FINANCE AND ADMINISTRATION COMMITTEE

Members present:
Mr MJ Crandon MP (Chair)
Mr R Gulley MP
Mr IS Kaye MP
Mr TS Mulherin MP
Mrs FK Ostapovitch MP
Mr CW Pitt MP
Mr EJ Sorensen MP
Mr MA Stewart MP

Staff present:
Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms M Freeman (Executive Assistant)

DEPARTMENTAL BRIEFING—INQUIRY INTO THE INDUSTRIAL RELATIONS (FAIR WORK ACT HARMONISATION) & OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 30 MAY 2012
Brisbane
WEDNESDAY, 30 MAY 2012

Committee met at 11.02 am

ANDERSON, Mr Michael, Manager, Industrial and Employee Relations, Public Service Commission

BLACKWOOD, Dr Simon, Deputy Director-General, Office of Fair and Safe Work Queensland

JACOBS, Ms Candice, Senior Policy Officer, Private Sector Industrial Relations, Department of Justice and Attorney-General

JAMES, Mr Tony Executive Director, Private Sector Industrial Relations, Department of Justice and Attorney-General

CHAIR: I declare the public departmental briefing of the Finance and Administration Committee’s inquiry into the Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012 open. I am Michael Crandon, the chair of the committee and the member for Coomera. Other members of the committee are Mr Curtis Pitt MP, the deputy chair and the member for Mulgrave; Mr Reg Gulley MP, the member for Murrumba; Mr Ian Kaye MP, the member for Greenslopes; Mr Tim Mulherin MP, the member for Mackay, who is unable to be with us today as he is in another meeting; Mrs Freya Ostapovitch MP, the member for Stretton; Mr Ted Sorensen MP, the member for Hervey Bay; and Mr Mark Stewart MP, the member for Sunnybank. The member for Inala, Ms Annastacia Palaszczuk MP, has been given leave by the committee to attend the briefing today and she will be joining us shortly.

The purpose of this meeting is to receive information from the department about the bill which was referred to the committee on 17 May 2012. The committee is interested in the particular implications of the policies being put into effect in the bill. The objective of the bill is to amend the Industrial Relations Act 1999 to modernise the law to reflect certain key aspects of the Commonwealth industrial relations regime and to require the Queensland Industrial Relations Commission, QIRC, to give consideration to the prevailing economic conditions when determining wages and employment conditions. In addition, the bill amends the Public Service Act 2008 to allow members of the QIRC to hear Public Service appeals.

This briefing is a formal proceeding of the parliament and is subject to the Legislative Assembly’s standing rules and orders. The committee will not require evidence to be given under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with a transcript. I remind all those attending the briefing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee.

I remind committee members that officers are here to provide factual or technical information. They are not here to give opinions about the merits or otherwise of the policy behind the bills or alternative approaches. Any questions about the government or opposition policy that the bill seeks to implement should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. Could I also request that mobile phones be turned off or switched to silent mode. I remind you that no calls are to be taken inside the hearing room.

Each of you will be provided the opportunity to make an opening statement. I remind you that, if you are going to make an opening statement, you will be restricted to five minutes.

Mr James: I have no opening statement.

Mr Anderson: I have no opening statement.

Dr Blackwood: Thank you for the opportunity to make an opening statement. We have provided a submission to the committee setting out the purpose of the amendments. From 1 January 2010, Queensland’s private sector industrial relations powers were referred to the Commonwealth, reducing Queensland’s industrial relations jurisdiction to almost exclusively Public Service and local government matters. As a result of this, it is considered appropriate that the IR Act be amended to better reflect the requirements of the altered jurisdiction.

Amendments are also considered necessary to achieve greater harmonisation with the federal industrial relations system and to address the changing nature of the state’s economic circumstances and its budget strategy. As Queensland’s industrial relations jurisdiction now applies almost exclusively to the...
Public Service and local government, it is no longer considered necessary to retain a distinct body to deal with public sector employment disputes. The Queensland government will refocus the Public Service Commission away from a regulatory function towards a public sector efficiency agenda. To assist in this regard, Public Service appeals will now be heard by members of the Queensland Industrial Relations Commission.

The purpose of the bill is to modernise the Industrial Relations Act and to create an industrial relations framework that is more appropriate to support the jurisdiction that Queensland has retained. Specifically, these amendments will, one, require the QIRC to give consideration to the state’s financial position and fiscal strategy including the financial position of the relevant public sector entity when determining wage negotiations by arbitration; two, for local government and local government owned corporations require the QIRC to give consideration to the financial position of the employer; three, provide a process whereby the Queensland Treasury chief executive may brief the QIRC about the state’s financial position, fiscal strategy and related matters; four, introduce a power for the Attorney-General to make a declaration terminating industrial action if satisfied that the action is threatening the safety and welfare of the community or is threatening to damage the economy; five, introduce an arrangement modelled on the Commonwealth’s protective action ballot order regime to clarify and strengthen the employee balloting process for the taking of protected industrial action in connection with the proposed certified agreement; six, introduce a process for an employer to directly request employees to approve a proposed certified agreement by voting for it; and, seven, provide that QIRC members are able to be appointed as appeals officers under the Public Service Act 2008 for the purpose of dealing with the review of certain decisions which affect Public Service employees.

In terms of the key issues that have been raised, in relation to the principal objects of the bill, we note that in accordance with clause 3 the principal object of this bill is to provide a framework for industrial relations that supports economic prosperity and social justice. In achieving this object, a variety of measures have been included not only for the protection of the industrial parties but also for the well-being of the state and Queenslanders in general. In line with this, the object of the bill will be expanded on to insert a new subsection in relation to when wages are determined. Other than in the public sector, the employer’s financial position is to be taken into account.

Matters to be considered by the QIRC as part of the public interest in arbitrating the making of an agreement—in particular, the amendment will require the QIRC to give consideration to the financial position of the state and of the relevant public sector entity when making binding arbitrated decisions relating to public sector wages. Currently when making a binding determination which impacts upon public sector wages the QIRC may only consider the state’s financial position broadly as part of the effect on the economy. The likely effects of a determination on the economy and the community are also to be considered by the QIRC in its arbitration of all disputes in connection with certified agreement negotiations.

Government briefing about the state’s financial position—a process has been introduced whereby the Queensland government may at any time brief the QIRC informing it as to the position of the state budget and government’s fiscal strategy. The Queensland government’s position is that the information is provided for the benefit of the QIRC and as a briefing about the state’s financial position and fiscal strategy generally.

Under new section 147A, employers may ask employees to approve a proposed agreement being negotiated with employee organisations. This amendment clarifies the situation in this regard by expressly providing for a process for an employer to approve a proposed certified agreement by voting for it. It is consistent with the stated policy objectives of this bill to modernise the law to reflect aspects of the Commonwealth’s industrial relations regime. The amendment brings the IR Act into line with the federal Fair Work Act, which gives employers the ability to request employees to approve a proposed enterprise agreement.

Ministerial power to terminate industrial action—this provision mirrors the Fair Work Act where declarations may be subject to similar criteria by the minister responsible for the effective functioning of the legislation. Given that a similar provision is already in place federally, this amendment simply brings the legislation into line with federal provisions that already apply to Queensland private sector employees. This creates greater consistency across jurisdictions, enabling the entire industrial relations system to function more smoothly. It is worth noting that this power has yet to be tested federally. It is expected that the minister would exercise the same caution in employing the state power, as such declarations would only be made in extreme cases where it was considered in the public benefit to take such action. Placing the power with the Attorney-General ensures that the power is linked to a position of accountability, both to parliament and to the public.

Protected action ballot orders—currently the Industrial Relations Act does not prescribe a clear process for the balloting of employees on matters giving rise to proposed industrial action in support of certified agreement negotiations. By contrast, the Fair Work Act contains a number of regulatory provisions. For example, it requires that a protected action ballot order be obtained, has provisions which stipulate how voting may occur, specifies when a ballot can be considered a successful ballot, and clarifies that expenses of any ballot are met by the Commonwealth through the Australian Electoral Commission unless the party that initiated the ballot elects to have someone other than the AEC conduct the ballot. The
Consultation—given that the amendments are largely based on existing provisions in the Fair Work Act which will create greater consistency across jurisdictions so similar rules will apply to all Queensland employees regardless of which jurisdiction they operate in, extensive consultation was not considered necessary.

Estimated cost for government implementation—in the explanatory notes it is stated, ‘There are no financial considerations aside from indirect benefits of a more efficient industrial relations system.’ However, as raised in the submission to the committee, the cost of conducting protected action ballots will be a cost to this government. The government agrees that this is a cost and is of the view that it would not be reasonable to impose such a financial burden upon the industrial parties. Therefore, it is considered appropriate that the cost of conducting protected action ballots should be borne by the government.

CHAIR: Thank you. I welcome the member for Inala, Ms Annastacia Palaszczuk, who has joined the meeting as I explained earlier. Ms Jacobs, do you have any opening remarks to make?

Ms Jacobs: No.

CHAIR: Thank you. The first question will be from the member for Mulgrave.

Mr Pitt: I welcome all of the representatives here today and I thank you for your attendance. I have a quick question about the statement that ‘declarations would only be made in extreme cases where it was considered in the public benefit to take such action’. Can you elaborate on the public benefit component of that decision-making process?

Dr Blackwood: The legislation makes it clear that—

(1) The Minister may, by a written declaration ... terminate protected industrial action in relation to a proposed agreement if the Minister is satisfied that—

(a) the action is being engaged in, or is threatened, impending or probable; and

(b) the action—

(i) is threatening or would threaten to cause, or has caused, significant damage to the economy, community or local community, or part of the economy; or

(ii) is threatening or would threaten to endanger, or has endangered, the personal health, safety or welfare of the community or part of it.

The other requirement on the minister in that situation is—

The termination declaration—

(a) must be published in the gazette; and

(b) takes effect on the day it is made.

Also—

(2) The Minister must inform the commission of the making of the termination declaration.

(3) The Minister must take all reasonable steps to ensure the parties to the proposed agreement are made aware of—

(a) the making of the termination declaration.

The other thing to note in terms of the operation of that termination is section 181E, ‘Conciliation of matter during post-industrial action negotiation period’. So it is quite clear in the legislation that in extreme circumstances the minister may move to terminate that industrial action, and as we noted in our opening remarks that power has not been used in the federal arena since its initial introduction in 1996. Once the minister has declared that industrial action should cease, the matter is sent back to the Industrial Relations Commission. During the post-industrial action negotiation period, to help the parties reach agreement, the commission has the power to conciliate the matter as if section 148 applied. The commission can undertake all action in relation to conciliation over a period of 21 days, and it has the capacity at section 181E(4)(b)(ii) to extend that period by another 21 days. So after 42 days of conciliation, if the commission believes that it still cannot arrive at a negotiated settlement between the parties then it is able to determine the matter by arbitration as quickly as possible.

Mr Pitt: I have a follow-up question relating to consultation. Harmonisation and getting that greater consistency across the jurisdictions is of course welcome; it is something that is very difficult to argue with. I go to the question, however, of how it relates to the elements of the Fair Work Act. When looking at the harmonisation aspects, what consideration was given to what was and was not included from the Fair Work Act? There are omissions, so could you expand on the consideration? I think if it was true harmonisation then essentially all aspects of the federal legislation would be brought in but I understand that is not the case. Can you expand on that?

Dr Blackwood: The decision in relation to this bill was to harmonise in relation to some important elements within the Fair Work Act. A lot of provisions of the Industrial Relations Act 1999 have been picked up in the Fair Work Act. To give a full answer to what is already harmonised we would have to undertake some more work, obviously. There was a decision to pick up on some important elements that the government considered should be the subject of harmonisation, but, as I say, the federal and state systems have moved in the direction of harmonisation. That process has been ongoing since the early
nineties, so a lot of the provisions in the Industrial Relations Act are not written in exactly the same format in all places but there are a lot of similarities in relation to protected action, the whole certified agreement and enterprise bargaining approach, awards et cetera.

Mr Pitt: Thank you very much.

Mr Sorensen: On the termination of the industrial action by a minister, could you clarify the terms of the application of ‘high threshold’ and ‘extreme cases’?

Dr Blackwood: When talking about the high threshold, it is important to look at section 181B of the legislative amendments which sets out the requirements. The situation would normally be that a matter is in disputation and it is likely to be before the Industrial Relations Commission before any action is taken by government, and that has always been the case. Then obviously the government has to be satisfied that it is causing significant damage to the economy, community or local community. They are the factors that the government needs to take into account should it decide, as we say, in that extreme case to take that sort of action. The minister highlighted in his second reading speech that—

... intervention by the Queensland government in industrial disputes will not be undertaken lightly and will only be utilised where there are strong public interest grounds warranting such action.

Mr Sorensen: Can you give us the various steps that the minister must take to best ensure that the parties affected by the declaration are informed that the industrial action must cease and is no longer protected?

Dr Blackwood: The legislative amendments are set out at section 181C, and it includes the requirements in relation to informing the commission and parties of termination declaration. It states—

(1) This section applies if a termination declaration is made.
(2) The Minister must inform the commission of the making of the termination declaration.
(3) The Minister must take all reasonable steps to ensure the parties to the proposed agreement are made aware of—
(a) the making of the termination declaration; and
(b) the effect of section 181F(2).

Then 181D, which is titled ‘Minister may give directions to reduce or remove threat, damage or danger’, states—

(1) If a termination declaration has taken effect in relation to a proposed agreement, the Minister may give written directions requiring any of the following persons to take, or not take, stated action—
(a) a stated employee who will be covered by the agreement;
(b) an employee organisation that is a party to the proposed agreement;
(c) the employer who is a party to the proposed agreement.

So that is at section 181D. Then the Act moves on to the process of conciliation.

Chair: Thank you. Member for Inala, do you have some questions?

Ms Palaszczuk: Dr Blackwood, is it a standard practice for the department to consult with unions before a bill is introduced into parliament?

Dr Blackwood: The practice that the department undertakes varies, and that is all I can advise on that. That is as a result of discussions with the government on each matter.

Ms Palaszczuk: Can I just draw you to part 7, ‘Other Matters’, and section 339AA, ‘Government briefing about State’s financial position etc’. Subsection (1) states—

The treasury chief executive may, at any time, give the members of the commission a briefing about the State’s financial position and fiscal strategy, and related matters.

I see that there is a notation there which states that ‘the briefing is for information purposes only’. Was any consideration given to the fact that questions could be raised by members of the commission?

Dr Blackwood: The provision provides that the briefing is for information purposes only. The provision does not provide for other parties to raise issues but obviously, in briefing the commission, the commissioners may have some questions that they put back in a briefing session.

Ms Palaszczuk: Sorry? They actually can put information back? It is not just one-sided?

Dr Blackwood: I should clarify. It is a briefing to the commissioners by the Under Treasurer. In any such briefing, the commissioners may have some questions to clarify issues raised in the briefing, but it is very much, as the amendment reflects, for information purposes only. We would see that any questions being put by the commission would be seeking to maybe clarify information being provided by the Under Treasurer.

Ms Palaszczuk: Thank you.

Mrs Ostapovitch: The committee does note that there has been no community consultation on the proposal and that only the Public Service Commission, Queensland Treasury and the Department of the Premier and Cabinet have been consulted. Could you please explain why no community consultation was undertaken?

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Dr Blackwood: In our opening statement we did advise in relation to consultation that, given that the amendments are based largely on the Fair Work Act, there was a decision that extensive consultation was not considered necessary. That is the information we have provided to this committee.

Mr STEWART: One of the concerns highlighted in the submission was limitation of the protected ballot to 30 days after the declaration or 60 days if extended by the QIRC and disadvantage to employees in remote locations. Concerns were also voiced about the Electoral Commission’s ability to conduct ballots within this time frame. How would you respond to this? Also, what are the reasons for the stipulation for these time frames?

Dr Blackwood: I might clarify, because there were issues raised about the 30 and 60 days and the balloting period. First, what is required to take place is a ballot. That is conducted by the ECQ and that is determined by their processes and procedures. Once the balloting has taken place and if the requirements are met—in other words, that 50 per cent of people have voted and that 50 per cent of those have voted in favour—then the period begins when industrial action can be taken, and that is the first 30 days, which can be extended by another 30 days. So there are two processes that are happening in there—the first is the timetable for the protected-action ballot.

The legislation indicates, at page 34, the timetable for a protected-action ballot. It states that, as soon as practicable after receiving a copy of the protected-action ballot order, the ECQ must develop a timetable for the protected-action ballot. So whilst there were some concerns expressed about remote and regional people, the ECQ is required to develop the timetable and in developing the timetable it must consult with each applicant for the protected-action ballot order and the employer of the employees who are to be balloted. But that does not impact, then, on the second element, which is the amount of time in which people, if they decide to take protected action, have to take that action.

Mr STEWART: A further concern was also that the post industrial action negotiation period contained in section 181E would be 21 days, which the submissions considered to be unrealistically brief. What are the reasons for the stipulation of this time frame, if any?

Dr Blackwood: Those provisions at 181E are the same as those that are in the Fair Work Act federally. The only other comment we would make is that, as we have indicated before, intervention in these sorts of disputes would indicate that they are significant industrial disputes, there is a lot at play and there is a need to settle the matters. It is considered that that 42 days is a sufficient period.

Mr PITT: In an earlier question I raised the harmonisation aspects and what was included and what was not included between the federal and state Acts. The Fair Work Act has several options for a ballot, and this bill harmonises that. I think it could be argued that there is nothing contentious about the balloting process. What consideration was given to including all of those balloting options in this legislation as opposed to what is happening federally?

Dr Blackwood: There are two distinctions that were made in terms of the way that the balloting is to occur. In the federal arena it allows either the AEC or in other cases the unions can decide or the employer can decide to nominate somebody else to conduct a ballot. So that is one difference. The Industrial Relations Act Queensland covers approximately 245,000 workers, mainly amongst large employers. Obviously the Fair Work Act covers about 9.5 million workers in a variety of workplaces, so there is a bit more flexibility. The government was of the view that the ECQ is best placed to conduct those ballots and then the decision was made that as a result of that the government would pay for those ballots. That is really the main substantial difference with the Fair Work Act in relation to the protected action ballot process.

Mr PITT: With regard to the compulsory ballot vote, there will be no doubt a cost associated with that. Has there been any determination as to what the costs might be for those ballots if they are being done by the ECQ? I know it will depend on the size of the vote in each case, but obviously that could be an expensive process. I am just wondering if there have been any costs laid out as part of the thinking by the department when providing information around this bill.

Dr Blackwood: We have not had any discussions with the ECQ about their costs and how they would undertake it. That is really a matter for the Electoral Commission and their discussions with their department and minister.

Mr PITT: Thank you.

Mr STEWART: I am just wondering if you could please explain how employees’ rights from non-English speaking backgrounds will be protected in terms of how proposed section 144(4)(a) applies.

Dr Blackwood: We would not see any change as a consequence of that issue. It remains the same.

Mr STEWART: The committee, I suppose, is concerned that granting of wide powers under clause 12 will erode employees’ rights to take industrial action. So how would you respond to this concern?

Dr Blackwood: You are talking about the termination of industrial action by the minister?

CHAIR: Under rights and liberties of individuals contained in clause 12. There is a new chapter 6 division 6A relating to termination of protected industrial action by ministers.

Dr Blackwood: If we are talking about 181A, we have outlined the requirements that the minister must take in relation to this matter. I do not know whether we can assist the committee any more than what we have already said in terms of the way in which these provisions are set out and the requirements that
the minister must have about informing the commission and the requirements that the minister must take into account in terms of the sort of action that is occurring and its consequences on either the economy or the community. Those matters are set out pretty clearly in the provisions as they have been worded. As we said before, these are the same as those found in the Fair Work Act federally and have been the subject of considerable debate in the federal arena in their development.

Mr GULLEY: Thank you for your attendance today. My question relates to fundamental legislative principles clear and concise. The committee is concerned that no guidance is given to the provision to indicate what criteria or matters other than the minister’s own judgement or discretion is provided. The committee is concerned that this is ambiguous. So the question is: how would you respond to this concern? Is it anticipated that additional guidance will be prepared?

Dr Blackwood: The explanatory notes set out at page 3 the sorts of matters that could be considered, and they do directly address consistency with fundamental legislative principles. As we say, it sets out the three things that we consider important. The explanatory notes state—

Given that these provisions are already in place federally this amendment simply brings the legislation in line with federal provisions that apply to Queensland private sector employees ... It is expected that the Minister would exercise caution in employing this power and that such declarations would only be made in extreme cases where it was considered in the public benefit to take such action.

That is obviously of key importance. The explanatory notes continue—

The high thresholds before Ministerial intervention is permitted under the amendment also fetter inappropriate use of this power. In addition the Minister is required to take various steps to best ensure that parties affected by the declaration are informed that industrial action must cease and is no longer protected.

So we believe that there are certainly a number of safeguards set out in the legislation around the use of that power.

Mr PITT: Dr Blackwood, does this legislation envisage that the QIRC is going to be restricted to the fiscal strategy of government? In terms of the briefing by the Under Treasurer, there is limited ability to cross-examine because it is a briefing. For example, if the government has a strategy of a 1.5 per cent wage increase, is the commission required to adopt that position if the fiscal strategy is the only issue that the QIRC is allowed to give weight to?

Dr Blackwood: We could go to a number of aspects to the change. One issue that has been raised is the principal object of the Act. There has been an additional section added in relation to the objects which requires the QIRC to consider the financial position of the state or the employer when arbitrating under section 149. However, we would point out that the existing objects of the Act remain. So this is object (p). If you have a close look at the objects of the Act, you will see that collective bargaining and agreement making still remain a key part of the Act and also that provisions in the objects which refer to social justice, economic prosperity and standard of living of employees continue in the objects. Certainly, it retains the balance. In relation to 149(5)(C)(ii) where there has been the addition of a requirement where the commission is arbitrating to take into account the financial situation of the state and the relevant public sector entity, the commission at the same time is required to consider the merits of the case and also to take into account other matters in relation to the economy and the community. So it is certainly not indicating that it is just limited to that matter; it is an additional matter, but only one of a number.

Mr PITT: The QIRC in the past has been able to take into consideration the past in terms of precedence—that is, previous decisions being made. You may well have just answered this, but I just wanted to specifically touch on that point though. As it relates to the social justice and economic prosperity and fairness aspects, is the QIRC, in the same way a court of law looks at legal precedent, able to go back into all of its precedents in terms of its decision making still? Is that power retained under these changes?

Dr Blackwood: The provision sets out that the commission should consider this matter amongst a number of matters. It is an independent commission and so in no way is the commission fettered in terms of its considering the matters. It is one of a number of matters that it should take into account when making a decision—that is, they should consider the financial situation of the state. The other issue there is, as the bill makes clear, the Queensland government has referred its private sector industrial relations powers to the Commonwealth and therefore the Industrial Relations Act now is focused on the public sector and the Queensland government public sector and local government. So it was considered relevant to make changes that reflected the limited jurisdiction of the Industrial Relations Act in Queensland.

Mr PITT: Thanks very much.

Mr KAYE: This question relates to fundamental legislative principles in that the legislation should not prejudice the independence of the judiciary. The committee is concerned that requiring the QIRC to take account of the state’s financial position or fiscal strategy appears to have real potential to pre-empt the outcome of wage arbitration. It is further concerned that statutorily requiring government policy to be a relevant consideration in the deliberations of a judicial body arguably erodes the doctrine of the separation of powers by legislative fettering of judicial independence and discretion. How would you respond to this concern?

Dr Blackwood: As we answered previously, the changes are to the objects and section 149, but they are an additional element that the QIRC is being asked to consider in making its decisions in relation to arbitration of matters.

CHAIR: Any there supplementary questions?
Mrs OSTAPOVITCH: The Public Service Commission is responsible for Queensland government employees industrial relations as of 3 April 2012. Could you please explain to the committee the ongoing role of the Public Service Commission in industrial relations matters whilst delivering the public sector efficiency agenda?

Dr Blackwood: As part of the arrangements in government, the Public Sector Industrial and Employee Relations unit has been moved to the Public Service Commission and they have had some oversight and responsibility in relation to the negotiations of agreements within the public sector. Previously, they were a unit within the Department of Justice and Attorney-General. I think the other relevant matter to note is that the changes proposed here include amendments that will result in the Public Service Commission not having responsibility in relation to appeals and that those matters will be undertaken by the Industrial Relations Commission.

Mrs OSTAPOVITCH: The committee notes that it is no longer considered necessary to retain a distinct body to deal with public sector employment disputes. Could you explain why that is?

Dr Blackwood: The legislation moves the responsibility for dealing with the appeals from the Public Service Commission to the Industrial Relations Commission in that industrial relations commissioners will be undertaking that work as opposed to an appeals officers located in the Public Service Commission. But the appeals matters will continue to be heard.

CHAIR: Thank you. I will give one final opportunity to any members of the committee who may have any additional questions or final questions.

Mrs OSTAPOVITCH: It has been noted that when wages are determined other than in the public sector the employee’s financial position is taken into account. Could you please explain how this occurs?

Dr Blackwood: Whether it is in the public or private sector, whether it is under the Fair Work Act or the Industrial Relations Act, the commission is required to take into account the situation of employees and their wages and conditions—that they are appropriate in terms of a living standard. It is clear in the principal objects of the Industrial Relations Act, particularly object 3(b), that improved living standards as well as employment security are matters that the commission should always consider in making any decisions in relation to agreements or awards and also ensuring that wages and employment conditions provide fair standards in relation to living standards prevailing in the community. That continues at 3(g). They are important objects of the Industrial Relations Act.

Mrs OSTAPOVITCH: So are guidelines being developed that differentiate how wage negotiations are determined in varying economic conditions?

Dr Blackwood: The matters of making decisions on wages in relation to agreements and awards are the subject of submissions by employers and unions. The commission takes into account those matters and any other relevant matters when it reaches decisions about wages. Traditionally, economic circumstances have always been a matter of consideration.

Mr PITT: In the eyes of Treasury not all departments are created equal. So there are going to be some departments that are better resourced or funded than others. So it could be based on their existing funding within an agency or if the government has reduced the funding for a particular agency, will the QIRC be looking at the government’s financial position as a whole as opposed to agency specific? Obviously, if a particular agency may not be able to afford a wage rise, that may be the briefing that comes forward as opposed to the what the briefing from Treasury would be, which says that the government has the financial capacity to fund these potential wage increases. I was just wondering if you could provide some clarity around that.

Dr Blackwood: The amendment at new section 149 and also in relation to the objects of the Act refer both to the state’s financial position and fiscal strategy and the financial position of the public sector entity that is affected by any negotiations. So it is saying that there are a number of matters that the commission might need to consider in wage negotiations. Obviously, how that plays out in those negotiations will depend upon the case that comes before the commission. So it is hard for us to predict how a particular case will develop.

Mr PITT: So there is nothing specific that says that the briefing from the Under Treasurer needs to be whole-of-government, or department specific?

Dr Blackwood: Sorry, just to clarify this, in relation to the government Treasury briefing, it just says—

... a briefing about the state’s financial position and fiscal strategy, and related matters.

So that is certainly saying that, when Treasury was to give a briefing to the industrial commission, it would be about the state’s financial position and fiscal strategy related matters. There may be some consideration by Treasury about the impacts on certain agencies et cetera that constitute a large element of the state budget whereas the provisions at new section 149 and in the principal objects set out that the commission—particularly in 149—should consider both the financial position of the state as well as the public sector entity and the state’s fiscal strategy.

CHAIR: Okay. There are no further questions from other committee members? I will give you one final question. We heard this morning from the United Firefighters Union, who highlighted their concern about limiting the capacity to take industrial action in regard to the decision of the Federal Court, which
ruled that employees are entitled to take protected industrial action to bring employers to the bargaining table. Are you able to explain where the proposed legislation diverges from the Federal Court ruling and the International Labour Organisation’s convention and the reasons for any divergence?

Dr Blackwood: In relation to that issue, I think we have made clear that the Queensland Industrial Relations Act has not and has never required a person to negotiate. A person who does not negotiate cannot be characterised as bargaining in bad faith—there has been no bargaining—and that is consistent with the current position under the state Industrial Relations Act. That a party cannot be forced to bargain is a decision of the president in 2005. So the first thing we should say is that there is no requirement to bargain. Obviously, if one party is not bargaining, the other parties can use various measures to highlight their concerns about the lack of bargaining. But they cannot be forced to negotiate as such. So that is our answer to that issue in relation to J J Richards.

CHAIR: Are there any further questions prompted by any of that? We are six minutes short of the allocated end time for this meeting, but I note that we have received a comprehensive written briefing. If members require any further information, we will contact you. Thank you for your attendance today. The committee appreciates your assistance and I declare the briefing closed. I see here that we have to authorise publication of committee evidence. Is it the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001? There is no objection. So authorised. Thank you.

The committee adjourned at 11.54 am