an *independent courier*) inserted by cl 66 defines 'independent courier' broadly to capture 'all drivers of vehicles engaged in transporting goods and are acting as individuals or members of a partnership or a company where the individual driving the vehicle (or vehicles) is an executive officer of the company or a member of an executive officer's family'. The coverage of the proposed provisions is further widened by the definition of 'courier vehicle' included in new s 406A (Definitions for chapter) which includes a motor vehicle, bicycle or scooter.[71]

The proposed chapter 10A has the potential to apply to gig workers and platform-based businesses, however it is not designed to apply only to them. As the department confirmed in a public briefing:

> The policy intent is not designed to have a specific application to gig or platform based businesses. However, if such a business is engaging independent couriers, as defined in the bill, and the business meets the definition of a principal contractor, as defined in the bill, and the work that is being undertaken

65 Submission 19, p 7.

66 Submission 32, p 2.

67 Department of Education, correspondence, 19 July 2022, p 19.

68 Principal contractors are 'all persons who carry on a business arranging for the transport of goods by independent couriers, and who engage at least two independent couriers in doing so' (explanatory notes, p 31.

69 Explanatory notes, p 11.

70 Public briefing transcript, Brisbane, 30 June 2022, p 2.

71 Bill, cl 66.

> is a courier service, as defined in the bill, chapter 10A may apply subject to a decision in relation to a contract determination by the Queensland Industrial Relations Commission.[72]

The Bill proposes empowering the QIRC to make orders relating to contracts which are courier service contracts in effect, though not in form, by declaring that a contract is a courier service contract.[73] The QIRC may make or vary a contract determination on the QIRC's own initiative, or following an application from a person.[74] This is to 'ensure that the provisions of the chapter are able to have their intended effect and to stymie any efforts to evade the operation of the chapter on the part of unscrupulous operators (whether principal contractors or independent couriers)'.[75]

The department advised it will be 'up to the Queensland Industrial Relations Commission to make determinations for classes of workers that apply. These determinations are meant to be a minimum safety standard for these workers who, as we have seen, can be subject to exploitation'.[76] The QIRC:

> … must ensure that a contract instrument provides remuneration and working conditions that are fair and just; and comparable to the remuneration and conditions that a person performing the work under an award, agreement of the IR Act would receive; and in the main reflects the current minimum standards for remuneration and working conditions.[77]

The intention is for the QIRC to 'balance the need to ensure a safety net for independent couriers' remuneration and working conditions' while factoring in a range of other factors including, but not limited to, market conditions, business costs and financial risk.[78]

However, the department advised 'these provisions will only take effect if the Australian government agrees to exempt Queensland from the federal independent contractor legislation'.[79] The department advised the Queensland Government is in discussions with the Commonwealth regarding this exemption.[80] Hence, if the Bill is passed, the new provisions relating to independent courier drivers will commence on proclamation 'due to the requirement for an exemption from the coverage of the *Independent Contractors Act 2006* (Cth) to be obtained from the Australian Government before these provisions can have effect'.[81]

The proposed chapter 10A, which will apply to 'independent couriers', is modelled on chapter 6 of the NSW IR Act, which regulates 'contracts of carriage'. Thus, although chapter 10A is modelled on the NSW IR Act, it will apply to a different group of workers, including some categories of workers currently excluded from the application of chapter 6 of the NSW IR Act. Most notably, chapter 10A will apply to food delivery drivers and cyclists. This group is currently excluded from the operation of chapter 6 of

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72 Mr Tony James, Acting Deputy Director-General, Office of Industrial Relations, Department of Education, public briefing transcript, Brisbane, 21 July 2022, p 1.

73 Explanatory notes, p 31; Bill, cl 66.

74 Explanatory notes, p 34; Bill, cl 66.

75 Explanatory notes, p 31.

76 Public briefing transcript, Brisbane, 30 June 2022, p 4.

77 Explanatory notes, pp 31-32; Bill, cl 66.

78 Explanatory notes, pp 31-32.

79 Public briefing transcript, Brisbane, 30 June 2022, p 2.

80 Public briefing transcript, Brisbane, 30 June 2022, p 2.

81 Explanatory notes, p 14.

the NSW IR Act by s 309(4)(i) of that Act, which provides that a 'contract of carriage' does not include a contract 'for the delivery of meals by couriers to home or other premises for consumption.'

2.4.1 Submitter comments

2.4.1.1 Summary

Submitters who commented on the proposed chapter 10A broadly supported the objective of improving working conditions and safety for independent couriers. However, some submitters disagreed on 2 key points:

- whether this objective should be addressed at the state or national level
- assuming action is taken at the state level, whether expanding the QIRC's powers to set minimum entitlements and conditions is a good way of achieving this objective.

In relation to the second of these points, these submitters raised 2 primary concerns. These related to:

- the track record of chapter 6 of the NSW IR Act, on which the proposed chapter 10A is modelled, and the likely impact of the proposed chapter 10A on the road transport sector
- whether the approach proposed in chapter 10A is appropriate for independent couriers working for 'on-demand' platforms, given the particular nature of such work.

Submitters' comments in relation to these 2 issues revealed a degree of confusion around the intended scope of chapter 10A.

Some submitters offered broad support for the proposed chapter 10A, but raised concerns about its enforcement and how particular provisions might be interpreted and applied in practice.

2.4.1.2 The objective of improving working conditions and safety for independent couriers

Diverse stakeholders indicated support for the objective of improving working conditions and safety for independent couriers. This included organisations that represent workers and professionals – such as the QLS, QCU and TWU,[82] businesses that engage independent couriers – such as Uber Australia and DoorDash,[83] and organisations representing employers – such as AIG.[84]

2.4.1.3 The policy objective at the state or national level

Submitters expressed diverse views about whether the objective of improving working conditions and safety for independent couriers should be addressed at the state or national level. Submissions from organisations representing workers broadly supported the introduction of legislation at the state level, while submissions from organisations representing the business community expressed the view that this issue would be better dealt with at the national level.

Some stakeholders suggested there is potential for state legislation in this area to overlap, duplicate or be inconsistent with national laws, submitting that it may lead to impractical regulation that is complex and increases compliance costs.[85] Some stakeholders raised these concerns with respect to the road transport industry and independent couriers generally. They included the QTA, AIG and the

82 Submissions 5, 8, and 15.

83 Submissions 7 and 21.

84 Submission 9.

85 Submission 9, p 6; submission 10, p 1; submission 30, p 3.

Business Council of Australia. Other stakeholders raised these issues specifically in relation to on-demand delivery drivers. They included Uber Australia, Menulog, DoorDash Australia and Deliveroo. Both of these groups of stakeholders expressed a preference for a unified national framework that considers the needs of all stakeholders, particularly for businesses operating nationally.[86]

For example, the QTA submitted that 'Changes to state-based legislation are not suitable to address nation-wide issues'. The QTA added 'while there should be proper and fair industry standards, these are not standards that should be limited to QLD, in competition with other states, and in the limited scope of the Queensland Industrial Relations Commission' particularly given 'the comparative measures for remuneration are set at the federal level, outside of the control of the QIRC'.[87]

Stakeholders also raised the constitutional validity of state-based legislation due to the application of the *Independent Contractors Act 2006* (Cth).[88] The need to seek and be granted an exemption from that legislation was noted by the Business Council of Australia (BCA) as 'not assured and is, in the view of the BCA, undesirable, given the alternative and much superior approach of introducing legislation at a national level'.[89]

In addition, several stakeholders advised that the new Federal Government has indicated it intends to give the Fair Work Commission expanded powers to set minimum pay and conditions for all gig workers across Australia as a priority. They argued that it is undesirable to introduce separate regulatory regimes at the state level that may pre-empt national reform and potentially be incongruous.[90] For example, DoorDash argued that the proposed chapter 10A 'has the potential to upset ongoing work toward a national framework and ultimately result in inconsistencies with Federal reforms'.[91]

Several businesses that provide access to on-demand delivery work for independent couriers argued that recent non-legislative initiatives at the national level demonstrated that legislation at the state level is both unnecessary and undesirable.[92] In their submissions they cited several recent initiatives:

- the *Statement of Principles and Future Commitments for Workers in the On-Demand Economy*, an agreement signed between Uber and the TWU in 2022
- the *Statement of Principles to Ensure Safety and Fairness for Workers in the On-Demand Economy,* an agreement signed between DoorDash and the TWU in 2022
- the *National Food Delivery Platform Principles*, established by Uber, Menulog, DoorDash and Hungry Panda in 2020.

Other submitters argued that legislation at the state level remained desirable despite the potential for future reforms at the national level. For example, the TWU, while acknowledging that 'significant reforms are needed at a Commonwealth level', argued for the Bill, stating it will 'seek to provide an industrial safety-net for these owner-drivers and independent couriers' and the provisions:

86 Submissions 3, 7, 9, 10, 21, 24, and 30.

87 Submission 3, pp 4, 6.

88 Submission 30, pp 6-7.

89 Submission 30, p 7.

90 Submission 9, pp 5-6; submission 24, p 1; submission 30, pp 3-4.

91 Submission 21, p 2.

92 For example Uber Australia, submission 7, and DoorDash, submission 21.

> … will provide an ability for these workers to achieve rates and minimum standards that accurately reflect the cost-recovery they require to survive. These reforms will not only stabilise the system and address the race to the bottom in the road transport sector, they will save lives.[93]

In its response to written submissions, the department explained:

> Commonwealth regulation of relationships between principal contractors and independent couriers will take precedence over Queensland legislation. The provisions of Chapter 10A will apply to the extent that Commonwealth legislation provides an exemption from the Independent Contractors Act 2006 (Cth) (IC Act) and does not cover some independent courier drivers.[94]

Other submitters noted divergent views about the potential for inconsistencies between state and national laws were unwarranted. For example, in his submission, Professor Emeritus David Peetz stated that if the Commonwealth Government wished to legislate in the area, 'it can easily overcome any inconsistencies with state legislation' by denying or qualifying the exemptions that are required to be given by the Commonwealth Government for chapter 10A to take effect.[95]

Prof Emeritus Peetz also disputed the argument that state legislation threatened potential reforms at the national level. He argued that the opposite was true:

> … if the Queensland Parliament were to resile from action in this area, by withdrawing the provisions in this Bill relating to courier drivers, this would send an immediate signal to the Commonwealth government that it should not act. The greatest danger to effective national action in this area would be for the Queensland Parliament to withdraw these provisions, because doing so would raise doubts about the appropriateness of any action.[96]

In the public hearing, the TWU also highlighted the potential value of legislation at the state level, arguing that localised approaches are sometimes better than national ones because they can be tailored to the particular circumstances of an area. Mr Joshua Millroy, the Political and Campaigns Director for the TWU's NSW/QLD Interim Governance Branch explained:

> A state system as well is always going to be better for certain elements of the economy... If we look to the example of Sydney, there is a general carriers contract determination for Greater Sydney which factors in a lot of the extra expenses that go into Sydney—tolls, fuel, urban environment costs. Sometimes it is better to have a system that can be hyperlocal and only reflect one small agreement or one small geographic area.[97]

2.4.1.4 Expanding QIRC's powers to set minimum entitlements and conditions

A number of stakeholders expressed support for the proposed chapter 10A as a whole.[98] For example, the QCU advised it supports the provisions for independent couriers 'to provide them with access to minimum wages and conditions through decisions of the QIRC and negotiated agreements between parties, as well as introducing important protections against unfair contracts, and dispute resolution procedures.'[99] The IEUA similarly submitted it 'strongly supports the establishment of minimal

93 Submission 15, p 6.

94 Department of Education, correspondence, 19 July 2022, p 3.

95 Submission 33, p 8.

96 Prof Emeritus David Peetz, submission 33, p 8.

97 Public hearing transcript, 21 July 2022, Brisbane, p 44.

98 See, for example, submissions 8, 13, 14, 15, 18 and 26.

99 Submission 8, p 20.

entitlements and conditions for independent courier drivers that will see their pay and conditions align with equivalent award employees' to 'address the ongoing exploitation of these vulnerable workers'.[100]

The AHRI submitted that from 'a HR perspective, the ability for principal contractors to negotiate with multiple independent couriers to have collective agreement on terms and conditions assists in administratively managing the workforce'.[101]

The QLS, while generally supporting 'the ability for collective bargaining for independent couriers' raised a number of issues with the provisions in the Bill. The QLS recommended the new provisions regarding courier drivers be reviewed in terms of their operation after an appropriate time, such as in 4 years.[102]

2.4.1.5 Chapter 6 of the NSW IR Act

Submitters offered divergent assessments of chapter 6 of the NSW IR Act, on which chapter 10A is based, with respect to its impact on road safety and the road transport industry more generally.

While the explanatory notes do not refer to safety as a reason for the independent courier provisions, a number of stakeholders referred to safety as a reason they either support or oppose the Bill. Submitters offered divergent points of view regarding whether there was any evidence to show that chapter 6 of the NSW IR Act has improved road safety.

The QTA expressed its belief that there is no evidence that the NSW IR Act has had a more than a modest effect on safety over time.[103] The QTA also stated that there are 'no statistics specifically measuring the effect of the legislation on businesses primarily engaging gig workers for road freight activities'.[104]

In contrast, Prof Emeritus Peetz presented a quantitative analysis of national data on fatal road accidents which he argues suggest that chapter 6 of the NSW IR Act has had a positive impact on road safety. He calculates that approximately 171 fewer fatal accidents occurred in NSW as a result of the introduction of chapter 6, translating to approximately 205 fewer lives lost, but notes that this figure is likely an underestimate.[105]

AIG submitted that the analysis presented by Prof Emeritus Peetz suggests a correlation between the introduction of chapter 6 of the NSW IR Act and improved road safety, but does not demonstrate a causal link between the two.[106]

AIG argued that the existence of chapter 6 of the NSW IR Act, and the contract determinations made under it, have discouraged many businesses from adopting operating models that rely on the engagement of contract carriers.[107] For example, according to AIG, many businesses have instead engaged the services of 'fleet providers', small transport businesses that themselves engage multiple

100 Submission 14, pp 2-3.

101 Submission 13, p 9.

102 Submission 5, p 8.

103 Submission 3, p 3.

104 Submission 3, p 2.

105 Submission 33, p 15.

106 Submission 35, p 9.

107 Submission 35, p 6.

drivers (either as contractors or employees) and who are not subject to chapter 6 of the NSW IR Act. Such practices have, in AIG's view, reduced the amount of work available to contract carriers.

In contrast to the position of AIG, the TWU submitted the NSW IR Act 'has had bi-partisan support for over 40 years in New South Wales due to its balanced protection of small business and contribution to a sustainable transport industry'.[108] It argued the Bill has 'taken the key elements of chapter 6 while improving on components that require changes after over 40 years of operation, factoring in changes to the transport industry and technological developments', and added:

> This legislation will help address the crisis in road transport that has resulted in record insolvency for small business, an unsustainable and horrific mortality rate in the transport industry and will help end the cycle of exploitation for many low paid operators.[109]

The QTA expressed a concern that the provisions regarding independent courier drivers would disproportionately affect businesses that do not operate within the gig or platform economy because the NSW IR Act was introduced 'to address contract terms for owner-drivers'.[110] The QTA stated 'This is of concern as business models involving owner-drivers have existed in QLD for over 100 years, and there has been no specific case made out as to why QLD owner-drivers outside of the gig economy should now have this imposed upon them' as there 'is no evidence of a broader issue in the road freight industry to justify the intervention introduced with this Bill'.[111]

2.4.1.6 Chapter 10A and on-demand delivery work

Some stakeholders argued that the approach taken in chapter 10A is not suitable for the regulation of on-demand delivery work accessed via online platforms because of the particular nature of that work. For example, Deliveroo noted 'that the original intent of NSW chapter 6 was primarily designed for safety reasons in a context that is incredibly different to the gig economy'.[112] Stakeholders such as Deliveroo and the BCA argued that emergence of new forms of work in the gig economy required new approaches to regulation tailored to the nature of that work, rather than reliance on existing models.[113]

In their submissions, stakeholders critical of the approach taken in chapter 10A highlighted 2 aspects of on-demand delivery work which, they argued, rendered the approach taken in chapter 10A inappropriate:

- the highly flexible nature of that work, which is highly valued by many on-demand delivery workers
- the practice of 'multi-apping,' when an on-demand delivery worker is working for multiple platforms (e.g. Uber and Deliveroo) at the same time.

[108] Submission 15, p 3.

[109] Submission 15, p 3.

[110] Submission 3, pp 1, 3.

[111] Submission 3, pp 1, 3.

[112] Submission 24, p 7.

[113] Submission 3, p 1, submission 30, pp 4-5.

They argued that these characteristics render on-demand delivery work fundamentally different from the work 'of road transport drivers, such as truck drivers delivering goods from point A to point B on a fixed schedule and route'.[114]

Concerns were raised by some stakeholders about the impact of the Bill on the flexibility of work for independent couriers.[115] Flexibility was identified as the key reason people participate in the gig economy, and it was submitted that the proposed provisions in the Bill will deny their preferred flexible way of working, potentially causing them to leave the labour market.[116] In the public hearing, several stakeholders, including Uber, AIG, and Deliveroo, gave evidence that this would have serious adverse consequences for small businesses that engage on-demand couriers, particularly within the restaurant sector in Queensland.[117]

The BCA referred to the gig economy and platform work as 'a new form of work that does not easily fit into the conventional employee/contractor paradigm' and stated 'it has created new work opportunities for workers and new opportunities for consumers, many of which could not be provided if the workers were in an employment relationship', particularly due to 'the flexibility and autonomy the work provides'.[118]

Deliveroo argued that the flexibility sought by those participating in the gig economy 'can only be achieved through an independent contractor model, which is clearly distinguishable from the kinds of arrangements offered to employees under state or federal industrial instruments'.[119] Deliveroo submitted that flexibility is the defining feature of the work offered via Deliveroo, and similar platforms. Its riders can choose when and how long to work, are free to accept or reject any orders, and do so in practice.

Other stakeholders submitted that the approach taken in chapter 10A is capable of accommodating the particular nature of on-demand delivery work, including its flexibility. Prof Emeritus Peetz took this view, stating:

> It is one of the great virtues of chapter 6 of the NSW IR Act, and of the Bill, that they very much allow for the specific circumstances of courier drivers to be taken into account, and in doing so they do not aim to reclassify contractors as employees.[120]

In response to written submissions, the department stated:

> Any worker who could be covered by an expansion of an employee under the FW Act provisions is unlikely be subject to the IC Act. If an independent courier is engaged under a contract of employment, then they will not be subject to the provisions of chapter 10A (see section 406D).
>
> The Bill inserts no provisions that require immediate review of existing commercial contracts. Any orders of the QIRC with regard to existing contracts will be made only following the procedures set out in Chapter

114 Submission 24, p 5.

115 See, for example, submissions 9, 10, 24, 30.

116 See, for example, submissions 10, 21, 24.

117 Public hearing transcript, 21 July 2022, Brisbane, p 13 and pp 31-33.

118 Submission 30, p 3.

119 Submission 24, p 1.

120 Submission 33, p 7.

10A, and will be subject to the regular natural justice requirements of QIRC proceedings under the IR Act.[121]

2.4.1.7 Enforcement and other issues

The QTA raised concerns about enforcement of the Bill, stating that enforcement is important to the success of the Bill and will require and adequate level of resourcing if it is to be effective.[122] The TWU also raised the issue of enforcement, and submitted that the new provisions should incorporate chapter 9 of the IR Act through applied provisions (as occurs in the NSW chapter 6) so that registered industrial organisations can utilise Right of Entry and Inspections of Records to enforce the contract instruments made.[123]

Other issues raised in submissions included:

- whether chapter 10A provides adequate exemptions from formal collective bargaining, for example if there is not majority support for bargaining amongst relevant workers[124]
- the potential for workers who object to a collective agreement being forced to work under it[125]
- the technical challenge of complying with requirements to disclose information about the gender pay gap when work is allocated by an algorithm that does not factor in the gender of the worker[126]
- the need to obtain better data about the on-demand delivery sector, and more evidence about the potential impact of chapter 10A, before legislating in this area.[127]

2.4.1.8 Clarifications to the Bill

Stakeholders who supported and opposed the independent courier provisions in the Bill suggested several amendments to chapter 10A and requested clarifications regarding several of its provisions. In its written response to submissions, the department explained why those amendments are either unnecessary or undesirable given the policy objectives of the Bill, and provided the requested clarifications.[128] The committee is satisfied with the department's responses.

Committee comment

The committee supports the policy objective of improving working conditions and safety for independent couriers, and is satisfied that the proposed chapter 10A is an appropriate means of achieving that goal.

121 Department of Education, correspondence, 19 July 2022, p 3.

122 Submission 3, p 4.

123 Submission 15, p 7.

124 Submission 24, p 10.

125 Submission 24, p 10.

126 Submission 24, p 10.

127 Submission 24, p 7.

128 Department of Education, correspondence, 19 July 2022.

2.5 Consumer law protection for workers (representation by registered organisations)

Collective representation is central to the Queensland industrial relations system. In return for the right to represent, employee and employer groups must be registered and must comply with the governance and reporting requirements stipulated in the IR Act. In recent years entities have emerged that seek to represent their members' or other persons' industrial interests without registering or complying with the requirements of the IR Act.[129] The Bill seeks to reduce the risk of employers and employees being misled or confused about which entities are able to represent them, or having standing, under the IR Act.

The Bill addresses this problem through amendments to both the IR Act (cls 33 to 36), the AI Act (cls 75 to 86) and the Associations Incorporation Regulation 1999 (cl 88). The amendments to the IR Act will provide a clear distinction between the representation rights of employee and employer organisations properly registered under the IR Act and other entities not registered under the IR Act that purport to represent the industrial interests of employees and employers.[130] These consequences will potentially include the cancellation of an entity's incorporation under the AI Act, where the relevant entity is an incorporated association.

The Bill does not prevent individuals from joining organisations that are not registered under the IR Act, and thus are ineligible to represent them in that context. However, it does propose amendments that will ensure there are consequences for entities that falsely present themselves as being able to represent employees or employers under the IR Act.

2.5.1 Submitter comments

Most submitters who posed opinions on this issue supported efforts to clarify the IR Act so as prevent unregistered organisations from representing employees in the QIRC and imposing penalties for unregistered organisation who purport to be able to do so. Submissions from employee and employer organisations that are registered organisations under the IR Act and/or the FW Act were supportive of these changes. However, 2 submitters were critical of the proposed changes. Their central concern was that these changes could erode the freedom of association by limiting the ability of individuals to choose which organisations represent them in industrial matters.

Submissions from employee organisations currently registered under the IR Act, and peak bodies representing them, were supportive of the amendments designed to prevent unregistered organisations from representing employees in the QIRC and imposing penalties for unregistered organisations who purport to be able to do so. This included the QCU, which stated that 'these changes are strongly supported by the QCU and our affiliate unions'.[131] QLS, IEUA, Together Queensland, United Workers Union (UWU), UFUQ, CPSU, Maurice Blackburn Pty Ltd, SDA, and QPU also expressed support for the relevant amendments in their submissions.[132]

The QCU (whose submission was expressly endorsed by the QTU, TWU, UFUQ and CPSU in their submissions)[133] took the view that:

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129 Public briefing transcript, Brisbane, 30 June 2022, p 2.

130 Public briefing transcript, Brisbane, 30 June 2022, p 2.

131 Submission 8, p 21.

132 Submissions 5, 14, 16, 18, 23, 25, 26, 28 and 32.

133 Submissions 15, 17, 23 and 25.

- in return for the right to represent the industrial interests of employees under the IR Act industrial organisations such as unions are subject to a range of accountability and governance requirements that do not apply to entities that are not registered under the IR Act[134]
- the relevant provisions of the Bill strike an appropriate and reasonable balance between the freedom of association and collective bargaining rights.[135]

The QPU took a similar position in its submission, stating:

> … the restriction of freedom of association and general protections to members of registered organisations is a fair and effective balance between ensuring organisations have rights and accountabilities under the legislation and that employees in the system are able to achieve fair and effective representation and the right to freedom of association free from employer or other external influences.[136]

AIG, which is a registered employer organisation under the FW Act (and was previously a registered organisation under the IR Act) stated that it 'supports the policy intent of limiting the industrial rights of associations that purport to be unions but are not subject to the onerous duties and reporting requirements of registered organisations.'[137]

AHRI offered more qualified support for the relevant amendments.[138] It supported the requirement for employee organisations to be registered under the IR Act in order to have standing in industrial matters, it also supported having 'a clear pathway for current organisations to become registered, and to have the right to appeal decisions about their registration' because 'this is critical to an open and fair approach to employee representation'.[139]

Two submissions opposed the proposed amendments in this area.[140] In their written submission and evidence at the public hearing, Red Unions Support Hub (RUSH) asserted that 'unregistered unions' do not mislead their members about their capacity to represent them in industrial matters, or their standing under the IR Act. The Retail and Fast Food Workers Union Incorporated was critical of the business model employed by RUSH, however it made very similar objections to the proposed amendments in this area.[141]

2.6 Single commissioner arbitration

The Bill at cls 27 and 28 amends the collective bargaining framework to ensure access to arbitration by a single Commissioner during enterprise bargaining negotiations.[142]

At present, if all of the negotiating parties apply to the QIRC for arbitration, the application must currently state whether the negotiating parties agree on the aspects of the matter that are at issue between the parties, and if the parties agree, the aspects of the matter that are at issue between the

134 See for example QCU, submission 8, pp 23-24.

135 Submission 8, pp 24-25.

136 Submission 32, p 5.

137 Submission 9, p 27.

138 Submission 13.

139 AHRI, submission 13, pp 6-7.

140 See submissions 4 and 22.

141 Submission 4.

142 Explanatory notes, p 1.

parties.[143] The Bill amends the IR Act to provide that the application must also state whether the parties agree that the full bench may refer the matter for arbitration by a commissioner sitting alone.[144]

If the QIRC is applied to for arbitration of a matter, either because a conciliating member is satisfied that the parties are unlikely to reach agreement in further conciliation or all of the negotiating parties apply to the commission for arbitration of the matter, the full bench of the QIRC must arbitrate the matter. However, the Bill also provides that the full bench may refer arbitration of the matter to a commissioner sitting alone with the consent of all the negotiating parties, as indicated on the application mentioned above.[145]

When referring to a single commissioner, the full bench 'is not required to convene a hearing or consider any submissions when deciding if it should exercise its discretion to refer the arbitration to a commissioner sitting alone'.[146] If the full bench refers arbitration to a single commissioner, the appeal rights remain as if the arbitration had not been referred to a commissioner sitting alone.[147]

2.6.1 Submitter comments

Submitters who commented on the issue of single commissioner arbitration were supportive of the changes proposed by the Bill.

The QLS advised it believes these amendments may provide greater efficiency in the resolution of bargaining disputes, and that an application being made by all negotiating parties is appropriate.[148] The QCU similarly noted that these changes 'are expected to assist parties to reach a final agreement in a timely and more accessible manner'.[149] UWU also expressed support for the provision.[150]

2.7 General rulings (State Wage Cases)

Clause 43 inserts a new s 459A (Provision about general ruling for State wage case) to provide the QIRC with express discretion when considering whether to apply a State Wage Case general ruling to awards.[151]

Under the IR Act, award rates can be increased not only by the State Wage Case, but also through the rolling up of expired agreement rates. As noted in the review report, s 145 of the IR Act, which allows for the flow-on of provisions from certified agreements into a relevant state modern award, is a unique feature of the Queensland industrial relations jurisdiction.[152]

143 *Industrial Relations Act 2016*, s 178.

144 Explanatory notes, p 18.

145 Explanatory notes, p 19; Bill, cl 27.

146 Explanatory notes, p 19.

147 Explanatory notes, p 19.

148 Submission 5, p 7.

149 Submission 8, p 30.

150 Submission 18, p 3.

151 Explanatory notes, p 21.

152 State of Queensland, 2021, *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report,* Recommendation 25, p 45.

In the past, this has meant that some State Wage Case decisions 'delivered outcomes that led to pay rates in awards pertinent to employees in the Queensland public sector overtaking the rates settled upon in their certified agreements.'[153] At present, the QIRC has no discretion to take account of this possibility when making State Wage Case decisions. Section 459 of the IR Act only provides that a ruling may exclude from the operations of any of its provisions a class of employers or employees, or employers or employees in a particular locality, or an industrial instrument or part of an industrial instrument.[154] The Review Report recommended (Recommendation 25) that the IR Act be amended to give the full bench of the QIRC such discretion.[155]

In line with that recommendation, the Bill will give the QIRC discretion to consider this unique feature of the Queensland industrial relations jurisdiction when making its determination as to the application of a State Wage outcome to awards. Specifically, it will give the QIRC discretion to limit State Wage Case increases from applying to employees, or a class of employees, under a particular award or awards where this would result in rates of pay that equal or exceed those payable under a certified agreement or arbitration determination at the time of the State Wage Case decision.[156] The explanatory notes also comment that the proposed amendment is consistent with the main purpose of the IR Act in relation to the 'primacy of collective bargaining as the means for determining wages and conditions for employees'.[157]

2.7.1 Submitter comments

Some stakeholders opposed giving the QIRC discretion to not apply a State Wage Case outcome to certain employees if it would result in their wages being equal to or exceeding the wages paid to them under a certified agreement or arbitration determination. These stakeholders included the QCU (whose submission was expressly endorsed by the QTU, TWU, UFUQ and CPSU in their submissions),[158] Together Queensland, UWU, QNMU and UFUQ.[159]

The QCU submitted it, and its affiliates, do not support this clause because it would 'permit a situation where low paid employees in the public sector at the lowest levels of modern awards such as cleaners, wardspersons and entry level administrative staff may not be entitled to receive the same increase in any given year as that awarded for other low wage employees under the State Wage Case.'[160]

QCU also submitted that the change is unnecessary because the current s 459(2) already provides the QIRC with discretion to exempt a class of employers or employees, employers or employees employed in a particular locality, or an industrial instrument or part of an industrial instrument when it makes a general ruling.[161] Thus, QCU argues that the State Government already has the opportunity to

153 State of Queensland, 2021, *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report,* Recommendation 25, p 45.

154 *Industrial Relations Act 2016*, s 459.

155 State of Queensland, 2021, *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report,* Recommendation 25, p 12.

156 Explanatory notes, p 2.

157 Explanatory notes, p 21.

158 Submissions 15, 17, 23 and 25.

159 Submissions 8, 16, 18, 19 and 23.

160 Submission 8, p 30-31.

161 Submission 8, p 31.

advocate for such exemptions in the annual State Wage Case. Together Queensland presented a similar argument in its submission,[162] as did UWU and UFUQ.[163]

In addition, UFUQ submitted that the effect of this amendment would be to 'punish unions for positive outcomes they've obtained in bargaining', which in its view is not consistent with the IR Act's objectives.[164]

At the public briefing on 21 July 2022, the department clarified that the proposed amendment:

> … does not require the commission to limit the flow-on of wages. Whether or not the commission considers and makes a provision of a flow-on of a state wage case or general ruling into a parent award is entirely at the discretion of the commission.[165]

Committee comment

The committee notes the intent of cl 43 amendments to the IR Act to insert new s 459A to give effect to a recommendation from the Review Report. The committee also notes the concerns raised by the QCU and affiliated unions that the amendment would allow the QIRC to deny certain low-paid workers the same increase in any given year as that awarded for other low wage employees under the State Wage Case. The committee notes, however, that the scope for the QIRC ruling to limit the flow on of a State Wage Case to employees would only apply if the increase would result in wages payable under the award equalling or exceeding the wages payable to employees in relation to the same employment under a certified agreement or arbitration determination or a ruling under the *Public Service Act 2008.* This is an important principle to protect the primacy of collective bargaining.

The committee further notes that the QIRC retains discretion to limit any flow on of wages to employees from a State Wages case, and that unions would have the right to be heard on such determinations. The committee also accepts that the existing provisions in s 459(2) of the IR Act do not adequately address these issues.

2.8 Protections for casual workers from unfair dismissals

The Bill at cl 37 proposes extending protections from unfair dismissals to an increased number of casual workers. It does this by amending the definition of 'short term casual employee' that applies in Part 2 (Dismissals) of chapter 8 of the IR Act, reducing the period of time over which an employee can be engaged on a regular and systematic basis while still being considered a short term casual employee from one year to 6 months. This has the effect of extending the application of the IR Act's dismissals provisions to casual employees who have been employed on a regular and systematic basis for more than 6 months, provided other elements of the definition are met.[166]

The Bill does not change the definition of 'short term casual employee' in other parts of the IR Act.

2.8.1 Submitter comments

Submitters who commented on this issue were broadly supportive of extending protections against unfair dismissal to more casual workers. The QCU, which supported the amendment and whose

[162] Submission 16, p 6-7.

[163] Submission 18, p 3; submission 23 p 6.

[164] Submission 23, p 7.

[165] Public briefing transcript, Brisbane, 21 July 2022, p 2.

[166] Explanatory notes, p 20.

submission was endorsed by the QTU, TWU, UFUQ and CPSU, [167] noted that it ensures consistency between the IR Act and the federal FW Act.[168]

The LGAQ opposed this change, expressing concerns that the amendments could have unintended effects (for example, by encouraging employers to dismiss casual employees before they reached the 6 month threshold) and may prove difficult to apply consistently in practice.[169]

The department, in its advice to the committee on issues raised by the LGAQ, noted that the proposed amendment was made in order to align the IR Act with provisions of the FW Act.[170]

2.9 Legal representation in the Queensland Industrial Relations Commission

As noted above, the Bill at cl 53 amends s 530 of the IR Act to allow parties to be legally represented in proceedings before the QIRC relating to an industrial matter involving allegations of sexual harassment or sex or gender-based harassment, where the QIRC gives leave. It does not propose broader changes to the right to legal representation in the QIRC. This is consistent with the findings of the Five-year review of the IR Act. That review concluded that given the importance of maintaining the QIRC as a lay tribunal that involves minimal costs, as well as the absence of the issue from its Terms of Reference, there was no justification for recommending any change regarding the right to legal representation in the QIRC.[171]

2.9.1 Submitter comments

QLS submitted that it supports the amendment to s 530 of the IR Act to allow parties to be legally represented before the QIRC in matters that related to allegations of sexual harassment or sex or gender-based harassment. However, QLS noted that this is not an automatic right: parties will need to seek leave from the QIRC to be represented by a lawyer in such cases. The QLS argued that this requirement to seek leave will create uncertainty and increase legal costs. As such, it recommended an amendment such that no leave is required for parties to be represented by a lawyer in such cases. QLS submitted that allowing legal representation in these complex cases would benefit parties to the cases, as well as the QIRC.[172]

In its response to written submissions, the department stated:

> The Bill provides for a right to legal representation in sexual harassment or sex or gender-based harassment proceedings. The right to legal representation in this new provision is consistent with the existing framework for other industrial matters which requires leave of the QIRC. The QLS's comments on the barriers to legal representation more generally, and the right of representation in interlocutory matters, are noted; however, these issues are outside the scope of the Bill.[173]

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167 Submissions 15, 17, 23 and 25.

168 Submission 8, p 30.

169 Submission 28, p 13.

170 Department of Education, correspondence, 19 July 2022, p 24.

171 State of Queensland, 2021, *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report,* p 64.

172 Submission 5, p 2.

173 Department of Education, correspondence, 19 July 2022, p 5.

2.10 Qualifications and behaviour of paid agents who are not lawyers

In the course of its inquiry the committee received 2 submissions highlighting an emerging problem not covered by the Bill regarding the issue of agents who charge a fee to provide representation in the QIRC and Industrial Court.

2.10.1 Submitter comments

In written submissions, the Hon Justice Peter Davis, President, Industrial Court of Queensland and the QIRC and the QLS stated that there is an urgent need for the regulation of agents who charge a fee to represent Queensland citizens in the QIRC (and the Court) and are not legal professionals.[174] Both submissions highlighted the negative consequences of the current lack of regulation in this area, arguing that Queenslanders are left with no protection from agents who misrepresent the extent of their knowledge and expertise, charge unreasonable fees, or fail to act in the best interests of their clients.

The Hon Justice Davis cited the example of a recent case in the Industrial Court, in which an agent (who the Hon Justice presumed was paid) represented a party to the case but failed to advance the interests of his client because 'he simply did not have the skill to advocate for the applicant.'[175] He went on to stress that 'these issues are arising regularly and suggest an urgent need for some regulation.'[176] The QLS agreed with this position, stating that its members have reported instances in which parties represented by paid agents who were not lawyers appeared to be pressured into settlements for amounts 'likely to be entirely or substantially exhausted by the fees they are charged'.[177] QLS members had also reported matters in which paid agents who were not lawyers 'did not appear to have the requisite skills or knowledge of the law or process to effectively assist'. [178]

In its response to written submissions, the department supported action to address this issue. It stated:

> To ensure a consistent approach to regulating representation under the IR Act, it is considered reasonable and necessary to address the issue regarding agents appearing before the QIRC and the Court as part of the Bill.[179]

The department reiterated its support for action in this area in the public briefing. Mr Rhett Moxham, Director, IR Strategic Policy, Office of Industrial Relations, Department of Education, stated:

> We agree that this is an area that warrants attention and that there should be a level of oversight of agents to ensure that when a worker is engaging an agent then that agent actually has the best interests of that person when they are engaging in the Industrial Relations Commission or the court.[180]

174 Submissions 31 and 33.

175 Submission 31, p 5.

176 Submission 31, p 6.

177 Submission 33, p. 1.

178 Submission 33, p. 1.

179 Department of Education, correspondence, 19 July 2022, p 5.

180 Public briefing transcript, 21 July 2022, Brisbane, p 5.

Committee comment

The committee notes the issues raised by the Hon Justice Davis and the QLS relating to the lack of regulation of paid agents who are not lawyers in the QIRC and the Industrial Court. In light of the issues they raise, and the department's support for action in this area, the committee recommends that the Minister investigate options for addressing the issue of agents who charge a fee to provide representation in the Queensland Industrial Relations Commission (and the Industrial Court) under the Industrial Relations Act.

Recommendation 2

The committee recommends that the Minister for Education, Minister for Industrial Relations and Minister for Racing investigate options for addressing the issue of agents who charge a fee to provide representation in the Queensland Industrial Relations Commission (and the Industrial Court).

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that 'fundamental legislative principles' 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
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.2 Rights and liberties of individuals

3.2.1 Amendments to the registered employee and employee organisations framework

The Bill makes a number of changes to the registered employee and employer organisations framework. These amendments potentially impact on a person's rights and liberties because they limit the entities available to a person to represent their industrial interests.

The Bill proposes to amend the IR Act to enable the QIRC to make orders that an entity is not eligible for registration under chapter 12 (Industrial organisations and associated entities) of that Act.[181]

The Bill defines employer and employee organisations who are eligible for registration[182] and provides for:

- application to the QIRC for an order declaring an entity (other than an 'organisation'[183]) to be an ineligible entity, and the circumstances in which the QIRC may grant that application[184]
- the QIRC to make an ancillary order in support of an ineligibility order,[185] which may prohibit:
    - an officer, employee or agent of the entity from representing a person in a matter before the court, the QIRC, the full bench or the registrar
    - the entity from arranging for an agent to represent a person under chapter 6 (Industrial disputes)
    - the entity from holding out membership on the basis of being able to provide representation in stated industrial matters
    - another entity associated with the entity, or an officer, employee or agent of another entity associated with the entity, from engaging in the above conduct

[181] Clause 51 (IR Act, ss 483A – 483F); explanatory notes, p 4.

[182] The Bill inserts a definition for 'eligible for registration under chapter 12': cl 51 (IR Act, s 483A).

[183] 'Organisation' means a body registered under chapter 12 as an organisation: IR Act, sch 5.

[184] Clause 51 (IR Act, s 483B) provides that the QIRC must be satisfied that the entity is not eligible for registration under chapter 12 as an employee organisation or employer organisation, or that registration of the entity under chapter 12 would be inconsistent with the objects of the IR Act.

[185] Clause 51 (IR Act, s 483D).

- application for revocation of an ineligibility order, including the right for the original applicant to be heard.[186]

A decision by the QIRC to make an order about an ineligible entity is able to be appealed.[187]

According to the explanatory notes, potential breaches of fundamental legislative principles arise from the amendments to the registered employee and employer organisations framework, however they are:

> … considered to be justified as an individual employee or employer remains free to choose whether or not to become a member of an employee or employer organisation, association or other entity purporting to advance, protect and/or represent the industrial interests of a person or group of persons as provided for by the International Labour Organisation's Freedom of Association and Protection of the Right to Organise Convention (No 87) ratified by Australia. The Bill does not restrict an individual's freedom to join an ineligible entity, though it does seek to make clear that such entities cannot lawfully represent their members' industrial interests so as to reduce the risk of employees and employers being misled or confused about the ability of an entity to represent a person, or the entity's standing under the IR Act.[188]

The explanatory notes state that the purpose of the amendments is to ensure that employees' and employers' industrial interests are effectively represented by entities subject to regulation under the IR Act, rather than unregulated entities who are not required to fulfil the high level of governance duties under the IR Act:

> The amendments are designed to protect members' interests by prompting integrity, accountability and transparency of the employee and employer organisations. The amendments are also considered to be consistent with a free and democratic society based on human dignity, equality and freedom as their application by the QIRC, a public entity under the *Human Rights Act 2019* (HR Act), is required to act compatibly and give proper consideration to human rights when making decisions/orders under s 58 of the HR Act.[189]

Committee comment

Noting that the object of the relevant amendments is to ensure that employees' and employers' industrial interests are effectively represented by entities subject to regulations that ensure their integrity, accountability and transparency, the committee is satisfied that the proposed amendments to the IR Act with respect to registered organisations have sufficient regard to the general rights and liberties of individuals.

3.2.2 Administrative power and natural justice

Fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals, which depends on, for example, whether the legislation:

- makes the rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

186 Clause 51 (IR Act, s 483E).

187 See clause 51 (IR Act, s 483F).

188 Explanatory notes, p 4.

189 Explanatory notes, pp 4-5.

- is consistent with the principles of natural justice.[190]

The Bill excludes certain persons from accessing an existing right to an internal review. This potentially impacts on a person's rights and liberties because it may prevent them from accessing an appropriate review mechanism for a decision that affects them.

The Bill also provides for a range of administrative decision-making processes. These potentially impact on a person's rights and liberties because they may affect an individual's employment arrangements, such as remuneration and working conditions.

3.2.2.1 Incorporated Associations amendments

The Bill proposes to amend the AI Act to specifically exclude affected persons of specified decisions[191] from accessing the existing internal review provisions set out in Part 15 of that Act.[192] These internal review provisions include the existing right under the AI Act for a person whose interests are affected to apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of a reviewable decision.[193]

In addressing this clause of the Bill, the explanatory notes observe that the amendment 'has the consequential effect of removing a right of appeal to QCAT for these decisions', but that individuals affected by a decision relating to the objection ground 'have rights of appeal under the IR Act'.[194]

Committee comment

Noting that individuals will retain a right of appeal under the IR Act, the committee is satisfied that the proposed amendments to the AI Act have sufficient regard to the rights and liberties of individuals despite limiting access to the internal review mechanism set out in that Act.

3.2.2.2 Independent couriers – administrative decision-making processes

The Bill would insert a new chapter into the IR Act,[195] which empowers the QIRC to make determinations setting minimum standards of work for 'independent couriers'.[196]

The provisions include a range of interacting components, such as 'contract instruments' (comprising of 'contract determinations' and 'negotiated instruments') and 'courier service contracts', and clarify which is to apply in instances of inconsistency.[197]

These independent courier provisions provide for a range of administrative decision-making processes, including:

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190 *Legislative Standards Act 1992*, s 4(3)(a) and (b).

191 Being decisions under AI Act, ss 10A(1)(b), 12(3), 48(9), 48A(1)(b), 93B(2) or 106K.

192 Clause 84 (amends AI Act, s 109).

193 AI Act, s 113 provides for the external review of decisions.

194 Explanatory notes, p 48.

195 Clause 66 (IR Act, ch 10A (Independent couriers), ss 406A-406ZZF).

196 The Bill defines an 'independent courier' to be a person who provides a service transporting goods using a courier vehicle if, in the course of providing the service, the courier vehicle is driven only by the specified drivers, including, if the person is an individual—the individual; cl 66 (IRA Act, s 406B).

197 Clause 66 (IR Act, ch 10A, Parts 1 and 2, ss 406A-406M).

- contract determinations[198] for a class of courier service contracts,[199] including providing for applications for the making or variation of a contract determination,[200] application for an order providing exemption from a contract determination,[201] and empowering the QIRC to revoke or review a contract determination, upon application or on its own initiative[202]
- negotiated agreements[203] for a class of courier service contracts,[204] including providing for notices of intent,[205] a request to the QIRC to help reach agreement,[206] an application to the QIRC for scope orders,[207] the making and hearing of applications for certification of a negotiated instrument, and[208] amending and terminating negotiated agreements[209]
- individual courier service contracts,[210] including providing for applications for amending or voiding,[211] and unfair termination,[212] of such contracts (including an application to the QIRC for reinstatement or compensation).

Although the explanatory notes do not include these proposed independent courier provisions in their consideration of the Bill's consistency with fundamental legislative principles, the provisions would engage the rights and liberties of individuals.

For example, both contract determinations and negotiated agreements may impact on individuals, as they are a determination or agreement about the remuneration and working conditions of independent couriers, who can be individual drivers. Further, courier service contracts impact on individuals, as an independent courier is a party to such a contract.

Therefore, administrative decisions made under the proposed independent courier provisions may potentially have a detrimental impact on the rights and liberties of individuals.

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198 Being, a written agreement about the remuneration and working conditions of independent couriers engaged by a principal contractor (cl 66 inserts IRA Act, s 406N).

199 Clause 66 (IR Act, pt 3 (Contract determinations), ss 406N-406U).

200 Clause 66 (IR Act, ss 406N-406Q).

201 Clause 66 (IR Act, s 406R).

202 Clause 66 (IR Act, ss 406T-406U).

203 Making a determination fixing minimum remuneration and working conditions for independent couriers; cl 66 (IR Act, s 406V).

204 Clause 66 (IR Act, pt 4, 'Negotiated agreements', ss 406V-406ZT).

205 To negotiate or to be a party to negotiations; cl 66 (IR Act, ss 406W-406X).

206 Clause 66 (IR Act, s 406ZA).

207 The Bill provides that a negotiating party may apply to the QIRC for an order in relation to a proposed negotiated agreement, if the negotiating party has concerns the agreement will not cover appropriate independent couriers or will cover inappropriate independent couriers; cl 66 (IR Act, s 406ZB).

208 Clause 66 (IR Act, ss 406ZC-406ZQ).

209 Clause 66 (IR Act, ss 406ZR-406ZT).

210 Clause 66 (IR Act, Part 5, 'Individual courier service contracts', ss 406ZU-406ZZD); the Bill defines 'courier service contract' to be a contract between a principal contractor and an independent courier, under which the independent courier transports goods under arrangements made by the principal contractor; and that is not a contract of employment (cl 66, IR Act, s 406D).

211 Clause 66 (IR Act, s 406ZU-406ZW).

212 Clause 66 (IR Act, s 406ZX-406ZZD).

Fundamental legislative principles generally require legislation to set criteria for decision-making that exercises administrative power, and to provide appropriate avenues of review.[213]

To be consistent with the principles of natural justice:

- a person must be given an adequate opportunity to present their case to the decision-maker
- the decision maker must be unbiased
- fair and appropriate procedures must apply to the case.

In relation to the administrative decision-making powers and processes included in the Bill, the committee notes that the Bill provides:

- for criteria and considerations for the QIRC in exercising its powers, including that it must ensure that a contract instrument provides for just and fair remuneration and working conditions for independent couriers[214]
- that a person who will be covered by a proposed contract determination is entitled to be heard on an application for a contract determination[215]
- that the QIRC may only make an order revoking a contract determination, if satisfied that no independent couriers will be adversely affected[216]
- that a proposer[217] must give each other proposed party to the negotiations a written notice of the proposer's intention to start negotiating[218]
- that before[219] the independent couriers who are to be covered by a proposed negotiated agreement are asked to approve it, the principal contractor take reasonable steps to ensure

213 OQPC, *Fundamental legislative principles: the OQPC notebook*, pp 15-24.

214 Also, the conditions must be comparable to those an employee would receive under an industrial instrument or the IR Act for performing similar work; and generally reflect the prevailing minimum conditions of independent couriers covered, or to be covered, by the instrument; cl 66 (IR Act, s 406F). The proposed section also sets out matters the QIRC must consider in exercising its powers, which are similarly favourable to independent couriers.

215 Clause 66 (IR Act, s 406Q).

216 Clause 66 (IR Act, s 406T).

217 Being the person who proposes to negotiate with a view to a negotiated agreement being made.

218 The proposed notice provisions also require that a principal contractor who proposes to negotiate with a group of independent couriers must give notice to each 'relevant employee organisation'. Such organisations include employee organisations or federal organisations of employees that are to be covered by the proposed agreement, or are entitled to represent the industrial interests of independent couriers who are to be covered by the proposed agreement; cl 66 (IR Act, s 406W).

219 At least 14 days before: cl 66 (IR Act, s 406Y).

that each independent courier has[220] a copy of the proposed agreement and an explanation of the terms[221] [222]

- that the negotiating parties to a proposed negotiated agreement must negotiate in good faith[223]
- that a person who will be covered by a proposed negotiated agreement is entitled to be heard on a certification application[224] and that before refusing the application, the QIRC must give persons who will be covered by the agreement an opportunity to take action to assist the application[225]
- that a proposed negotiated agreement must be agreed by all of the parties[226]
- for a range of further protections favourable to individuals, including the no-disadvantage test,[227] the equal remuneration test,[228] and requiring the QIRC to refuse to grant a certification application for a proposed negotiated agreement in specified instances[229]

220 Or has ready access to.

221 Also, for a proposed negotiated agreement with a group of independent couriers, each independent courier must be informed that they may be represented in the negotiations by a relevant employee organisation; cl 66 (IR Act, s 406Y).

222 This proposed section also provides that the principal contractor must not ask the independent couriers to approve the proposed negotiated agreement until 21 days after the later of the specified occurrences.

223 In this regard, the Bill specifies what each party is required to do in order to negotiate in good faith; cl 66 (IR Act, s 406Z).

224 Clause 66 (IR Act, s 406ZE).

225 Clause 66 (IR Act, s 406ZF).

226 Under the Bill, agreement is reached if it is signed by or for all of the parties; or the QIRC is satisfied all parties have agreed on the terms of the agreement and the agreement was approved by—for an agreement to which a group of independent couriers is a party – at least 65% of the independent couriers who will be covered by the agreement in a secret ballot, or otherwise – a valid majority of the independent couriers who will be covered by the agreement in a properly conducted ballot: cl 66 (IR Act, s 406ZH).

227 The Bill provides that the QIRC must be satisfied the proposed negotiated agreement does not disadvantage independent couriers in relation to their working conditions: cl 66 (IR Act, s 406ZI).

228 The Bill provides that the QIRC must be satisfied that a proposed negotiated agreement provides for equal remuneration for work of equal or comparable value (for independent contractors) and that the principal contractor implements it accordingly: cl 66 (IR Act, s 406ZK).

229 Such as, where the QIRC considers a provision of the agreement is inconsistent with an equal remuneration order, or seeks to prohibit or restrict an application being made for such an order; or a provision of the agreement is an objectionable term or discriminatory: cl 66 (IR Act, s 406ZL). The Bill also provides for refusal where there is a contravention of an industrial action provision; or where the agreement defines the group or category in a way that other independent couriers are not being covered, when it would be reasonable for them to be covered and unfair that they are not: cl 66 (IR Act, ss 406ZM-406ZN).

- for various processes applicable to an application to amend a negotiated agreement,[230] and applicable to termination of such an agreement[231]
- for an application process to amend or declare void unfair courier service contracts,[232] and remedies for when the QIRC considers an independent courier's contract has been unfairly terminated.[233]

Committee comment

In light of the criteria and procedures which the proposed chapter 10A sets out for the exercise of the QIRC's new administrative powers, and its provision of appropriate avenues of review, the committee is satisfied that the proposed independent courier provisions have sufficient regard to the rights and liberties of individuals.

3.2.3 Right to privacy and confidentiality

The committee holds the view that the rights and liberties of individuals include an individual's right to privacy and confidentiality.

The Bill requires the disclosure of certain information, such as a conviction and penalty under the IR Act, and the publication of certain information. The amendments may potentially impact the privacy and confidentiality rights of independent couriers.

Clause 61 of the Bill proposes to amend the IR Act to provide that, in specified circumstances, the registrar must give the chief executive (associations incorporation) a written notice about a conviction of an officer of an unincorporated association who is convicted of an offence against the IR Act and the penalty imposed.[234]

In inserting the proposed independent courier provisions into the IR Act, cl 66 provides for the following:

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230 The proposed section requires, depending on the circumstances, agreement by the parties, including by relevant employee organisations; and (for a negotiated agreement to which a group of independent couriers is a party) at least 65% of the independent couriers covered by the agreement in a secret ballot, or a valid majority of the independent couriers covered by the agreement in a properly conducted ballot: cl 66 (IR Act, s 406ZR).

231 The proposed sections, which provide for applications for termination of a negotiated agreement, include similar types of requirements as the above referenced proposed amendment provisions, but in the context of the parties who may apply for termination or must provide their approval of termination: cl 66 (IR Act, ss 406ZS-406ZT).

232 The Bill provides for when a courier service contract is an 'unfair contract', including where the contract is harsh, unconscionable or unfair; or is against the public interest; or provides a total remuneration less than that which a person performing the work an independent courier would receive under a contract instrument, or an employee performing the work would receive under an industrial instrument or the IR Act: cl 66 (IR Act, s 406ZU).

233 Including reinstatement of a courier service contract and compensation: cl 66 (IR Act, ss 406ZZB and 406ZZC).

234 Clause 61 (IR Act, s 981B).

- publication requirements relating to an application for the making or variation of a contract determination, requiring the registrar to publish a copy of the application and the specified notice on the QIRC website, and the notice in a newspaper[235]
- disclosure requirements requiring the negotiating parties to a negotiated agreement to disclose relevant information (other than confidential or commercially sensitive information), including information relevant to the gender pay gap under the proposed negotiated agreement[236]
- publication requirement requiring the registrar to publish a copy of the negotiated agreement on the QIRC website, as soon as practicable after receiving a copy of it.[237]

Although the explanatory notes do not include these proposed provisions in their consideration of the Bill's consistency with fundamental legislative principles, the provisions would potentially engage with the rights and liberties of individuals.

Clause 61 requires the disclosure of a conviction and penalty if an incorporated association or an officer of an incorporated association is convicted of an offence against the IR Act, a penalty is imposed and the conviction or penalty has not been set aside on appeal.[238]

The amendments in clause 66 may potentially impact the privacy and confidentiality rights of independent couriers.

Additionally, the Bill proposes to amend the *Public Trustee Act 1976* to provide that the public trustee's register of unclaimed moneys must contain details of (if the moneys are an amount of unpaid wages) the name of the employer who paid the amount to the public trustee, and the name, date of birth and last known address of the former employee to whom the amount was payable.

The committee notes that under the existing law, the Public Trustee may publish details in the register on the Public Trustee's website or by any other way decided by the Public Trustee,[239] but that the potential breach of a former employee's privacy is intended to assist that individual in claiming monies payable to them.

Committee comment

The committee is satisfied that the identified amendments to the IR Act and the *Public Trustee Act 1976* have sufficient regard to the rights and liberties of individuals.

3.2.4 Creation of new penalties

Penalty provisions have the potential to impact the rights and liberties of individuals.

Penalties should be relevant and proportionate, and consistent with other penalties in the legislation.[240]

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235 Clause 66 (IR Act, s 406P).

236 Clause 66 (IR Act, s 406Z).

237 Clause 66 (IR Act, s 406ZP).

238 Clause 61 (IR Act, s 981B).

239 *Public Trustee Act 1976*, s 99A(3).

240 *Legislative Standards Act 1992*, s 4(2)(a); OQPC, *Fundamental legislative principles: the OQPC notebook*, p 120.

The Bill introduces a number of new penalty provisions.

In common with the other civil penalty provisions in chapter 8 (Rights and responsibilities of employees, employers, organisations etc) of the IR Act, the new civil penalty provision relating to misrepresentations with respect to the right to represent the industrial relations of a person[241] has a maximum penalty of 90 penalty units ($12,937.50[242]) for an individual.[243]

Another civil penalty provision that would be introduced by the Bill provides that if a person contravenes a relevant contract instrument,[244] the maximum penalty for an individual is 27 penalty units ($3,881.25).[245] This amount is consistent with the maximum penalty amounts for civil penalty provisions in chapters 3 (Modern awards), 4 (Collective bargaining), 5 (Equal remuneration), 6 (Industrial disputes), and 9 (Records and wages).

As discussed above in relation to the amendments to the registered employee and employee organisations framework, the QIRC may make ancillary orders when it makes an order about an ineligible entity. If an entity fails to comply with the order, it faces a maximum penalty of 100 penalty units ($14,375).[246] This is the same amount as the existing maximum penalty for failing to comply with orders and ancillary orders imposed by the full bench under subdivision 10 (Orders about right to represent a group of employees) of chapter 11 (Industrial tribunals and registry).[247]

The Bill would also provide that if a principal contractor wilfully contravenes an order to reinstate a courier service contract for an independent courier, the commission may, amongst other things, order the principal contractor to pay the independent courier an amount up to 50 penalty units ($7,187,50).[248]

Committee comment

The committee takes the view that the penalty provisions in the Bill are relevant, proportionate and consistent with other penalties in the IR Act, and consistent with fundamental legislative principles.

3.3 Explanatory notes

Part 4 of the LS Act 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 sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

241 Or a particular group of persons.

242 The value of a penalty unit is $143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

243 Clauses 36 (IR Act, new s 293A), 64 (IR Act, amended sch 3).

244 This is one of the provisions in new ch 10A (Independent couriers).

245 Clauses 66 (IR Act, new s 406G), 68 (IR Act, amended sch 3).

246 Clause 51 (IR Act, new s 483D).

247 See IR Act, s 483.

248 Clause 66 (IR Act, new s 406ZZD).

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[249]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the *Human Rights Act 2019* (HR Act).[250]

The HR Act protects fundamental human rights drawn from international human rights law.[251] Section 13 of the HR Act provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

The statement of compatibility, which was tabled by the Minister when introducing the Bill, identifies 4 human rights issues as being relevant to the Bill:

- the right to freedom of association (s 22 of the HR Act), which is relevant to proposed s 293A (Misrepresentation) of the IR Act and the AI Act amendments
- the right to freedom of thought, conscience, religion and belief (s 20 of the HR Act), which is relevant to the AI Act amendments
- the right to hold an opinion without interference and the right to freedom of expression (s 21 of the HR Act), which is relevant to the AI Act amendments
- the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked (s 25 of the HR Act), which is relevant to the AI Act amendments.

The statement of compatibility considers the Bill is compatible with these human rights because the relevant provisions of the Bill limit them only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

In addition to the human rights issues identified by the Minister, the right to a fair hearing (s 31 of the HR Act) is also relevant to cl 84 of the Bill, which amends s 109 of the AI Act (Affected person may apply for review).

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249 HR Act, s 39.

250 HR Act, s 8.

251 The human rights protected by the HR Act are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HR Act, s 12.

4.1.1 Right to freedom of association

Section 22 of the HR Act confirms the right of all persons to peaceful assembly and to freedom of association with others, including the right to form and join trade unions.

4.1.1.1 Proposed s 293A (Misrepresentation) in the IR Act

Clause 36 of the Bill inserts s 293A into the IR Act which creates a new civil penalty, prohibiting a person or other entity from misrepresenting to another person that the person or entity has the right to represent the person's industrial interests. Its purpose is to protect the interests of employees and employers by ensuring that industrial organisations capable of exercising rights under the IR Act are those which fulfil strict governance and accountability requirements.

Notably, the relevant clause will not remove individuals' rights to form a new industrial organisation and seek its registration in appropriate circumstances. The QIRC's oversight of relevant processes also provides an additional degree of protection for industrial rights.

Committee comment

The proposed s 293A (Misrepresentation) is arguably relevant to, but does not limit, the right to freedom of association.

4.1.1.2 Proposed amendments to the AI Act

The proposed amendments to the AI Act demonstrate a clear intention to impose a limitation on the right to freedom of association. Where an association's incorporation is cancelled, or where an association is refused incorporation or the registration of an amendment to rules, this will limit the rights of individuals to join with others to pursue a specific common interest, namely representation of industrial interests.

The purpose of this limitation is to ensure clarity as to which associations are registered under the IR Act and bear the consequential status and industrial rights that flow from such registration. It also seeks to serve the interests of employees and employers by ensuring that industrial organisations capable of exercising rights under the IR Act are those which fulfil strict governance and accountability requirements.

Of particular relevance here is the existence of several groups that purport to represent members' interests in industrial relations in exchange for membership fees, but which are not registered under the IR Act. The existence of such groups suggests a need to ensure that employees and employers are not confused about which organisations can represent industrial interests under the IR Act. Effective industrial representation is appropriately undertaken by organisations subject to regulation under the IR Act and the obligations it imposes in terms of transparency, accountability, and integrity. There is no less restrictive and reasonably available way to achieve this outcome.

Committee comment

While it is important to protect the right to freedom of association, that right is not absolute and is subject to limitation where such limitation is reasonable and demonstrably justified. In this case, an appropriate balance has been found between the relevant right and the limitations imposed by the amendments. Although the proposed amendments do limit the right to freedom of association, that right may still be exercised through the industrial relations framework. The committee considers the limitations on the right to freedom of association (s 22 of the HR Act) imposed by s 293A (Misrepresentation) and the AI Act amendments is reasonable and justified.

4.1.2 Right to freedom of thought, conscience, religion and belief

Section 20 of the HR Act affirms the right of every person to freedom of thought, conscience, religion and belief, including the freedom to adopt their religion or belief of choice, and demonstrate that religion or belief individually or as part of a community.

The Bill's amendments to the AI Act could limit this right by interfering with the capacity of people with shared beliefs to form an incorporated association for a shared purpose. However, the potential limitation appears minimal. The amendments to the AI Act would only limit the right in circumstances where the right's exercise could generate confusion about the status of an association that purports to *represent* the industrial interests of employees and employers.

The purpose of this limitation is to ensure that industrial representation is appropriately undertaken by organisations subject to regulation under the IR Act and the obligations it imposes in terms of transparency, accountability, and integrity. There is no less restrictive and reasonably available way of achieving this purpose.

Committee comment

In light of the above, the committee considers the limitations on the right to freedom of thought, conscience, religion and belief (s 20 of the HR Act) imposed by the AI Act amendments of this right is reasonable and justified.

4.1.3 Right to hold an opinion without interference and the right to freedom of expression

Section 21 of the HR Act affirms the right of every person to hold an opinion without interference and the right of every person to freedom of expression. The latter right includes the freedom to seek, receive and impart information and ideas of all kinds.

The statement of compatibility states that a person's ability to hold or express their views and associate freely in ways they may prefer could be limited by the amendments to the AI Act which permit the cancellation of an association's incorporation, refusal to approve incorporation or refusal to register an amendment to rules. However, it is arguable that the right to hold an opinion is not engaged by these amendments, or at least is not limited by them. Further, any limitation imposed on the right to freedom of expression by these amendments appears to be very minimal, given that they do not prevent people from associating with each other for the purposes of exchanging information and ideas.

To the extent that this right is limited, that limitation serves the purpose of ensuring that industrial representation is appropriately undertaken by organisations subject to regulation under the IR Act and the obligations it imposes in terms of transparency, accountability, and integrity. There is no less restrictive and reasonably available way of achieving this purpose.

Committee comment

In light of the above, the committee considers the potential limitation on the right to hold an opinion without interference and the right to freedom of expression (s 21 of the HR Act) imposed by the AI Act amendments is minimal, reasonable and justified.

4.1.4 Right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked

Section 25 of the HR Act affirms the right of a person not to have the person's privacy, family, home or correspondence interfered with in unlawful or arbitrary ways, as well as the person's right not to have their reputation unlawfully attacked.

This right may be affected by the amendments to the AI Act, which require the chief executive to provide to the Industrial Registrar the name of each person known to be an officer of an incorporated association, immediately before that association's incorporation is cancelled by the chief executive. Such cancellation would be triggered by a notice from the Industrial Registrar regarding a breach of a relevant provision of the IR Act.

The purpose of this limitation is to ensure the integrity of organisations registered under the IR Act. There is no reasonably available and less restrictive alternative means of achieving this purpose.

Committee comment

In light of the above, the committee considers the limitations on the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked (s 25 of the HR Act) imposed by the AI Act amendments is reasonable and justified.

4.1.5 Right to a fair hearing

Section 31 of the HR Act affirms the right of a person charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This includes the right of a person to procedural fairness, including the right to respond to allegations made against them and their right to be heard by an unbiased and independent court or tribunal.

The Bill demonstrates a clear intention to limit this human right, in that it amends the AI Act to provide that the chief executive's decision to give notice to the Industrial Registrar of an application for incorporation or to register an amendment to rules is not a reviewable decision. The purpose of this limitation is to ensure that incorporated associations do not convey that they have a status equivalent to an organisation registered under the IR Act when they do not.

Although the amendments to the AI Act limit the access to the review process set out by that Act, affected individuals will retain access to the appeals process established by the IR Act. Thus, while one particular avenue of appeal is limited by the relevant clauses, the right remains adequately preserved. As such, it appears that there is no less restrictive and reasonably available way of achieving the purpose of the relevant amendments.

Committee comment

In light of the above, the committee considers that the limitation on the right of a person charged with a criminal offence or a party to a civil proceeding to have the charge of proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing (s 31 of the HR Act) imposed by the AI Act amendments is reasonable and justified.

4.2 Statement of compatibility

Section 38 of the HR Act requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HR Act. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. However, the statement did not address the potential impact of the Bill on the right to a fair hearing (s 31 of the HR Act). The statement could have been improved by addressing this issue.

Appendix A – Submitters

Sub #	Submitter
001	Australian Christian Lobby
002	IWD Brisbane Meanjin
003	Queensland Trucking Association Ltd
004	Retail and Fast Food Workers Union Incorporated
005	Queensland Law Society
006	Confidential
007	Uber Australia
008	Queensland Council of Unions
009	Australian Industry Group
010	Menulog Pty Ltd
011	Fair Go for Queensland Women
012	Maternity Consumer Network
013	The Australian HR Institute
014	Independent Education Union of Australia – Queensland and Northern Territory Branch
015	Transport Workers' Union NSW/QLD Interim Governance Branch
016	Together Queensland, Industrial Union of Employees
017	Queensland Teachers' Union
018	United Workers Union
019	Queensland Nurses and Midwives' Union
020	Maternity Choices Australia
021	DoorDash Australia
022	Red Union Support Hub
023	United Firefighters' Union of Australia, Union of Employees Queensland
024	Deliveroo Australia
025	Community and Public Sector Union
026	Maurice Blackburn Pty Ltd
027	Local Government Association of Queensland
028	Shop Distributive and Allied Employees' Association

029	Queensland Coalition for Sex-based Rights
030	Business Council of Australia
031	Hon Justice Peter Davis, President, Industrial Court of Queensland and the Queensland Industrial Relations Commission
032	Queensland Police Union of Employees
033	Professor Emeritus David Peetz
034	Queensland Law Society (supplementary submission)
035	Australian Industry Group (supplementary submission)

Appendix B – Officials at public departmental briefings

Public briefing on 30 June 2022

Department of Education

- Mr Tony Shostakowski, Acting Executive Director, Industrial Relations, Office of Industrial Relations
- Mr Rhett Moxham, Director – IR Strategic Policy, Office of Industrial Relations

Department of Justice and Attorney-General

- Mr David McKarzel, Executive Director – Office of Regulatory Policy, Liquor Gaming and Fair Trading

Public briefing on 21 July 2022

Department of Education

- Mr Tony James, Acting Deputy Director-General, Office of Industrial Relations
- Mr Rhett Moxham, Director – IR Strategic Policy, Office of Industrial Relations

Department of Justice and Attorney-General

- Mr David McKarzel, Executive Director – Office of Regulatory Policy, Liquor Gaming and Fair Trading

Appendix C – Witnesses at public hearing

Australian Christian Lobby

- Mr Rob Norman, State Political Director Qld/NSW/ACT

IWD Brisbane Meanjin

- Professor Karleen Gribble, Adjunct Associate Professor, School of Nursing and Midwifery, Western Sydney University

Queensland Coalition for Sex-Based Rights

- Dr Nick Collyer, Director
- Ms Carolyn Ride, Media Spokesperson

Fair Go for Queensland Women

- Ms Stephanie Hughes, Co-Founder

Maternity Choices Australia

- Mrs Azure Rigney, Queensland President

Australian Industry Group

- Mr Brent Ferguson, Director – Major Cases, Workplace Relations Advocacy and Policy

Local Government Association of Queensland

- Mr Tony Goode, Workforce Strategy Executive

Red Union Support Hub

- Mr Jack McGuire, Managing Director

Retail and Fast Food Workers Union Incorporated

- Mr Josh Cullinan, Secretary

Queensland Trucking Association Ltd

- Mr Ezra Pyers-Taurerewa, Employment Relations Manager

Uber Australia

- Ms Bec Nyst, General Manager of the Uber Delivery Business, ANZ
- Ms Pia Brunner, Head of Public Policy and Government Affairs, ANZ

Deliveroo

- Mr Ed McManus, CEO
- Ms Libby Hay, Head of Corporate Affairs

DoorDash Australia

- Ms Maggie Lloyd, Public Policy

Queensland Council of Unions

- Ms Jacqueline King, Assistant General Secretary

Independent Education Union of Australia – Queensland and Northern Territory Branch

- Mr John Spriggs, Senior Industrial Officer
- Dr Adele Schmidt, Research Officer

Shop Distributive & Allied Employees' Association

- Ms Stephanie Purton, Industrial Officer

Transport Workers' Union NSW/QLD Interim Governance Branch

- Mr Richard Olsen, State Secretary
- Mr Joshua Millroy, Political and Campaigns Director
- Mr Margesh Thakar, owner-driver and TWU Member

Statement of Reservation

Statement of Reservation

The Opposition Members object to the perverse and clearly unresolved conflict of interest the Industrial Relations and Other Legislation Amendment Bill 2022 raises. It is a major leap backwards - to an era that is more reminiscent of the 1950's than a progressive 2022. Not only does this Bill seek to featherbed and advantage the governing Labor party's donors - such as the Queensland Council of Unions (QCU) and the affiliated trade union movement - it also seeks to disadvantage any competing employee organisations who do not contribute funds and services in kind to the electoral cause of the Labor Party.

Some aspects of the bill – such as strengthening protections against workplace sexual harassment - have merit but are vastly outweighed by the draconian and antiquated measures this legislation will introduce.

An important part of the story of Queensland is a continuous culture of human improvement and widening the circle of personal freedoms to allow individuals to flourish. In a modern 21st century Queensland, it is the right of the individual to choose, identify and associate themselves in a way they feel appropriate which is supported by the Queensland Parliament in 2019 passing the Human Rights Act that bestows a right to freedom of association. The Queensland Human Rights Commission underlines these protections, as seen in their "easy read guide" and highlights our fundamental rights and protections when dealing with Government and what we should expect.

Yet, the Industrial Relations and Other Legislation Amendment Bill 2022 makes a mockery of these core legal rights. One could surmise that this legislation is in direct contradiction to the Human Rights Act and should be void of any legal standing. If this is not the case, then the Human Rights Act is completely farcical. Queenslanders have a right to ask why this legislation was enacted with such fanfare when the Government can simply ignore it when it suits them?

To highlight a key point of the Human Rights Act - peaceful assembly and freedom of association. I quote, *"You have the right to meet with other people who share your beliefs and opinions or join a group to do this.".* These words should have a meaningful impact on legislation as fundamental freedoms, yet the proposed legislation leaves these values under direct assault.

For example, in Queensland we currently have two industrial groups representing nursing. The Queensland Nurses and Midwives Union and Nurses Professional Association of Queensland. Both claims to be industrial advocates catering for their member's needs. One is rapidly growing in numbers with no political alignment whilst the others has seen a stagnation or a steady exodus of membership and is aligned with a political party.

The Queensland Industrial Relations Commission only acknowledges one association to act on behalf of a specific profession. The Conveniently Belong Rule allows any industrial advocate that is already on the Industrial Relations Commission the ability

to veto any potential competition. These changes will ensure that the monopoly status of existing unionised industrial advocates is unchallenged and will remove the individual's right of association.

The fact that one advocate is easier to deal with for Government and large corporations only serves to reduce competition and curtails the diversity of industrial relations advocates, restricting member's rights. This increases the likelihood of industrial relations outcomes that may not be in the best interest of individual workers but are beneficial to other parties. In these situations, workers have no choice in industrial relations representative.

One should ask, what will become of those individuals who have contrary opinions and interests to their predetermined Industrial advocate? Shouldn't they be allowed to choose whom they feel best represents their needs? On this basis alone, this legislation has no place in modern Australian society.

Therefore, the practical impact of this bill will take away the rights of the individual from choosing an industrial advocate whom they feel best represents them. One should also take into consideration the potential for reprisals for those who are now forced to join or re-join a Labor Party aligned union.

This highlights how regressive this aspect of the legislation is and why it should be voted down by all members, but we suspect Government members who are a financial and in-kind beneficiaries of the trade union movement will not feel the same and we detail our arguments below.

A reasonable observer would conclude that there is a high likelihood that the Queensland Labor Party and their Parliamentary Members will be direct financial beneficiaries of the proposed legislation via political donations and campaign resources. The potential integrity issues that this would raise for the government are obvious and significant, particularly as the current Government is already bedevilled by numerous integrity issues.

At the very least this section of the Bill is special interest politics at its worst with policy being made to benefit government supporters and doners, but not the working people of Queensland. There is a history of Labor MPs benefitting electorally from financial and/or in-kind assistance provided by the QCU and/or individual trade unions who will benefit from the measures in this bill.

The ability for unions to provide direct assistance through staff, advertising, social media support and direct funds to sitting Members and/or candidates (to name just a few ways) creates an immediate and enormous conflict of interest. We believe a public disclosure of benefit alone is not nearly sufficient and any recipients of benefit should be immediately recused from the decision making process.

The LNP also have concerns in relation to independent delivery drivers. The Albanese government has already stated they are looking into changing legislation in this area.

Therefore in this case, a wait and see approach that harmonises with national standards may well be more prudent.

An important consideration must be taken to account for the impact these changes will have on Cafés and Restaurants and their ability to distribute goods and services. Advocates for the industry have expressed their apprehension at these changes as it will reduce the number of courier drivers and their availability during peak periods. This will result in longer wait times for food delivery and less food deliveries being made. In turn, this will discourage customers and reduce sales, resulting in detrimental impacts on both employment opportunities for drivers and a potential source of income for small businesses who are reliant on it. Ultimately, in 2022 no customer wants cold soggy chips.

There are some aspects in the Bill that are to be welcomed, especially around strengthening protections against workplace sexual harassment. However, the aspects outlined above and the manifestly serious conflict of interest issues are a bridge too far and these archaic provisions have no place in modern Queensland.

James Lister MP
Member for Southern Downs
11 August 2022

Mark Boothman MP
Member for Theodore
11 August 2022