FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr RA Stevens MP
Mr LL Millar MP
Mrs J-A Miller MP
Mr DA Pegg MP
Mr PT Weir MP
Mr J Pearce MP

Staff present:

Ms A Honeyman (Research Director)
Ms L Sbeghen (Principal Research Officer)
Ms K Shalders (Committee Support Officer)

PUBLIC HEARING—INQUIRY INTO THE INDUSTRIAL RELATIONS BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 12 OCTOBER 2016

Brisbane

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Committee met at 9.18 am

EDMONDS, Ms Thalia, Industrial Advocate, Queensland Teachers' Union

GOLDMAN, Mr Daniel, Acting Assistant Secretary, Together Queensland

HENDERSON, Mr Neil, Secretary, Services Union

KRANK, Mr Kevin, Industrial Officer, Queensland Nurses' Union

MARTIN, Mr John, Research and Policy Officer, Queensland Council of Unions

MOHLE, Ms Beth, State Secretary, Queensland Nurses' Union

SCOTT, Mr Alex, Secretary, Together Queensland

SPRECKLEY, Mr John, Industrial Coordinator, United Voice

TODHUNTER, Dr Liz, Research and Policy Officer, Queensland Nurses' Union

CHAIR: Good morning. I call to order this public hearing of the Finance and Administration Committee. Thank you for your interest and for your attendance here today. I acknowledge the traditional owners of the land upon which this parliament stands.

My name is Peter Russo, the member for Sunnybank and chair of the committee. Mr Ray Stevens, the member for Mermaid Beach, is the deputy chair of the committee. I would like to introduce other committee members: Mr Lachlan Millar, the member for Gregory; Mr Duncan Pegg, the member for Stretton; Mr Pat Weir, the member for Condamine; Mrs Jo-Ann Miller, the member for Bundamba, who will be here until approximately 10.20am; and Mr Jim Pearce, the member for Mirani, who will be substituting for Mrs Jo-Ann Miller from 10.20am.

Today's public hearing is for the committee to receive evidence regarding its inquiry into the Industrial Relations Bill 2016. The committee has advised the public of the inquiry by publishing details on the parliamentary website and also by writing directly to a number of individuals and organisations. Witnesses at today's public hearing will appear in the order outlined on the public hearing program.

This hearing 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 witnesses will be provided with a transcript. Therefore, I ask you to please identify yourself when you first speak, and to speak clearly and at a reasonable pace.

Today's proceedings will be broadcast live on the parliamentary website. In this regard, I remind members of the public that under standing orders the public may be admitted to or excluded from the hearing at the discretion of myself as chair and by order of the committee. I also ask that if witnesses agree to provide any further information to the committee, they provide the information by Monday 17 October 2016. Before we commence, I ask that mobile phones be turned off or switched to silent mode.

I welcome all witnesses who are appearing today. We thank you for your detailed submissions received. I will invite each organisation to make a brief opening statement. As there are a number of organisations here today, I ask that you keep your statement brief and under three minutes. I call our first witness from the Queensland Council of Unions, Mr John Martin. Would you like to make a brief opening statement?

Mr Martin: Thank you, Chair. I thank the committee for the opportunity to be here today. This submission, as you requested, will be brief. I would like to commend the Palaszczuk government for the review that has been undertaken, which has resulted in this bill. There are some, what I describe

as, minor matters where we depart from the government in terms of what we would see as being appropriate for the bill. However, in the main, there is a high level of support for the new bill. I think I would leave the submissions at that, but am happy to take any particular questions in relation to our submission or other matters pertaining to the bill.

Mr STEVENS: John, thank you for your appearance today. In the construction industry, referring to the change of Sunday to a designated public holiday, it has been accepted for a long time that the Easter break and Sunday are a part of that extended holiday break for most workers, except in holiday accommodation and those sorts of industries. I do not imagine many of your members would be involved in that Sunday practice. However, for those who are involved in that practice, is there any consideration of the job loss that will result from making Sunday, which was time and a half under the old scheme, double time and a half under the new scheme, for deferring a public holiday?

Mr Martin: I guess that is not something that we have addressed in detail. In terms of the construction industry, and others may be able to assist me here, I would think you would be dealing with overtime on a Sunday in any case, so it would be a marginal change to the penalty that is already in existence. Given that the industries you are talking about are largely or all covered by the Fair Work Act, there is a variety of Sunday penalties. Most are at 175 or 200 per cent, so I would think that the change to the penalty for that Sunday would be not catastrophic. It would be what you would describe as a marginal increase. I am not sure that I can assist any further than that.

Mr MILLAR: Following on from the question of Ray Stevens, the member for Mermaid Beach, has there been any consideration given to small businesses? I come from regional Queensland where the penalty rates determine whether or not they open and resultant job losses. I do not think anybody would deny anyone else the right to have a holiday or call in a holiday, but small businesses such as coffee shops in regional areas might say, 'I'm not going to open that day because I don't think I'm going to meet the costs of the day', such as electricity, wages, et cetera. Has any consideration been given to that?

Mr Martin: Would those be the coffee shops that have a little sign saying, 'We're charging a surcharge because it's a public holiday'? That would generally be the practice that I have witnessed. I am not familiar with Gregory, but certainly on the Sunshine Coast, the Gold Coast and areas of that nature, it is quite common for a surcharge to be used on a public holiday, which would be a means by which any additional labour cost could be defrayed, I would assume. Alternatively, no-one is compelling you to open on that one day of the year.

Mr MILLAR: I understand what you are saying. I am just looking at the economic impact of it; that is all.

Mrs MILLER: Mr Scott, I want to go into detail about the Public Service in relation to this bill. My understanding is that many public servants are concerned about the implementation of the bill, particularly those public servants who are temporaries. My understanding is that some departments are already moving on temporaries, given that they believe that a directive may be issued by the Public Service Commission. They are obviously very concerned about that, particularly temporaries who have been working in departments diligently and are very good offices of the Public Service. Certainly they have raised with me the issue that they are being put off before this legislation is approved or possibly approved by this parliament. Could you comment on that, please?

Mr Scott: Thank you for the question. In terms of the Together submissions, while we broadly support this bill moving forward we have grave concerns in relation to temporary employment. The numbers tell a very significant story in relation to that, with over 36,000 workers employed within the state public sector currently temporary. We have seen that, in terms of that issue, over 800 workers have put in submissions to this inquiry through the Together website. Also today we have seen over 560 workers make submissions in support through social media—we have a social reach of over 570,500—in relation to support for temporary employment changes.

The fundamental question we have in relation to this bill is that it does not go far enough in relation to employment security. While the numbers are important, the personal situations are the reality of the circumstance, that is, while temporary employment does not cost the government money or save the government money, it has a huge impact on the individuals involved who cannot get housing loans and people are not able to get access to normal conditions. As a result, they have significant concerns and employment security is a huge issue. We know that temporary workers are having their contracts terminated. We believe that is potentially in light of this bill, but we think this bill should go further.

While questions around dealing with issues have been dealt with through public sector amendments, the fundamental problem with the previous legislation and the current bill relate to the ability of the Industrial Relations Commission to determine whether or not someone is permanent. As

a result of a significant decision about 15 years ago, the Industrial Relations Commission has been hamstrung in relation to its ability to determine whether someone is permanent in the public sector, as they would determine if someone was permanent in the private sector. While submissions have been put forward in relation to this, we have sought advice from the Industrial Relations Commission. Deputy President Bloomfield has provided us with a written statement to confirm the view that the Industrial Relations Commission does not currently have the power to determine a public sector worker is permanent as they would have the power or Fair Work would have the power to determine a private sector worker is permanent.

We submit to the committee that the bill should be amended to fully empower the Industrial Relations Commission to not be limited by other parts of legislation in relation to public sector employment; to give the state industrial commission the same powers it would have in the private sector or the Fair Work Commission would have in the private sector generally; and to make sure that an independent umpire has the ability to make a determination in relation to the nature of someone's contract of employment based on common law principles rather than being limited, as they currently are, to using directives which come and go at the whim of the government. This has meant that we have a much higher rate of temporary employment in the public sector than we do in the private sector and also there is a huge personal cost, which is why so many workers have been putting in submissions to this committee and participating in trying to get this committee make a recommendation that they should have the same rights to access the industrial commission as private sector workers.

CHAIR: Mr Scott, you referred to a letter or submission from Deputy President Bloomfield.

Mr Scott: We sought a statement from Deputy President Bloomfield. Unfortunately, that was provided to us just after the closing date for submissions; however, we can provide that to the committee by next Monday. We were not able to include it in our original submission given the time frame of that response from Deputy President Bloomfield.

CHAIR: Am I correct in assuming that you will provide it by—

Mr Scott: By Monday, the time frame you announced this morning.

Mrs MILLER: My other question is in relation to public servants who are relieving in positions. Mr Scott, I would like your comments in relation to this. I have been advised that there are literally thousands of public servants across all government departments who have been relieving in positions—sometimes for many, many years—and departments have deliberately not called for those positions to be filled because, as you know, there is an enormous cascade effect in relation to the Public Service. For those public servants who are coming up to retirement age, around 55 or older, and those who are on the defined benefits scheme, obviously there is a huge impact in relation to those officers who may be going back to their substantive position and they want to retire, so they would actually like to retire on the higher level duty position because in some instances it could mean a difference of a couple of hundred thousand dollars and also whether or not they would have the ability to retire in any case.

My understanding from the public servants that I have been talking to is that over the last few months the departments have been putting those people back to their substantive positions, and they are also still requiring them to do the work that they were doing in their relieving capacity. I understand that those departments have been doing that because they are trying to pre-empt a directive from the Public Service Commission Can you confirm if that is the case and what is the impact on those officers—many of whom have been lifelong public servants—who are in the defined benefits scheme?

Mr Scott: The issue of public servants on a long-term higher duties allowance is intrinsically linked to the issue around temporary employment. The case law that has been determined by the industrial courts about limiting the power of the industrial commission to determine issues in relation to people's contracts of employment, the same principles apply in relation to temporary employment as apply to higher duties. Where there are high levels of temporary employment we often find there are high levels of people on long-term higher duties. Someone who is on a substantive AO2 or AO3 might be working for five, 10 or 15 years as an AO4 or an AO5, so $15,000 to $20,000 of their annual income is effectively at risk every day because the courts have determined that the way the legislation is structured between the Public Service Act and the industrial act has meant that there are no appeal rights effectively in relation to conversion and that, if you are working as an AO4 for 20 years, effectively you should be seen as a substantive AO4 rather than when organisational change happens or budgetary implications happen departments can unilaterally say, 'No, we've decided your job is actually an AO3,' and you can lose $5,000 to $10,000 a year because of the decision of local management.

Realistically those people do not change their duties; they just change their income, so they are getting paid less for doing the work that they are performing historically as an AO4 or AO5. That has meant that the Industrial Court has overridden the industrial commission around this issue and the temporary employment issue, so there is not the ability of the industrial commission to determine that, eventually if you are doing a job, that should become your actual take-home salary on a permanent basis rather than being discretionary. It has a big impact in relation to people in a range of agencies at the moment who are losing $100 a week because of a unilateral decision of the employer who will say, 'No, we've decided to force you back. We have changed the organisational structure. You are going to basically keep doing the same thing, but we have decided that your job is now an AO3 and not an AO4 or an AO5.'

That has a huge impact in relation to people's take-home salary on a weekly and annual basis and also the inability to be converted from your base position to the position you have been acting in year after year after year. It has an impact in relation to retirement benefits as well, and clearly for long-term public servants the cumulative effect of the multiplier would mean that those people not only lose money in terms of retirement, but the bigger issue in the short term at the moment is that people are effectively taking a pay cut unilaterally by the employer. That is having a huge impact on their personal circumstances and it is one area we are suggesting needs to be addressed through the legislation to give the Industrial Relations Commission more power in line with what they would have in the private sector so they are unencumbered by the drafting of the Public Service Act which currently is limiting—because of some court decisions—the ability of the industrial commission to fundamentally address the issue of long-term higher duties and temporary workers.

CHAIR: Does it matter which tribunal has this power, Mr Scott?

Mr Scott: As the previous question indicated, we have heard rumours that there might be a directive issued, although we have not heard about it, but the fundamental question is about which tribunal should have the power. The Industrial Relations Commission will hear matters as the Industrial Relations Commission. Under this bill the Industrial Relations Commission will also hear appeals in relation to public sector appeals. It will be the same people hearing it, but under which legislation is important because if the Industrial Relations Commission is hearing it under the Public Service powers, they will be doing it based on a directive that is issued. What we have seen over years is those directives have ebbed and flowed, and the Public Service Commission has unilaterally at times stripped away workers' rights; therefore, the ability for temporary workers to be resolved is fundamentally undermined despite the intention of the legislation at the time. Whereas if the power is vested by unencumbering the Industrial Relations Commission to act as an Industrial Relations Commission, those decisions would be based on common law and the notion of implied permanency—which is not only a well-developed principle but an evolving principle as with any common law—and could not then be unilaterally changed or reduced by actions of the Public Service Commission, which happened in 2009 and in 2013.

That is why we think that, in terms of ensuring that the commission is fully empowered, it is a much stronger protection for our members than having it done through the Public Service Commission appeals process being heard by the same people, but that would then mean that the directive could be unilaterally changed without reference to parliament. We have certainly seen decisions taken about the misuse of directives inconsistent with the legislation but not outside the legislation which has reduced our appeal rights. From our point of view, empowering the industrial commission to be the industrial commission is a far more effective and longer-term solution than having the appeal right based on the directives, because our experience with successive governments has been that the Public Service Commission has removed the directives or fundamentally changed the directives in a way which has allowed for the abuse of temporary employment and long-term higher duties to continue. That is why we think the appeal right must rest with the industrial commission and not the Public Service Commission powers being heard by the industrial commission.

Mr PEGG: I have a question for John Martin in relation to recommendation 8.2 where you talk about the drafting of section 557. It appears that appeals are only allowed from the QIRC to the Industrial Court, not to the Full Bench of the commission. For the benefit of the committee, could you tell us why it is important to allow appeals to the Full Bench of the commission?

Mr Martin: The main reason would be if you are in the jurisdiction of the court that would be a wig-and-gown sort of environment, so there would be an expense associated with that for the parties. With the greatest of respect to the President, the President is a Supreme Court judge who spends some of his time as President of the Industrial Court, so for two reasons: one would be the expense to the parties of having to engage lawyers to appear before the court; secondly, the availability of the President. There are matters that would by necessity have to go to the President, that is, where there is an error of law.

In our submission we have referred back to the provisions of the Workplace Relations Act, the federal 1996 act, which provided for Full Bench appeals where there are grounds for appeal on the basis of public interest. Those would largely be that the decision lacked merit or was inconsistent with other Full Bench decisions. That would be a far less expensive and perhaps quicker process if the Full Bench appeal was a possibility. We suspected that that may have been a drafting error in fact. As I think I said in our submission, one of the things the Palaszczuk government has done is deliberately attempted to reinstate the industrial commission as a lay tribunal. If appeals only lay to the court as opposed to a Full Bench that would be inconsistent with that policy position.

CHAIR: I am just conscious of time. I invite Mr John Spreckley, the industrial coordinator for United Voice, to make a brief statement and make himself available to answer questions. The clock is beating us at the moment.

Mr Spreckley: Thank you, I will be brief. I wish to thank the committee for inviting United Voice to participate in the committee process. We do value the opportunity and take it seriously. We provided a written submission which we trust will assist the committee. If there is any further information or anything arising from our written submission, we are more than happy to provide it if requested. Other than that, I do not have anything further this morning in relation to that.

CHAIR: Does the committee have any objection if I just keep moving through the list of people? I next invite Ms Bev Mohle, state secretary for the Queensland Nurses' Union, to make a brief statement. I will then obviously give you the opportunity to answer some questions.

Ms Mohle: Thank you, Chair. Appearing with me today are Dr Liz Todhunter, our research and policy officer, and Kevin Krank, industrial officer. If there are any issues that go to the detail of our submission it would be best for Liz or Kevin to answer those, but I would just like to make a few introductory comments.

We thank the committee for inviting us to appear at this hearing. We would like to also extend our thanks to Jim McGowan and the Industrial Relations Legislative Reform Reference Group, the researchers who developed the initial discussion paper and departmental staff who informed and drafted this essential piece of legislation. We appreciate their consultative approach and expertise in carrying out this complex task. Our submission goes into some detail in relation to various aspects of the bill and particularly concentrates on proposed Queensland employment standards. We do not intend to revisit those now; we just want to draw the committee's attention to two particular important areas of industrial relations reform.

In 2012 when the previous LNP government introduced amendments to the Industrial Relations Act 1999 that enabled Queensland Health to recover overpayments and transition loans for its workforce as a result of the payroll system implementation failure, the QNU strongly opposed these changes. We continue to oppose this set of inferior legislative provisions for one part of the public sector workforce. At the time the QNU expended significant resources working cooperatively with Queensland Health to rectify the payroll system failure. We were ourselves under pressure from our membership to help them resolve a crisis that was not of their or our making. The payroll system failure occurred through administrative incompetence in the introduction of an ineffectual technology by the executive arm of government. The mechanisms for addressing this failure lie with the executive and the consultative processes enabled by industrial awards and agreements. They do not and should not lie with the legislature. Not only was the legislation unfounded; in essence it discriminated against one section of the workforce—the very workers who continued to keep the health system running in the face of enormous frustration and despair. We recognise the bill permits recovery of overpayments by agreement with the employer and employee and enables the minister to review the operation of the provisions. However, our concerns about legislation that provides lesser conditions for health workers remains valid and we seek the removal of these provisions.

On another matter, we also ask the committee to consider introducing provisions enabling the right to take protected industrial action outside a bargaining period. There is no entrenched right to strike in Australian law. Workers and their representatives are entirely reliant upon the state and federal parliaments to recognise this right and protect them from liability under common law. In our view, the protection of the interests of workers should not be confined to industrial action aimed at securing the terms of a collective bargain. Instead, we believe that workers should be able to take protected industrial action in pursuit of matters arising from their employment relationship. For nurses and midwives this could include excessive workloads, changes to career and classification structures and rostering practices. We also want to put on record before concluding that we support submissions made by other unions with respect to various aspects of the legislation. In particular the QTU has focused in its submission on registered organisations. We would like to commend the submissions of

other unions and, as I said, we welcome the changes that the bill provides to the Queensland state and local government sectors and look forward to the passage of the bill through the parliament. Thank you.

CHAIR: I welcome from the Services Union Mr Neil Henderson and invite you to make some opening statements if you so desire before we continue with questioning.

Mr Henderson: Thanks for the invitation. The Services Union has provided a brief submission to the committee. Generally speaking, we welcome all of the contents of the bill. It is a significant improvement on what has been there in the recent past and it was a very timely review which I was privileged to participate in as a delegate of the Queensland Council of Unions. In terms of the matters which we have raised, there are only two points that I want to highlight to the committee. Firstly in relation to the modern award provisions, these provisions will continue on even though by and large all of the present awards of the Queensland Industrial Relations Commission have been modernised. We see it as a very important issue to ensure that the minister's requirement that award modernisation is not intended to reduce or remove employee entitlements be retained in the legislation given that the capacity to modernise awards will continue on in the legislation. We are very concerned that in its present form the bill will entrench award modernisation but without that very important observation made initially by Minister Pitt and then carried on by the present industrial relations minister.

If I can also just take the committee into a little bit more detail to the issue of the nature of appeals, and I am sure this is a very interesting topic for many people. It is probably necessary to just reflect on the present arrangements in the Industrial Relations Act. At present there is an appeal in relation to an error of law to the Industrial Court or an appeal in relation to something other than an error of law to the full bench. A party can also appeal on an error of law to the full bench, but if the full bench does not find an error in a matter other than an error of law it will not proceed on to hear the error of law. This is a very complex arrangement for appeals—a Gilbert and Sullivan type arrangement I think—when compared with industrial jurisdictions elsewhere around the country. It overlooks the fact that in industrial relations more often than not appeals relate to matters which involve issues of fact and law, some of which are just inextricably intertwined and impossible to separate in the way that the present Industrial Relations Act envisages.

At the committee and subsequently in submissions to the government in relation to the bill, we put the view that there should be available to parties an appeal to a full bench along the lines of the federal system, and I think the New South Wales system and other systems, where the parties can allege that there have been errors in fact or law and the full bench will decide on an issue of whether there is sufficient public interest whether to grant permission to appeal and then decide it in accordance with the usual principles of identifying an error and then proceeding to correct it. We see no reason not to retain an appeal of the error of law to the court because there will be some instances where that will be the most appropriate way to go—straight to the court—similar to, in the federal jurisdiction, where parties might go straight to the Federal Court rather than seek proceedings in the Fair Work Commission.

We think that by doing that we entrench the collegiate operation of the Queensland Industrial Relations Commission that errors made by single members can be corrected by a full bench of their peers, and of course there are designated in the legislation, as in previous iterations of the legislation, judicial members of the commission who would sit on that commission along with, if you like, lay members of the commission. We think it is a very important point for the committee to come to grips with because, as presently written, as my colleague Mr Martin mentioned, appeals will only go to the court and we think that would be a retrograde step. It would also be a retrograde step to keep what we have got. I think we need to move on to a system that approaches the way that the matters are dealt with in other jurisdictions by having a collegiate appeal where permission is required to get to the appeal point and where the full bench can then deal with all matters that come before it. They are the only points I would wish to make. Thank you.

CHAIR: Thank you. I invite the representative from the Queensland Teachers' Union, Ms Thalia Edmonds, Industrial Advocate, to make a brief statement.

Ms Edmonds: I want to thank the committee for allowing the QTU to make submissions today. The QTU supports the bill and also supports the submissions made by our union colleagues. We seek to rely on our written submissions and wish to add an addendum statement in relation to sections 469 and 470 of the bill. The last clause in each of these sections could prove problematic if somebody in the commission or a party which is thinking about requiring or requesting assistance reads the last two words 'a matter' to include matters referred under either sections 469 or 470. The provision arguably needs to be made foolproof by adding some additional words after each clause along the lines 'under that provision'. An organisation interested in utilising these particular sections has the

capacity to influence a work value assessment in a negative sense by broadening the scope of the section instead of limiting it to the matter at hand. The QTU as part of our recently certified agreement with DET have a work value assessment scheduled in the commission to be commenced by June 2018 after discussions with Deputy President Bloomfield. In relation to these particular sections, he pointed out quite rightly that there may need to be some tinkering around the intent or the words to allow a work value assessment to be conducted solely without broadening the scope. Those are my submissions.

CHAIR: Thank you. Mr Scott, I was not going to skip over you but was going to make questions open to all participants and just see how we go for time, because we have to finish at 10.15. If there is a question asked that you feel that you can expand on or assist the committee with, obviously we invite each participant to do so but please be mindful of one person speaking at a time. I will open it up for questions now, if that is okay.

Mr STEVENS: My question is to Mr John Martin. Mr Martin, you may be aware of the Auditor-General's report basically indicating that local governments right around Queensland are in severe financial stress, and I think it was up to about 70 councils. Would you be able to advise me in relation to the LGAQ's comments that this particular splitting of the awards in local government will be a major cost to local governments throughout Queensland, putting further pressure on their financial stability or abilities? The alternative is job losses in local government, which would be one option for local councils to address the financial impost, or, as you suggested earlier, perhaps the opportunity is there, like coffee shops raise prices 15 per cent on a Sunday, for them to put the rates up to accommodate this extra cost to local government.

Mr Martin: I am sure the rates will go up one way or another, but I am not familiar with the Auditor-General's report, only that I have heard about it. I am trying to think of an appropriate way to respond to a suggestion that the number of awards would place financial pressure on local governments. That to my mind is an absurdity. There are sets of conditions that apply to workers and forever and a day there have been multiple awards applying within local government. If it is down to three, that is considerably less than there was for all of the 20th century. It makes no sense to say that the number of awards would have any financial impact, let alone be a threat to employment within the local government sector. It makes no sense whatsoever. It borders on madness to suggest that how many awards have application in that sector is going to create unemployment. It may well be that Mr Henderson, whose union operates in the local government sector, may also have a view with respect to that.

Mr Henderson: What I would like to add to what Mr Martin has said is that most councils are still operating on the old regime because they have certified agreements in place which continue the operation of the 18-odd awards which operated in the industry before modernisation. When we go through the next round of enterprise bargaining all of those councils will get the benefit of a reduction of 15-odd awards to three awards or potentially three awards which are clearly set out with common conditions in relation to matters like annual leave and so forth and then specific conditions relating to their particular area of work. In our view there will be no extra cost to council and in fact there will be a significant reduction in cost to council. I would make this point: that the costs involved in that are minuscule when compared with the issues that were raised in the Auditor-General's report. We deal with the issues in the Auditor-General's report in our enterprise bargaining with councils. That is what dictates what sort of wage outcomes and condition outcomes are delivered. I think it is fair to say the local government industry has a history of responsible wage increases negotiated with councils generally reached by agreement at the table and very rarely involving any industrial actions. I can say to you very confidently that it is a very stable industry in its industrial relations operations and there is nothing in this bill which will alter that.

Mrs MILLER: I have a series of questions to Mr Scott. Mr Scott, I think you said before that there were about 36,000 temporary employees in the Public Service. I was just wondering if you could advise the committee how many public servants are on higher duties at any given point within the Public Service.

Mr Scott: In terms of my answer and the 36,000, that was for the total, based on the Public Service commission data in March. That includes both Public Service and Queensland Health employees. In terms of a strict definition of Public Service, it is the budget-dependent areas of the public sector. In March 2016, we had 165,000 permanent and 36,000 temporary. In terms of the total numbers within higher duties, we have sought that information but have not been able to get it from the department. We will have some information, which I do not have to hand today, but I can make that available to the committee prior to close of business Monday. I think that was the time frame provided.

Mrs MILLER: Thank you very much, because I would certainly be interested in that. I am also wondering if you could advise the committee about the number of public servants who had been acting in higher duties but who have been put back to their substantive positions or of any cases whereby public servants are on stress leave or have lodged workers compensation cases because of the acute financial impact on them as well as health impacts?

Mr Scott: In terms of those, we will try to get what statistics we can prior to Monday. I certainly have spoken to a number of individuals who are going through traumatic circumstances themselves at the moment because of restructuring. I am involved with a number of negotiations around organisational change at the moment where people are losing $5,000 to $10,000 a year in salary. I am not aware of them taking workers compensation claims at this point in time. Certainly, we struggle to get accurate information from government departments, because they have a vested interest in not necessarily being transparent in this process. We particularly find it difficult to get accurate information as to the length of time that people are on higher duties. They might be able to tell us how many people are on it today, but they cannot tell us whether those people were on it previously. It is the same with temporary employment. Departments cannot tell us whether somebody has been temporary for 10 years or not. They can only tell us whether they have been temporary at the moment, because they do not have the recording of that data. We will try to find whatever data we can between now and Monday.

Certainly, I can say to the committee that I have spoken to a number of members over the last few weeks. I have been talking to members around this issue earlier this year in relation to restructuring and over the last five years in relation to restructuring. It is common sense that, if you take a $5,000 to $10,000 pay cut, that is a huge impost. You cannot get a home loan because, although you are earning a decent salary, the bank will not give you a home loan because you have 'temporary' stamped on your file, which happens to all temporary workers. Banks will not lend them money on that. For higher duties workers, they will not lend them money on their actual salary, their more substantial salary. There is a huge personal cost to these individuals.

With our ability to provide actual numbers to the committee, we would say that, while the committee has the 800 submissions listed on the inquiry website, a number of those submissions were amended individually and we will provide an analysis of that to the committee as well. While people filled in the form on our website they also then provided some of their personal stories. There are a range of personal stories already available to the committee. We would certainly urge the committee to consider those as individual people, because I think the human cost can get lost in the numbers game.

Mrs MILLER: Just to follow that up, Mr Scott, you mentioned that there are a number of departments or agencies that are undertaking organisational change at the moment. Can you tell the committee which departments and which agencies are currently restructuring?

Mr Scott: To get an accurate list I would have to provide that by Monday, but I can certainly say that there are a range of Health restructurings occurring in Cairns and Townsville and a range of other places. That is resulting in loss of positions and people losing long-time higher duties. There is a range of other agencies. I would prefer to provide that in writing, because I am certain to miss some. I will provide that by Monday.

We are handling a number of cases at the moment where agencies are seeking to introduce new structures, which is resulting in people on long-term higher duties losing their income—I know in Shared Services and a range of those areas. I would prefer to provide a full list in writing rather than a partial list from memory, if that is possible.

Mrs MILLER: Yes, of course. Mr Scott, this restructuring, in your view, has come about because of this legislation and the budgetary constraints within government?

Mr Scott: I think the restructuring is enabled by not this bill, but the current legislation and the cases determined by the Industrial Court—both the Carey decision and the Langley decision, which we referred to in our written submission. The current legislation and the interplay between the IR Act and the Public Service Act enable agencies to undertake the abuse of temporary employment that has occurred over the past 10 to 15 years. That has then provided the institutional framework that has allowed for the abuse and putting employment security in a precarious position, both for temporary workers and those on long-term higher duties.

Clearly, the problem with the current legislation is that it is an easy option for departments. If they want to silence staff, if they want to bully and intimidate staff, it is much easier to do so when people's salaries are at risk. Clearly, budgetary outcomes are sometimes the driver but also one of our broader problems in this issue goes to the nature of the Westminster model and frank and fearless

advice. If your contract or your income is at the discretion of a senior manager, you are unlikely to tell them that they are doing the wrong thing. The frank and fearless advice is fundamentally undermined by this level of temporary employment and this level of higher duties. That further exaggerates the culture of workplace bullying and intimidation within the workforce. That is bad for our workers, but it is bad for the community, because it results in the inability to provide frank and fearless advice up through the various government agencies.

Mrs MILLER: I have another question in relation to the corporate services officers within the Public Service. I would like your comment in relation to this. I think that the corporate services officers often get a very bad deal in relation to restructuring and organisational change. I am seeking your opinion, because there are many people who work in corporate services areas who are very worried about losing their jobs. All governments tend to talk about front-line services and forget that, if corporate services are not staffed to an appropriate level, everything grinds to a halt eventually. Is it your view that the corporate services areas of departments will get it in the neck again, so to speak, as a result of organisational change, or restructuring?

Mr Scott: I think the question of the definition of 'front-line' services is a very problematic one and has resulted in certain parts of agencies being targeted for cuts. Once the strike of a pen occurs, those who are deemed not front line then become easy targets. Certainly, we had a problem under the previous government, where there was a unilateral change to the definition of 'front-line' services that then allowed the floodgate of cuts to occur. In terms of Child Safety, while cuts were made under the previous government, there were also large numbers of administrative and other staff who would be deemed corporate services, because they were not front line. The hundreds of jobs that went through the Child Safety agency, large numbers of those were previously deemed to be not front line, even though they were fundamentally ingrained in the delivery of services.

We are urging the government, outside of this process, to reconsider the definition of 'front line' to make sure that they understand that any job cuts impacts on services. Artificial definitions around 'front line' and 'non-front line' is easy politics but results in damaging services to the Queensland community. It is often more financially appropriate to employ additional non-front-line staff to make sure that front-line staff can get on with the work that they are best at doing.

CHAIR: I am conscious of time. We have seven minutes to go.

Mr PEGG: I have a question for Ms Edmonds. You make a recommendation in the QTU submission of putting in an additional subsection in terms of the following—

The making or varying of an award is not intended to reduce or remove existing employee entitlements and conditions

Given the language in the minister's award modernisation variation notices, for the benefit of the committee could you please tell us why you think that additional subsection is necessary?

Ms Edmonds: Certainly. Conceptually, it aligns with the restoring fairness principle, which the Palaszczuk government has been adhering to and, clearly, is representational within the bill itself. To have something as clear as the minister's variation notice, or the minister's notice enshrined in legislation, would be an important step towards it.

Mr MILLAR: I listened to the question from Jo-Ann Miller in regard to restructuring. You said that there was restructuring and, in your submission, there have been job losses; is that right? If there have been, how many?

Mr Scott: There have certainly been job losses in Cairns Hospital—the Cairns health district service—and, based on the budget figures, there are also likely to be job losses in the Townsville health service as well. What we are seeing is, while there have been commitments from the government for permanent staff to be protected, there are not commitments to guarantee temporary staff that there will be jobs. What we know is, from 1 July last year compared to 1 July next year, there will be fewer people employed in those health services than there are currently.

In terms of the other areas, I would need to go through and identify them exactly. I would not be able to give you numbers off the top of my head in relation to those other parts of agencies. What we have seen is that there have not been any permanent staff being laid off, but a failure to renew contracts, a reduction in size and also a reduction in classification structure. The higher duties workers who are on a five will move back to a three. That would not be deemed to be a job loss, but that would be a huge financial impact on that individual worker. There would be some areas where there are job losses and there are other ones, which I was referring to, in some of the Shared Services restructure, where there would be a change in classification structure. The abuse of the higher duties process means that people stay employed but they are taking a $10,000 pay cut.

Mr MILLAR: The health minister is saying that there will be no job losses in Cairns. There are, in fact, some job losses in Cairns?

Mr Scott: The health minister said that they would abide by the government enterprise bargaining agreements, which says that there will be no permanent job losses. The question is about temporary workers. The question will be about whether that is done through vacancies not being filled or whether there will be temporary workers, who were working there but who are not working there. I think if you look at the state budget papers, the total number of employees by health service is listed as at 30 June and the number for this current year is less than that.

Mr MILLAR: There are still job losses. Whether they are temporary, permanent or on contract, that are still job losses in that restructure.

Mr Scott: Based on the budget papers, there will be fewer people employed this financial year in the Cairns health service than there were employed last year. Theoretically, that could be that the vacancies do not get filled, but my view is that there will be temporary workers who will lose their job during this process. The word 'permanent' is always in the minister's statements, not 'no job losses'.

Mr MILLAR: Just to follow on from that, does that mean that front-line workers such as nurses will be lost—temporary front-line nurse?

Mr Scott: I think that question is better addressed by the Nurses Union. They would know more than I would about that. We do not cover nurses. I could not accurately comment in relation to nurses.

Ms Mohle Yes, it certainly is more appropriate to direct that question to me. We have sought a commitment from the minister that there will be no job losses.

Mr MILLAR: For nurses?

Ms Mohle In relation to Cairns. We have sought that commitment.

Mr MILLAR: But there are job losses, are there not? Mr Alex Scott has signalled that there will be job losses. There are job losses?

Ms Mohle We are not aware of any in relation to nursing and midwifery. We are working very closely with front-line clinicians and other health workers who are involved in this. We have said that what needs to happen in relation to Cairns is a collaborative approach—to work with all of the hospitals that are there—about the appropriate delivery of services. As I said, I can only speak on behalf of what we sought in relation to our members. That is what we have written to the minister and sought. Certainly, our members would be on the blower to us immediately and we have a fair few officials up in Cairns this week doing walk arounds talking to people about these issues and we have not been made aware of any job cuts at this point in time.

Mr Scott: If the question is about front-line staff, while I cannot answer about nurses I can answer about other front-line staff in Health. If your question is about front-line staff in Health, certainly our view is that there is restructuring occurring in the health service and there has been for a while which has been an attempt to reduce staffing numbers because of the nature of the industrial instruments. If they do a restructure, they do not have to fill the vacancies and those restructures result in fewer employees during that process. We believe that clearly is part of the budget process; that there will be fewer front-line workers whom we cover in the health service over the next period. We have been campaigning about that and have had a series of protest meetings in Cairns. We are seeking, as part of collective bargaining at the moment, for the admin, operational and health professionals to get a better guarantee through collective bargaining. At the moment we think the health system particularly has a loophole in its industrial provisions. If you announce a restructure, you can reduce the total staffing numbers, whereas if you just say you are reducing staffing numbers that is protected by the enterprise bargaining agreements as they currently stand. If you call it a restructure, you can then cut jobs. Permanent staff will not lose their jobs, but we believe temporary staff are likely to lose their jobs. We have not seen anybody yet, but we believe that is the outcome of the restructurings that have been announced.

CHAIR: Thank you for appearing before the committee today. The secretariat will be in touch to provide you with a copy of the proof of transcript which will also be placed on the committee's website. I think only Mr Scott was going to provide a response to questions taken on notice. Could that be provided to the secretariat by 17 October, please.

Mr Scott: Can I confirm: is that close of business on the 17th?

CHAIR: Yes, close of business.

BEHRENS, Mr Nick, Director, Advocacy, Chamber of Commerce and Industry Queensland

BELFIELD, Mr Martin, Manager, Workplace Relations, Master Builders

MEIKLEJOHN, Mr Cameron, Policy Analyst, Chamber of Commerce and Industry Queensland

SWAN, Mr Maurice, Manager, Queensland Workplace Relations, Australian Industry Group

CHAIR: Welcome. I invite you all to make a brief opening statement. Mr Behrens, would you like to start?

Mr Behrens: The CCIQ greatly appreciates the opportunity to present to the committee. The chamber wishes to acknowledge the Queensland Tourism Industry Council, Clubs Queensland and Master Grocers Australia which collaborated to provide our submission to the Finance and Administration Committee. Our organisations are strongly opposed to the introduction of an additional public holiday for Easter Sunday due to the pressure it will place on retail, hospitality and accommodation businesses. Our submission outlines the economic and operational impacts that this proposal will have on businesses, such as the hours they offer their staff and their opening hours, and explores the macro-economic impacts on Queensland's economy.

Through extensive research, our submission demonstrates that thousands of small businesses will foot the bill for this extra public holiday. The additional penalty loadings as a result of this bill make it extraordinarily difficult for businesses to operate in a financially viable manner across the Easter period. Small businesses will be forced to either absorb the increase in cost to open on this day or reduce staff levels and opening times to minimise their resultant losses. The cost to these businesses is estimated at $58 million. It effectively undercuts the engine room of our economy and is entirely at odds with the state government's emphasis on job creation as Queensland's key priority. Additionally, the move to declare Easter Sunday a public holiday was unfortunately a last-minute inclusion that occurred entirely outside reference group deliberations. The business community expresses deep frustration with the lack of formal consultation on this issue.

Finally, claims that declaring Easter Sunday a public holiday will harmonise Queensland with the national framework are, frankly, misleading. Only New South Wales, Victoria and the ACT currently declare Easter Sunday a public holiday. In summary, our submission provides substantive evidence that should be considered, and we urge the committee to make a recommendation to remove Easter Sunday public holiday from the bill.

CHAIR: Mr Meiklejohn, do you wish to make a statement?

Mr Meiklejohn: No, I have nothing to add to Mr Behrens's opening statement.

CHAIR: Mr Swan?

Mr Swan: Thank you very much. The Australian Industry Group thanks the committee for this opportunity to address it on the issues raised by the Queensland Industrial Relations Bill. The Australian Industry Group is a peak industry association in Australia which, along with its affiliates, represents the interests of more than 60,000 businesses in a greatly expanding range of sectors including manufacturing, engineering, construction, automotive and food transport all the way down to defence, mining, equipment and supplies, airlines, health and community services.

We were represented on the reference group whose report formed the basis for the bill which is now before the parliament. We supported a number of the proposals in that report but we opposed a number too. Pages 3 to 4 of our submission to the committee sets out the matters which we opposed in the reference group report which were recorded in that report. Those views of the Australian Industry Group did not find expression in the bill. Nevertheless, we maintain our opposition to those things.

There are a number of things, in particular, which are a little more salient than others, and we have elaborated at some length on those matters about which the Australian Industry Group is quite concerned. We echo the concern about the declaration of the Easter Sunday public holiday. There was next to no consultation with industry groups about that, which is a matter of great regret and is something I think which the minister ought to think about in future. However, there are other fundamental issues in the Industrial Relations Bill which the Australian Industry Group is greatly concerned about.

The importation of a foreign concept to Australian industrial law—the importation of the doctrine of mutual trust and confidence between employer and employee—is something which the Australian Industry Group has always opposed. We were gratified to see the High Court's decision recently in Barker's case which declared that that doctrine was not part of Australian law, and yet the government has seen fit to import a doctrine which has no history in Australian law and therefore involves an importation of risk into industrial relations.

We have some concerns about long service leave. This is not just a concern in principle, because the long service leave provisions of the Queensland Industrial Relations Act affect the entitlements of a large number of private sector employees whether or not they are members of the Australian Industry Group. The concerns about that are that allowing leave to be cashed out by agreement between employer and employee without procedural obstacles is something that should have been incorporated in the bill, but the bill imposes procedural obstacles to the cashing out of long service leave which we recommend should be removed. Many employees would derive a significant benefit from cashing out their long service leave and paying that amount off their mortgage or doing something useful like that with it. There are also concerns by the Australian Industry Group about the possibility of the QIRC making decisions about an employee's and an employer's arrangements about flexible work. AI Group opposes giving the QIRC the power to arbitrate if an employer refuses an employee's request for flexible work arrangements.

Another major area of concern is in relation to domestic and family violence leave. This, amongst the others which are mentioned in our submission to the committee, was the subject of submissions to the reference group. Generally speaking, I commend our submission to the reference group to the committee in regard to that and the other issues I am addressing. No-one could attempt to deny that domestic and family violence is a major community issue and that community action needs to be taken to reduce the incidence of it. However, this introduces a precedent whereby it is the employer who is singled out for no well-argued reason as bearing an expense to be associated with that when this issue of domestic and family violence is no more closely related to the employer than to anybody else in the community. The possibility of imposing a further financial impost on employers is not something which the Australian Industry Group can do anything but oppose. There is a lack of thought in relation to the provision in clause 198 of the bill regarding consultation clauses in agreements. It is something that the bill makes available in a broad undefined range of circumstances which imposes a procedural obligation on the employer. Am I using up my time?

CHAIR: Yes, and everybody else's, Mr Swan.

Mr Swan: I commend the committee to our submissions to the committee and to the reference group.

CHAIR: Mr Belfield, I am conscious of time. Obviously the longer you talk the less opportunity we have for questions. I am sure the committee would like to ask some questions.

Mr Belfield: Thank you for the opportunity to make a brief statement. Master Builders has identified two key areas of concern. I will not drill down to the minutia that Mr Swan has. In terms of reporting by organisations, the bill makes changes to the transparency, accountability, registers and practices of organisations and, in doing so, is very likely to fall out of step with federal regulations. The review of the bill by the reform reference group was undertaken during 2015. In its report the group unanimously supported consistency between state requirements and those under the Fair Work Act.

What does consistency mean? The federal government has a bill, the registered organisations bill, currently before parliament. This bill was drawn up in response to some of the recommendations contained in the final report of the trade union royal commission released on 28 December 2015. The comparison between the IR Bill, this bill, and the registered organisations bill shows that the Queensland bill is not consistent and in some areas falls short of the standards of transparency in government set out in the IR Bill.

We recommended the reform reference group be re-established for a short time to allow it to consider the registered organisations bill and how that bill differs from the Industrial Relations Bill. The reference group can then make recommendations to the government regarding consistency between the state and federal regulations. The government can then decide if it wishes to proceed with that report.

The other area of concern is in relation to the transfer of the ADCQ, the Anti-Discrimination Commission Queensland, matters to the Industrial Relations Commission. The bill wants to direct work related discrimination applications onto the QIRC, including arbitration, as Mr Swan pointed out. In doing so, the bill will provide rights and remedies which are different to the ADCQ QCAT framework.

It is clear that the bill intends to change the arrangements that have been in place for many years, not just in process but in the tribunal itself. We question whether this is in the spirit of the national industrial relations referral.

Consider the circumstances leading to the 2009 Fair Work Act and the formation of the single national framework. The Fair Work Act meant that the state industrial relations laws no longer had application to national system employees and employers. That is fairly straightforward. The Fair Work Act goes further and excludes any state industrial laws to the extent that they regulate anti-discrimination matters. Importantly, the Fair Work Act preserves the anti-discrimination laws which were clearly stand-alone, with a clear jurisdiction, tribunal and standards set up under the ADCQ.

During the drafting of the Fair Work Act in 2009, it would certainly have been a contentious issue if the QIRC had the reach into the anti-discrimination laws as is now proposed by the Industrial Relations Bill. There would have been questions raised as to how to separate the industrial jurisdictions—that is, why should a state industrial relations tribunal retain jurisdiction to determine employment related anti-discrimination actions against corporations? It could be speculated that to comply with the draft Fair Work Act in 2009, the QIRC powers would have been transferred to the ADCQ. The reverse is what we are facing today.

Given the ADCQ expertise in this very complex area, its submission to this committee paints a credible picture that an application under the IR Bill process will not be afforded the level of right and remedies as are available in the current Anti-Discrimination Act. This alleged reduction of protections, together with insertion of the state industrial—

CHAIR: Excuse me, Mr Belfield, I am conscious of time.

Mr Belfield: One more. The alleged reduction of protections, together with the insertion of the state industrial tribunal into the field, poses the risk that the bill could lead to outcomes for national system parties that are inconsistent with the Fair Work Act.

Mr STEVENS: Mr Behrens, you mentioned that the move to the Sunday holiday would cost in the vicinity of $58 million—I think it was around that sort of figure that you mentioned. That assumes obviously that there will be a continuation of the current employment opening practices for all those sectors that you mentioned are utilising Sunday trading.

We have heard earlier from other presenters that that could be covered by putting up the price of trading—that is, the 15 per cent loading for a coffee on a Sunday. Have you done any inquiries or investigations or can you confirm that there will be job losses—it might not be a complete cost—and there may be people shutting down because they cannot afford to trade on Sunday as a public holiday?

Mr Behrens: Thank you for the question. Firstly, the estimate of the cost of this bill in wages of $80 million put forward by the department has an assumption underpinning it that the employer would simply lift their wage rates commensurate with the implications of the bill. What we have sought to do in our submission is provide some clarity around the actual dollar impact that the awards increase by. For the general retail award it increases from a 200 per cent loading up to a 250 per cent loading. For the hospitality industry award it goes from a 175 per cent loading up to a 250 per cent loading.

The reality is that that $80 million estimate is based on an assumption that, in our view, is wrong. What we actually know is that the behaviour of businesses vary. There are some businesses, such as those in aged care and in respite care, that have a duty of care to those who are within their care which means they simply cannot adjust their workforce profile. They have to absorb this increase.

What we know for businesses in the retail, hospitality and accommodation areas is that they have choices available to them. As is evidenced by the research that we have provided, 27 per cent of those businesses that operated on Easter Sunday in 2016 will now close their doors because they believe that it is no longer financially viable for them to trade on that day. I hasten to add, that there is also spill over to Good Friday, Easter Saturday and also Easter Monday. Between 10 and 15 per cent of employers say, 'You know what? If we are going to increase our penalty loadings for Easter Sunday, you actually pretty much wipe out Easter Sunday for us.'

Some businesses also take the view that they will still continue to trade; however, what they will do is lessen the number of hours that the business is open. We know that the early hours that a business opens and the final hours that a business opens tend to be the least profitable hours. What they will do is that they will jettison those hours and focus on the hours in which they achieve the most takings.

What is really concerning for us is that this bill seeks to better remunerate employees who work on Easter Sunday. The evidence that is within our submission demonstrates that that is not the case. Some 41 per cent of employees who worked on Easter Sunday 2016 will now no longer have any hours of employment made available to them or will have significantly reduced hours of employment made available to them. Some 61 per cent of all businesses that opened on Easter Sunday 2016 said they are going to lessen the number of employment hours made available to their workers. We have concerns around that. We are urging the government to reconsider this bill.

In reference to the surcharge that some businesses can apply on Easter Sunday, the reality is that if you are in retail, if you are in accommodation, if you are in aged care, if you are in respite care you cannot put a surcharge on a transaction. You can only put a surcharge on a transaction if you are in hospitality. Again, that statement that you can put a surcharge on transactions ignores a fundamental rule of economics and that is the price elasticity of demand. As you increase the unit price of a good and service there is a commensurate reduction in demand for that good and service.

Mr PEGG: I have a question for Mr Swan. Domestic and family violence is a huge issue in our community. During the life of this parliament we have passed a number of bills on a bipartisan basis, including as recently as yesterday. This particular bill allows for domestic and family violence leave. It is, in fact, already in a number of federal enterprise agreements.

In the AI Group's submission you state that we should wait to make a decision on this until the Fair Work Commission considers the claim as part of the modern awards process. Obviously, pursuant to this bill, we can legislate for family and domestic violence leave notwithstanding the Fair Work Commission's decision on those modern awards. Given the overall circumstances in society, why should we be waiting on this important issue?

Mr Swan: Firstly, because there have been submissions from employer groups and submissions from unions in considerable depth to the Fair Work Commission in relation to including these particular provisions in awards in industry. That process is a much more considered and deliberate process than was available to the reference group.

You might recall that the then minister in late November or early December last year announced that the new bill would include domestic and family violence leave before the reference group had completed its report. Therefore, there was little point in the reference group doing anything else unless the majority of the group really wanted to make a stand, which obviously they did not. This is an issue on which the employer interests must be represented forcefully and cogently. That is what the Australian Industry Group, as well as other employer groups, have been doing in the process before the Fair Work Commission. It is a process that has not been replicated, even in shadow form, in the process leading to the inclusion of these provisions in your bill.

Mr PEGG: Just to follow-up on that, is it the AI Group's position then that whatever the Fair Work Commission decides the Queensland government should follow? Is that your position?

Mr Swan: No, because we have opposed the union's application for such entitlements in awards generally in the proceedings before the Fair Work Commission. What I am saying is that the committee should have regard to the detailed argument in the Fair Work Commission proceedings in relation to that and have regard to—and I am not saying it should adopt—what members of the Fair Work Commission full bench have to say about those arguments. I understand you are a lawyer Mr Pegg. You would understand the difference between having regard to something and being bound by something.

Mr MILLAR: Mr Behrens, there was no consultation on the public holiday for Sundays. How did you find out that this was going to be in the bill?

Mr Behrens: The chamber has great difficulty with how this came about. We continually demonstrated good faith in our participation with the reference group proceedings. The majority of our interest is jettisoned by way of the referral by the state government of unincorporated business employees to the fair work framework. We could have taken a hard line and opposed a lot of the contents of this bill on the basis that employers contribute 65 cents in every dollar to the state government and that we want the government to be in a position to be able to better manage its workforce, which we are not convinced this bill enables. However, we demonstrated good faith.

Another example of the good faith that we demonstrated is that we wrote to the federal minister supporting the state government's request that bullying claims for unincorporated business employees also be referred to the fair work framework. We felt that throughout this process we did the right thing by the state government.

We were very disappointed to learn through a phone call on a Thursday—and I can provide the date to the committee—from the department advising that the government had made a decision to include Easter Sunday as a public holiday. We had a meeting with the department the next morning to get a fuller picture of that. Then we had an urgent meeting with the minister on the Monday morning where it was a decision that had already been made. In any of the written submissions provided to this process, I do not see any of the unions commenting on the need for a public holiday.

In our view, Easter Sunday is already regarded as Easter Sunday, so there is no reason really to clear that up. We are disappointed with the state government on this one because we have demonstrated good faith. Through a ministerial direction that panders to the SDA, employers are going to be saddled with an extra $58 million in the hospitality, retail and accommodation sector. If the government is true to their commitment about jobs, you would not do this because we know that 41 per cent of all employees who worked on that day are now going to receive either no hours of employment or significantly less hours of employment. Do the right thing: jettison this aspect of the bill.

CHAIR: Thank you for appearing before the committee today. The secretariat will be in touch to provide you with a copy of the proof transcript, which will also be placed on the committee's website. Please provide your responses to any questions on notice—I think there was only Mr Behrens' in relation to some dates—to the secretariat by close of business on 17 October.

Proceedings suspended from 10.46 am to 11.03 am

GOODE, Mr Tony, Workforce Executive, Local Government Association of Queensland

HOFFMAN, Mr Greg, General Manager—Advocacy, Local Government Association of Queensland

CHAIR: I welcome Mr Tony Goode, Workforce Executive, and Mr Greg Hoffmann, General Manager—Advocacy, from the Local Government Association of Queensland. Thank you for appearing before the committee. I invite you to make a brief statement. Obviously time is of the essence. The longer you talk the less time for questions is the rule of thumb. We are basically in your hands. We are also in your hands as to who wishes to start.

Mr Goode: I thank the committee for the opportunity to appear here today on behalf of local government across Queensland in support of our submissions on the Industrial Relations Bill. I will rely primarily on our written submission, but there are a couple of issues I want to raise. I do have some handouts here which would make sense of some of the submissions. I seek leave of the committee to provide those.

CHAIR: Is leave granted? There being no objection, leave is granted.

Mr Goode: There are four documents. First of all, there is a briefing note which we provided to the government justifying our explanation for one award. We have some statistics that we have gathered at a July census on workforce numbers in local government broken down a certain way. Just to give some credibility to that census, I have also attached copies of the actual instrument that we use to collect that data which goes out to the councils. I will pass that over as well.

We fronted this committee back in 2015 and we requested that the single local government award that had been generated as part of the award modernisation process be allowed to stand. We advised the committee then that without that single award councils would have difficulty maintaining their current workforce levels due to the increasing economic challenges confronting local government. Those pleas were ignored to an extent and we saw the Industrial Relations Commission ultimately stripped of its award-making powers in relation to local government.

The legislation as it stands now puts the final nail in the coffin of the single modern local government award because, in part, it directs the Industrial Registrar to recreate multiple awards for local government. Since that modern award was created after a very comprehensive and very inclusive process by the Industrial Relations Commission, we had 23 councils move to that single modern award. I draw the committee's attention to the evidence in our submission which shows a steady decline of jobs in local governments since 2011.

I want to quickly contrast the experience of those 23 councils on the single award to the 53 councils under the multiple awards with the myriad of inequitable and dated conditions. Between 2014 and 2016, the councils under the single modern award collectively recorded a 1.61 per cent increase in job numbers. Contrast that to the remaining councils who collectively recorded a 2.04 per cent decrease in job numbers. The councils who had gone to the single modern award actually recorded an increase in job numbers. The councils who remained under the old system, with its myriad of conditions, continued to record a stronger decrease in job numbers. If the councils under the multiple awards had increased their employment levels at the same rate as those councils who had been under the Local Government Industry Award, we calculated there would be an additional 1,006 jobs in the local government sector today.

We have had opponents of the single award claim that this job growth in these councils came at the expense of employee welfare. We would dispute that. Our census also collects data on employee turnover, which is an indicator of employee satisfaction. Simply put, if employees do not like working where they are and they think they are being screwed, they will walk. You can measure their satisfaction that way. During the same period of time, the turnover rates for councils under the single Local Government Industry Award collectively dropped by over five per cent. Contrast that to within the multiple award councils where turnover has increased slightly by around 0.3 per cent. There are more job numbers and less turnover in the councils that had moved to the single industry award when in contrast to those councils who remained under the multiple award system. The figures speak for themselves.

While this has been going on, we have also been working with councils and conducted comprehensive internal industrial audits. Those audits highlight the difficulties that councils have operating under multiple awards when you have overlapping coverage, different entitlements for same conditions, different penalty rates, different overtime rates and a plethora of other issues that

the Industrial Relations Commission acknowledged when they approved the one award. We have estimated that those complications cost the sector in excess of $27 million or around 106 jobs which is what that equates to.

Councils need to the support of the state government if we are to maintain and create local jobs, and they should not be impeded in reaching that goal by a dated and archaic award system. Page 3 of the explanatory notes of the Industrial Relations Bill states that this particular clause in the legislation to create multiple awards will help employers and workers. Councils are saying to government that going back to multiple awards will not help them. Contrary to what is being said, multiple awards will simply not help them and in fact will contribute to more lost jobs, not to mention the fact that it will cost roughly between $200,000 and $250,000 to change their payroll systems and advise their staff to go back to multiple awards after they have already spent the same amount of money moving to the single award. This clause which asks the Industrial Registrar to create multiple awards must be deleted.

I am conscious of time, so I will cut this short. The other areas of the bill we would like to pay particular attention to are those relating to the nature of certified agreements. There are three elements of that we wanted to bring to the attention of the committee that we have particular angst with. One is the definition of who is a bargaining party. We take exception to the rule that says, 'As soon as you are served a notice, you automatically become a bargaining party.' We have difficulty with that because a lot of our councils may get served by a union saying, 'We would like to do a union collective agreement,' but the majority of workers have already voted and asked the council for an employee collective agreement. We believe that the sheer serving of a notice is not sufficient grounds to be deemed to be a bargaining party and captured by the legislation. We think you have to take on that offer and start bargaining.

The second element of it is the changes to what types of agreements can be had. The previous legislation under section 142 allowed for an employee collective agreement or a union collective agreement. The wording in this bill has changed somewhat and we are struggling with how to interpret it. The one clear interpretation could be that you cannot have an employee collective agreement if there is a union willing to negotiate an agreement regardless of whether they have members or not. We think that is unreasonable and unfair and we would strongly urge the committee to look at restoring the previous conditions that are similar to what exist in the Fair Work Act and which give councils, workers and unions the opportunity to either have a union collective agreement or an employee collective agreement. Even where the employee collective agreement does apply, unions still have the right—and it is recognised as such—to represent their members' interest and be involved in negotiations with the employer, and the legislation imposes an obligation on the employer. We strongly request that that legislation be amended back to what exists under the current industrial relations legislation.

The last part that we would like to bring to the attention of the committee specifically this morning is the removal of section 147A of the current legislation. What that basically says is that, when the unions and the employer are negotiating and they reach an impasse, currently the employer may take that impasse or where they are at with the proposal to the workers and have a vote on it. If the majority of workers agree with the proposal, they can go to certification. Under this system, that option of going to the workers and asking for their opinions is rejected. We think that is not in the interests of what cooperative industrial relations should be about. We would argument that a lot of the changes that have been put into this Industrial Relations Bill are not about cooperative industrial relations; they are more about coercive industrial relations.

Local government is a good employer. In every efficiency drive that councils initiate and every bit of reform they do and every new strategy, councils do work hard to maintain a local workforce. That is what they are about. It is in their interests to keep people working. We note in the submissions from other parties—

CHAIR: Excuse me, Mr Goode—

Mr Goode: One second. In one of the handouts I have given you at the very bottom I point to the casualisation of the workforce. Local government is a good employer. We keep a permanent full-time workforce going. We want assistance in doing that. We do not want it taken away from us. We do not want to be in a situation that the state is at the moment. We would ask the committee to support the changes recommended in our submissions.

CHAIR: Before we go on, a couple of the documents that you sought leave to tender had 'confidentiality' stamped in the right hand corner. I understand that that confidentiality would attach to the answers rather than to the document itself?

Mr Goode: Sure. We accept that once we pass the documents over they are public. They are now public documents, yes.

Mr STEVENS: Tony, I think my question might be better addressed to Greg in terms of what a previous submitter this morning made reference to, and I am conscious of the Auditor-General's report of the financial stress that a lot of local councils are facing across Queensland. The submission we had this morning was that there would be no costs in this move to the extra awards rather than one award and that there should not be any job losses or should not be any increase in rates as a result of this moving to the three awards. Could you give a comment in relation to that please because, as far as I see, if there is an extra cost impediment to council it has to be passed on from either job losses or raising the income to pay for it through an increase in rates?

Mr Hoffman: Any suggestion that by adding increased complexity to a payroll situation will not cause additional costs is quite fanciful. Sadly we have a precedent or a history in the Health payroll debacle in that the complexity of the system that applied there was beyond the ability of technology and management to ensure correct payments were made on time. Local government across its 77 councils is dealing with complexity. The one award was removing significant elements of that. In fact, our own industrial audits that we have conducted now for the past 18 months have demonstrated that level of complexity under the current arrangements that the one award was removing and our best estimate of the costs is that over the term of local government it will cost somewhere in the order of $100 million for that level of complexity—in other words, multiple awards versus a single award in terms of what needs to be managed across the 77 councils. As the Auditor-General in his report yesterday acknowledged, local government is under very significant financial stress. The last thing we want is more bureaucratic complexity added into the task. The report in particular highlights that it is many of the medium and small councils, particularly rural and remote councils, that are under the greatest financial stress. The last thing we want to do is add increased pressure on to them with very limited administrative resources to manage complexity in the payroll system. It seems a waste of money when we would rather have people working delivering services to the community than inside managing an unnecessarily complex payroll system.

Mr STEVENS: Thank you.

Mr PEGG: I have a question about clause 348, and I am not sure whether Mr Goode or Mr Hoffmann is best placed to answer this question. In your submission you state—

> The absence of an obligation to give notice has resulted in reports of people unknown to staff and security personnel being seen trying to access council premises.

Given that there is a right-of-entry permit system in place, have you advised the councils that they could ask to see the permits in the circumstances you have outlined? Does not the permit system mean that there is no need for the changes that you seek?

Mr Goode: With regard to the permit system, it actually goes even a bit further than that in that the person entering the premises is required to go and report to the employer's representative when they walk on to the premises. The difficulty is in a lot of our premises there is not always the employer representative there—for example, a depot that might be located 100 yards away or sometimes 10 miles away from the main office. At this stage the union representative could quite easily just walk on to that premises on the premise that there is no employer representative there and start to meet with the members. The recent case was only in the last week and a half where we had a report that a person was seen entering a council depot. One of our council staff members went down there and the person was confronted and they explained that they were a union official and they said, 'Well, no, we didn't need to present to the office because there was no-one down here to talk to. It's before six o'clock. We're here and we're going to talk to people before work started, so there's no need for us to report to anybody.' All we have asked for, as we have said in our submission, unless it is impractical, is just notice or notification that the person intends to be there with 24 hours notice. I cannot see what concern or what qualms that would cause the trade union movement, to be quite honest with you.

Mr PEGG: What about if there is an urgent matter for instance?

Mr Goode: As we have said, if there is an urgent safety matter or if there is an urgent issue where it is for emergency purposes or exceptional circumstances, then you do what you have to do and the council would have no qualms at all about that. What we are concerned about is that with increasing security arrangements we need to have in place now people feeling that it is reasonable to walk on to the premises at any time when half the time a lot of the people do not know who that person is. All our staff need to be comfortable that if someone is walking around that person is there as a legitimate person and at the moment we do not have that satisfaction or that confidence.

Mr PEGG: Finally, do you think that having such a provision for 24 hours notice would promote cooperative industrial relations?

Mr Goode: Absolutely, because very simply there are very good union officials today who will always give notice. They will do it anyway as a matter of courtesy who ring and say, 'Hi. I plan to be there.' The council generally then cooperates in making certain that everybody is aware of it and that there is room, space and time made available. Just to turn up out of the blue, particularly without any notice whatsoever, potentially causes conflict, particularly if you have work schedules planned.

CHAIR: I have a couple of questions about the awards. I know that you are advocating for one award, but is it not the fact that the Brisbane City Council has indeed three awards?

Mr Goode: That is correct. Brisbane City Council are not captured. They have their own act and they have their own award system. They chose to cooperate and go to three awards for reasons best for them to explain.

CHAIR: I understand that there have been applications to the Fair Work Commission for one award to be split into three.

Mr Goode: There have been two reviews conducted by the state commission, but I am unaware of any application going to the fair work legislation for the single local government award in the federal system to be split. I am unaware of any of that. To the best of my knowledge the single award is still operating effectively in the federal system.

CHAIR: Are you aware of the entity called, I think, United Water, Mr Hoffmann?

Mr Hoffman: Are you talking about Unitywater, which is one of the distributor-retailer water entities in the south-east corner of the state? That is maybe what you are referring to.

CHAIR: That is the one I am referring to, Mr Hoffmann.

Mr Hoffman: What is the question?

CHAIR: The question is that I understand that they have asked for the one award to be split into three.

Mr Hoffman: It is not something that I am aware of. In fact, we represent the 77 councils, not the distributor-retailer entities that were established under state legislation as state statutory controlled bodies.

Mr Goode: You mentioned the fair work legislation. My understanding in the federal system is that water is actually contained under a separate award altogether anyway, so I am not quite sure what you are referring to. Certainly we had discussions with Unitywater and a few of the water entities at the time of the making of the single award to see whether they wanted to be covered or included and no decision had been reached at that stage because, as Mr Hoffmann pointed out, as they are a separate entity altogether it would make sense for them to be covered by a separate award. That is not splitting the local government industry award in any way, shape or form. It should stay like it is.

Mr WEIR: My question really is about the consultation. You have raised some concerns about the award. We have also heard some concerns about the consultation with the domestic violence leave and also the public holiday. You were part of the committee that looked into this. I was just wondering about the consultation on some of those sorts of issues.

Mr Goode: In relation to the public holiday, the first I knew about it—and I cannot speak for Mr Hoffmann—was when I read about it in the *Courier-Mail* and I immediately contacted CCIQ and asked if they knew about it and they said that, yes, they had had a phone call late the night before. There was no consultation and we have never had any consultation since on that matter. In relation to domestic and family violence, I was part of the review group, as I think the previous gentlemen have said. The matter was raised at the review group, but the announcement had already been made by the government at the time that the 10 days leave would be coming in through the bill. The review group really did not have much opportunity to discuss it because we were told it was going to happen anyway. Ourselves and our colleagues from CCIQ and Ai Group actually made objections to it. I have raised them in our submissions. The part I really find a bit offensive is that at that review group it was raised to go outside of the Quentin Bryce report and include an additional entitlement which is about local government and public servants being able to access their personal leave for domestic and family violence but to look after victims of DFV regardless of whether those victims are members of their family or complete strangers or whatever. As we put in our submissions, we are not going to argue here today about the 10 days family violence leave because we know the government is committed to that. That argument has been had. However, we do take strong objection to that extension which goes further than that recommended by Quentin Bryce in her report that will impose additional costs upon local government and employers.

CHAIR: That brings this part of the hearing to a conclusion.

Mr Hoffman: Mr Chairman, may I just make one observation in conclusion?

CHAIR: Yes. However, we have gone over time, so make it short please.

Mr Hoffman: Thank you; I appreciate that. Local government labour costs are about 50 per cent of local governments' total costs—somewhere between $4 billion to $5 billion a year. It is our contention that this award in fact significantly removes the ability of local government to control and manage its labour costs. In the context of the Queensland Audit Office's recent report, we find ourselves in an incredible bind in terms of what is expected of us in the financial and asset management space and labour cost management to now find our hands have been further tied behind our backs. The statistics that Mr Goode tabled demonstrate that under the one award the situation was improving. We also contend that the fact that the certified agreements that have been entered into or were entered into and were in fact set aside by the current government when it came to power were supported 90 per cent by employees in the negotiation with councils. That of itself is a demonstration that the workforce arrangements under the single award were welcomed by the employees. I also add for the record that at best union coverage of the local government workforce is at 20 per cent, so with respect to the unions 80 per cent of the employees who by and large were voting for those agreements under the one award were demonstrating that they were accepting of their employer's offer. With regard to the fact that they chose not to be members of a union, there was also a message in that as well.

We cannot understand why, with the successful implementation of the one award and a number of certified agreements put in place with overwhelming employer support, it is necessary to do this. There is no basis; there is no justification. It is a spurious argument that the workers of local government need to be protected by this award and it distresses us in local government managing the 40,000 employees that we have seeking to sustain their employment across 77 communities in very stressful and difficult times, many of them in rural and remote areas, that we now have lost control of our workforce. That is something the government needs to accept is an outcome of this decision that it has made and we would ask for our submission to be taken very seriously because we are interested in sustaining their employment. We know what is required of them and they have demonstrated with their support of what we have done that they were happy with the way things were going under the one award. Thank you.

CHAIR: Thank you. That brings this part of the proceedings to an end. The secretariat will be in touch to provide you with a proof copy of the transcript, which will also be placed on the committee's website. Thank you, gentlemen.

BALL, Ms Julie Ball, Principal Lawyer, Anti-Discrimination Commission Queensland

HOLMES, Ms Neroli, Deputy Commissioner, Anti-Discrimination Commission Queensland

CHAIR: I now welcome the next witnesses from the Anti-Discrimination Commission Queensland. I welcome Ms Holmes, the Deputy Commissioner, and Ms Julie Ball, principal lawyer. I invite you to make an opening statement. This session is due to conclude at 11.50.

Ms Holmes: Thank you to the committee for the opportunity to come and talk to you today. We have been consulted on the IR Bill and I guess you have seen our submission. The two major concerns of the ADCQ with regard to the current proposals in the IR Bill are these: firstly, it creates two forums for dealing with Anti-Discrimination Act matters. Work matters will be dealt with via the QIRC and all other matters dealt with under the Anti-Discrimination Act—which includes discrimination in the areas of goods and services, education, state government laws and programs and the other areas of the Anti-Discrimination Act—will be dealt with by QCAT. Our concerns are outlined in paragraphs 10 to 16 of our submission, but in summary our preference would be that there would be one adjudication forum for Anti-Discrimination Act matters, either QIRC or QCAT. We would prefer all ADA matters to go to one or other of those entities. Our desire would be that the entity has a specialist human rights list with qualified members with appropriate expertise to hear anti-discrimination matters.

I note that the two submissions from the Legal Aid Commission and Caxton Street Legal Service also have similar concerns about there being two adjudicative forums, the reason being it will increase complexity and there is a great danger in the anti-discrimination jurisdiction of having two different approaches to concepts under the anti-discrimination law—concepts such as indirect discrimination or comparator for direct discrimination. With two separate entities that are not obliged to follow each other's legal principles, the only way that, if divergent jurisprudence does emerge, it will get realigned is if it goes to the Supreme Court, to the Court of Appeal. Many cases will not do that. Most people will not have the funding to do that and that means there may be very variant approaches by the two jurisdictions to similar or the same concepts under the act.

Our second concern is the constitution of the tribunal. That is dealt with in paragraphs 28 to 34 of our submission. Under the proposals, the QIRC members who hear anti-discrimination matters do not need to have any legal qualifications at all. Under the previous Anti-Discrimination Act, the Anti-Discrimination Tribunal members were required to have five years legal experience before they could become an adjudicator under the Anti-Discrimination Act. That is the old Queensland Anti-Discrimination Tribunal. Under the QCAT Act, legally qualified members have to have at least six years standing as an Australian lawyer to be able to hear a matter under the Anti-Discrimination Act. Contrast that with the proposals under the QIRC legislation. Our preference would be, if the matter is going to come to the QIRC, there be a requirement that the members hearing the matters in the QIRC have at least five years experience with a legal qualification and that there be a specialist list of members who hear Anti-Discrimination Act matters.

Those are probably the two major points that we wish to bring to the attention of the committee. There are numerous other points in our submission, but they are not as substantive as those ones.

Mr STEVENS: You mentioned that you had a strong preference for having only one entity and I understand completely the justification for that request. Given the fact that we may agree to change the legislation so that only one body becomes the adjudicating body, which body would you prefer, the QCAT, with its six-year experienced lawyers, or the QIRC?

Ms Holmes: If the amendment was made that the QIRC had a similar range of experience, I do not think we would express a view one way or the other. We are not averse to all the matters under the Anti-Discrimination Act coming over to the QIRC, providing that the members appointed to hear Anti-Discrimination Act matters have appropriate legal expertise and training. We have high regard for the QIRC and we have high regard for QCAT. We would always want both forums, both QCAT and the QIRC, to make sure they have a specialist list of members to hear anti-discrimination matters and that there is continuing professional development and education of the lawyers determining those matters, so that they can be kept contemporary with developments in the anti-discrimination legal jurisdiction and in that space. I do not think we have a preference one way or the other, but we have a preference that it be one tribunal. We probably would not, at this stage, say QIRC or QCAT.

Mr STEVENS: That answer is a little confusing to me, because you are saying that if they change the requirements for QIRC to hear these matters then you are okay with either one. However, I am not aware of changes to QIRC to deliver your outcome. Given the current scenario, which one would you prefer?

Ms Holmes: Probably QCAT if there is to be no change. We do think it is very important because they are very complex legal concepts under the Anti-Discrimination Act. There are some complex provisions with regard the exemptions, the definitions under the act, the way that the law is determined. We think legal qualifications are pretty essential for people to be able to deal with it adequately.

Mr PEARCE: You made a comment a while ago about 'indirect discrimination'. What do you mean by that?

Ms Holmes: Under the Anti-Discrimination Act, there are two types of discrimination. Direct discrimination is the one you are probably very familiar with. It would be where someone said, 'I don't want a female engineer to construct my bridge. I don't want any engineers who are female on my bridge design team'. That would be direct discrimination against females. The most famous instance of indirect discrimination is the Convention Centre case, Cocks and Queensland. It is called a term or requirement that prohibits or disbars some people from being able to access or do the same things that people with an attribute would be able to do. The Convention Centre case was about stairs at the front of the Convention Centre and there being no equivalent access for people who may need to use things other than stairs, for example, an elevator or an escalator. It would be a lift, in fact, for a person in a wheelchair. Indirect discrimination happens when a term happens, such as you must walk up stairs. Some people cannot walk up stairs, so it is indirectly discriminating them because they will not be able to access that place. That is a common form of indirect discrimination—stairs—where you should also maybe consider having a lift, if it is not an unjustifiable hardship.

Other forms of indirect discrimination can be things such as a term that everyone starts work at seven o'clock in the morning. If you are a tollbooth operator and you have children, you may not be able to get your children into a childcare centre if it is not open at seven o'clock in the morning. That may be an indirect discrimination on the basis of your family responsibilities. It is terms that may prohibit unreasonably someone from doing something because of one of their attributes. It is quite a complex area of the law. Even lawyers struggle with defining the term 'indirect discrimination'. It is an area that, if different approaches are taken by different adjudicative bodies, we could get vastly different approaches to what is already a difficult area of the law. We would be concerned if that happened.

Mr PEARCE: Do you think it is an area that should be looked at through legislation, to make it a little simpler to understand?

Ms Holmes: We would like a review of the Anti-Discrimination Act. Contemporary anti-discrimination legislation has moved a little away from the idea of indirect discrimination. Acts in other jurisdictions in Australia that have been recently reviewed, similar to the Anti-Discrimination Act, have moved away from the concept of indirect discrimination. It is a complex term. It needs to probably have some closer looking at and some reform. If the parliament is minded to, we would very much like the Anti-Discrimination Act to have a fresh and contemporary review, because it is 25 years old this year. It is still a very good act, but any act after 25 years does need a look to make sure it is reflecting the contemporary and current needs of its community.

Mr WEIR: Still on that subject, it seems to me to be an extraordinarily complicated area, because those needs are not always going to be accommodated, those scenarios that you just put forward.

Ms Holmes: That is right. There is an element of reasonableness: is the term reasonable? You have to look at all the relevant circumstances of the situation to determine whether or not that is reasonable. It is quite a complex area of the law. On onus of proof in relation to the indirect discrimination, it is always up to the complainant to prove their case of discrimination, but once there is an assertion or an establishment that there is a term in existence, the onus of proof reverts to the respondent or the defendant to show that that term is reasonable. There are some complex legal issues here. It is already complex for parties to try to argue these issues, because they are often lay people and they struggle with these concepts. It is very important that an adjudicative member, while they cannot assist parties or assist the people in front of them to run their cases, are very familiar with the law to be able to facilitate an appropriate hearing of those matters. It is important that the member hearing the matters has a very good understanding of what that law entails and how it has been interpreted.

CHAIR: I understand in your submission there has been a recommendation to ensure that the QIRC hearings are held in public, similar to what occurs at QCAT now.

Ms Holmes: Yes.

CHAIR: Can you think of any matters in your experience where that exemption would apply to not having something held in public?

Ms Holmes: Yes. Under the former Anti-Discrimination Tribunal provisions and also under the QCAT Act, the court or the tribunal does have the power to have more closed and in-camera sessions and to have suppression orders on evidence going out from the tribunal in appropriate circumstances. They sometimes use those orders where they think the evidence is very sensitive and can damage someone's reputation or if it is going to infringe on someone's protection of their human rights.

I am familiar with the old Anti-Discrimination Tribunal when very salacious assertions of sexual harassment were made and it would sometimes make suppression orders in order to protect the respondent's or the defendant's reputation, so that it was not reported widely in the media until such time as it had been proved. If it was proved, then that suppression order would be lifted. Things can damage people's reputation without suppression orders. If children were involved, sometimes it is not appropriate for full reporting in an open court to happen in every situation. On having a closed court, justice generally should be done in public and seen to be done in public.

We think that that is a very important provision, but there are exceptions to that and I think it is important that the QIRC is given the Anti-Discrimination Act jurisdiction, that they have a mirror image of what QCAT has in order to be able to suppress publication and to close a court where they think that it is necessary.

CHAIR: That leads me then to the next question. That is why there is the desire to give more power to the QIRC—so that they can make these orders when appropriate?

Ms Holmes: Yes. You are talking about the other parts of our submission?

CHAIR: The other parts of your submission, sorry.

Ms Holmes: Yes. In terms of the other parts of our submission, our jurisdiction has moved from the Anti-Discrimination Tribunal over to QCAT and, now, part of it is moving over to the QIRC if this bill is passed. What we would like to see is that the provisions that were granted under the original Anti-Discrimination Act to the tribunal be given to whichever entity is hearing the matters. They should have the same powers and be able to have the same procedures so that, first of all, they have adequate powers and procedures to deal with matters in the Anti-Discrimination Act jurisdiction but also there is not that confusion with QCAT having one set of powers, QIRC having another set of powers. It is ostensibly the same jurisdiction; it is just two different hearing forums hearing matters under the one act.

It is very important that the powers be the same, be they in QCAT or the QIRC. At the moment, the bill lacks equivalency of powers. We would like to see them almost mirror image—duplication. We would think that that is an important thing to have in place by the time the QIRC, if it does, gets its jurisdiction. In order to be able to deal with Anti-Discrimination Act matters properly they need to have that full range of powers.

CHAIR: Does the committee have any more questions? There being no more questions, I thank you for appearing before the committee today. The secretariat will be in touch with you in relation to a proof copy of the transcript, which will also be placed on the committee's website. Thank you for your attendance.

COLES, Ms Klaire, Senior Lawyer, Legal Aid Queensland

POTTS, Mr Bill, President, Queensland Law Society

RAMSEY, Ms Kristin, Chair, Queensland Law Society Industrial Relations Committee, Queensland Law Society

WILKINSON, Ms Robyn, Acting Director, Executive Services, Legal Aid Queensland

CHAIR: I now welcome witnesses from the Queensland Law Society. I invite you to make a brief opening statement. This session is due to conclude at 12.15 pm.

Mr Potts: Thank you. I will keep it brief then, if I can. Those who now know who I am will also know that, like Mr Russo, I am a very humble criminal lawyer. Any of the technical questions in relation to this topic will be, I hope, very ably answered by Ms Ramsey, who appears today.

Can I first thank you for inviting the Queensland Law Society to appear at this public hearing in relation to the Industrial Relations Bill 2016. The Queensland Law Society is pleased to appear before the committee today to speak about the initiatives contained within the bill. For those of you who do not know us, the Queensland Law Society is, in fact, the peak professional body for the state's legal practitioners—over 11,000 members of whom we represent, educate and support. In carrying out its central ethos of advocating for good law and for good lawyers, the society proffers views that are truly representative of its member practitioners. The society is an independent, apolitical representative body upon which government and parliament can rely—and, we hope, do rely—to provide advice that promotes good, evidence based law and policy.

The society's position is that it is appropriate for the state of Queensland to maintain its own system of industrial relations and one that comprises the basic elements of fairness to all participants, namely, we want and require a minimum legislative safety net of employee terms and conditions; the existence of an independent umpire in the form of the Queensland Industrial Relations Commission equipped and enabled with broad functions of conciliation and arbitration; broad access rights to the commission in industrial dispute matters, including termination of employment situations and other employer/employee disputes; and, finally, appropriate regulation of industrial organisations. The key issues that we wish to address, and which we certainly invite any questioning in relation to in addition to the submissions that we have made and which I hope the committee has, are these. While supporting the bill the society does, in fact, recommend several changes to improve it. In particular, the Law Society wishes to highlight two main points in its submissions. They are, firstly, the Queensland Employment Standards, which is contained within chapter 2 part 3; and, secondly, amendments to the Anti-Discrimination Act, which are contained within chapter 19 part 2. That completes the opening address. Ms Ramsey will now address those issues in greater detail if it suits the committee.

CHAIR: It suits the committee.

Ms Ramsey: We have made 12 recommendations in total in our submissions. In the interests of time, I will not go through each of those. I will limit my comments to two particular areas. The first is the Queensland Employment Standards. There are three points that I would like to make about those standards. The first is in relation to flexible working arrangements. The bill introduces a broad right for employees to request a change to their working arrangements. Essentially, any employee can make such a request. The types of changes we are talking about are flexibility in relation to hours of work—start and finish times—perhaps even the location of their work. Where such a request is made, an employer must grant that request unless they have reasonable grounds for refusing it.

We support the introduction of this right and note that it is very comparable to the federal legislation and the right that is contained in the Fair Work Act. The issue that we have, though, is that the bill does not provide any guidance on what a reasonable ground may be to refuse a request. In our submission, that makes it somewhat difficult for employers to have any certainty over whether they are on good or shaky grounds when they are refusing a request.

This was an issue that arose when the Fair Work Act was originally introduced. There was no definitional guidance in that act either as to what a reasonable ground for refusing a request was. That was something that was rectified in later amendments to the Fair Work Act. Section 65 (5A) was introduced and it sets out a non-exhaustive list of reasons that could constitute reasonable grounds for refusing a request. They include things like the arrangement would be too costly to implement, it would not be practical to change the arrangements of other employees, or that the arrangement would

have a significant loss in productivity or detrimental impact on efficiency. The society considers that it would be beneficial to include comparable provisions in clause 28 of the bill that, essentially, replicates what is in the Fair Work Act just to provide that certainty for employers.

The second point that I wanted to make was in relation to annual leave. The existing legislation provides an ability for an employer to direct an employee to take annual leave in circumstances where there is no agreement between the parties on when that leave should be taken. That is a right that has been retained in the bill. We note that in the federal system, however, an employer's right to direct an employee to take annul leave is typically limited to two specific circumstances. The first is where the employee has accrued an excessive amount of leave and that is generally eight weeks. If you have accrued more than eight weeks, that is seen to be excessive. In that circumstance, an employer could direct an employee to take leave provided that they have given notice and subject to the employer retaining a minimum balance of leave. You could not direct them to take all of their leave; only part of their leave. The second time that you could direct an employee to take leave is during a period of shutdown.

Under the bill as it currently stands, an employer essentially has an unfettered right to direct an employee to take annual leave subject to just providing eight weeks notice. Whilst we support the retention of that right and think that it is an important right for employers to have, we have some concern that an unfettered right to direct an employee to take annual leave in any circumstances, irrespective of how much leave they have or how much leave they will have remaining after the direction, could operate unfairly in some circumstances. Our recommendation in relation to that is that further consideration be given to including some additional parameters or conditions around that right to direct to take annual leave and those could be comparable to the provisions that exist at a federal level.

My third and final point in relation to the Queensland Employment Standards relates to redundancy pay and notice of termination. The existing legislation contains minimum entitlements to notice of termination and redundancy pay. Those provisions are, again, replicated essentially in the bill. I note, however, that those entitlements do not apply equally to all employees covered by the bill. In particular, executive level public servants do not have these entitlements. The society considers that these are basic employment conditions and, like any other aspect of the Queensland Employment Standards, should apply equally to all employees covered irrespective of their position or level of income. Again, we are talking minimum standards here. It would not curtail any other arrangements that might provide for more beneficial entitlements. We note that this is also the approach taken at the federal level. The National Employment Standards rights in relation to notice of termination and redundancy pay apply to all employees irrespective of their position.

Leaving aside the Queensland Employment Standards now, the second area that I wanted to address briefly was in relation to the Anti-Discrimination Act and the amendments that are proposed there. The society supports the transfer of work related discrimination claims to the Queensland Industrial Relations Commission. The transfer of this jurisdiction occurs as a result of amendments to the Anti-Discrimination Act and the introduction of this concept of a work related matter. Whilst work related matters is defined in the bill at clause 1006, the society considers that it would be useful to further clarify the types of applications that may fall within the definition of work related matter and that, therefore, may fall within the commission's jurisdiction. At present, a work related matter is defined as—

... a complaint or other matter relating to, or including, work or the work-related area.

The society considers that this concept of a work related matter should clearly capture any alleged contravention of the Anti-Discrimination Act that relates to the workplace. This should include contraventions not only occurring during employment but also during recruitment and in the prework area and contraventions relating to sexual harassment, which are found in a different part in the Anti-Discrimination Act and not in that main part that deals with workplace discrimination.

At the moment, it is unclear whether all of these contraventions would fall within the definition of a 'work related matter'. We suggest that clarity could be provided either through a more expansive definition of 'work related matter' or otherwise an explanatory note added at the appropriate point. They were the main points that we wanted to make and I hand back over to Bill, or to the committee for questions.

CHAIR: Ms Coles, do you wish to make an opening statement?

Ms Coles: Yes, I do. Thank you very much, committee. Thank you for providing us with the opportunity to appear at this hearing today. As you are aware, I am a senior lawyer in the civil justice services at Legal Aid Queensland and I predominantly practise in the area of anti-discrimination and

employment. Legal Aid Queensland receives funding from state and Commonwealth governments through funding agreements. Under the funding agreements, Legal Aid is required to use funding for legal services in priority areas set by the government.

The current Commonwealth civil law priorities include Commonwealth employment, equal opportunity and discrimination cases. The current Queensland civil law priorities include discrimination, but do not include state employment law.

Legal Aid has had a discrimination advice and representation program within its civil justice team for over a decade. Advice and representation is provided in relation to both state and federal antidiscrimination laws. In 2014, Legal Aid Queensland began offering advice in casework services in employment law after receiving funding from the Commonwealth government. Unfortunately, a substantial amount of the funding for that service was lost in mid-2014 and that service has been significantly reduced. We have maintained a small employment law program, which focuses on providing advice and representation to employees who are covered by the Fair Work Act in accordance with Legal Aid's funding guidelines. Across Queensland Legal Aid currently has only two full-time-equivalent positions providing advice, minor assistance and representation in Commonwealth employment and discrimination matters. This will soon increase to three full-time-equivalent positions across the state.

We also note that the bill may increase the demand for legal services from Legal Aid Queensland. The bill creates an exclusive jurisdiction in the Industrial Relations Commission for all workplace employment related discrimination matters and introduces the general protections provisions. Legal Aid Queensland is not currently funded to provide advice and representation for state employment law matters but, given the combination of these matters with anti-discrimination matters, it may be necessary and unavoidable for Legal Aid Queensland to give advice or representation on all issues—that is, both employment and discrimination matters.

As we have outlined in our written submission, Legal Aid Queensland supports the review of Queensland industrial relations law and we support the introduction of protections for state system employees which align with those afforded to national system employees under the Fair Work Act, particularly in relation to the general protections regime and the introduction of the antibullying jurisdiction in Queensland.

Legal Aid Queensland supports the introduction of a prohibition on an employer from taking adverse action against an employee or prospective employee because they are a victim of domestic violence. However, given that these protections will only apply to state system employees, Legal Aid submits that consideration should be given to introducing 'victim of domestic violence' as a protected attribute under the Anti-Discrimination Act. This would ensure that all Queenslanders are protected from discrimination on the basis of being a victim of domestic violence in all areas of public life covered by that legislation.

I note the comments in our written submissions regarding the introduction of provisions preventing multiple actions being made in relation to dismissals, similar to those provisions in sections 725 to 733 of the Fair Work Act. The Fair Work Act provisions prevent a worker from commencing multiple actions in relation to their dismissal. Those sections do not apply where the initial application has been withdrawn or failed for want of jurisdiction and in certain circumstances do not apply after an unsuccessful conciliation. These provisions ensure that a person does not miss out on a remedy because they were unable to make a valid application for another remedy or where they have realised another action may be more appropriate than that which they originally sought. What these provisions prevent is a person from maintaining two or more actions about the same circumstances which could potentially provide very similar remedies.

We have had the benefit of reading the submission of the Anti-Discrimination Commission Queensland to the committee in relation to this bill. Legal Aid Queensland agrees with the submissions of the ADCQ that employees should not be prevented from maintaining a workers compensation claim and discrimination complaint or bullying complaint, as these actions raise different legal issues and provide different remedies.

I also note our comments in our written submission regarding the transferring of jurisdiction for work related anti-discrimination complaints from the Queensland Civil and Administrative Tribunal to QIRC. Legal Aid considers that there are a number of issues that will present in splitting the anti-discrimination jurisdiction between QCAT and the QIRC. We also refer to the submission of the ADCQ in this regard and note that they have made comprehensive submissions regarding splitting the jurisdiction. Legal Aid Queensland supports the recommendations made by the ADCQ regarding the transfer of jurisdiction for work related discrimination matters from QCAT to the QIRC. Those are my opening comments. Thank you very much.

CHAIR: Ms Wilkinson, do you have any short comments?

Ms Wilkinson: No, I have nothing to add.

Mr STEVENS: I am the member for Mermaid Beach on the fabulous Gold Coast, where Mr Potts does his fine work in criminal activity—defending, of course. It is in relation to that criminal activity that I ask for your knowledge, if I may. We all know that domestic violence is a criminal activity and we all know that in certain circumstances for criminal activity there is a financial recompense for serious matters, mostly from the public purse. Can you advise the committee of any circumstance that you are aware of where an employer has to bear a financial burden for a criminal activity that he is not involved with in any way, shape or form?

Mr Potts: I believe that the magnificent member for Mermaid Beach may be referring to circumstances where leave is being granted. In essence, the question is, I suppose, more of a philosophical one: do we as a society see that when people are injured, in pain and loss or have difficulties, for example in housing their children, the cost should be borne by employers or whether that is something which is to be left to, I suspect, every woman for herself.

Mr STEVENS: Not quite, Mr Potts. My question was specific and direct—not a philosophical question and not seeking your opinion on the matter. It was basically: are you aware of any other circumstance where an employer is financially responsible—through the 10-day leave, as you mentioned, on domestic violence—for criminal activities that he has no involvement in or association with?

Mr Potts: The answer is yes—every time someone is injured or harmed, whether it is a domestic circumstance or not, for example in a motor vehicle accident. Employees have a right to seek sick leave. That is something which is borne as a cost by the employer through opportunity costs and obviously time away from the workplace. Often those recovery periods can be substantial.

Mr STEVENS: Again, Mr Potts, that is not a criminal activity—being sick, having an accident or something like that.

Mr Potts: No, but being flogged in your house—suffering a broken nose—

Mr STEVENS: That is a criminal activity, correct. I am asking: are there any other circumstances of criminal activity that you are aware of where the employer pays for it?

Mr Potts: Only in terms of sick leave, Mr Stevens. That is it.

CHAIR: Ms Ramsey, I refer to page 3 of the submission. I know that in your opening remarks you mentioned the need for some clarification of reasonable grounds for the QIRC to refuse a request to hear a dispute. Could you help the committee with what you mean by 'reasonable grounds'? Could you advise the committee what you believe would be reasonable grounds?

Ms Ramsey: Could I just clarify the question? Are we talking about the reasonable grounds for refusing a request for flexible working arrangements?

CHAIR: No, the request for the QIRC to hear a dispute. It is on page 3 of your submission.

Ms Ramsey: Thank you. Those submissions relate to an interesting circumstance at the federal level whereby the Fair Work Commission does not generally have the power to consider disputes between employees and employers as to whether a refusal was reasonable. We note that the bill creates a system whereby the Queensland Industrial Relations Commission will have the power to mediate and conciliate those disputes, which we commend and certainly support.

In terms of the factors that the commission would or should take into account when determining whether or not a refusal was reasonable, I would direct the committee back to the provisions in the Fair Work Act that do, in my opinion, set out a pretty good basis for a foundation of what may constitute reasonable grounds for refusing a request—issues such as cost, the impact on other employees, impact on productivity, efficiency, customer service.

Mr WEIR: My question is on the other reasonable grounds for flexible working hours. You talked about some scenarios being laid out. Would that not complicate it more, as you start to pigeonhole what are reasonable grounds for refusing flexible hours? I can foresee a real hornet's nest there.

Ms Ramsey: It could, if not done carefully. Again, I think the provisions in the Fair Work Act that deal with some circumstances as a non-exhaustive list—'Here are some examples of when there might be a reasonable basis for refusing a request'—provide a good starting point to give the parties guidance. I think simply leaving it to everyone to say, 'What do you think is reasonable?,' with no other guidance, is a worse position than giving some guidance. Again I would say that the committee's and the society's position is that the provisions in the Fair Work Act are fair and reasonable and are

a good starting point as to the types of things employers should be considering in circumstances where they are faced with a request. They must grant that request unless there is a reasonable basis for doing so, so I think we need to give them something so that they have an understanding of, if the matter does go to a formal hearing with the QIRC, how it is likely to go—for them or against them.

Mr PEGG: Mr Potts, I go back to the line of questioning from the member for Mermaid Beach. He was asking what kind of costs employers can bear for the criminal acts of another. Is it not the case that, for instance, many employers have a confidential counselling service and employers would bear the cost of criminal acts that way? In addition, would there not potentially be significant losses in the productivity of that individual employee that employers would also have to bear?

Mr Potts: There is. That is simply an economic question of lost time. Lost opportunity is always going to be a cost. You are talking about services that organisations offer. My own organisation, the Queensland Law Society, offers, for example, six hours of free psychiatric/psychological assistance to lawyers—people who are in distress. Perhaps you could take it up yourself! The reason for that is that we take the view that mental health—let us be frank: domestic violence causes not only physical harm but also significant family stress and significant mental distress. We take that view that within our own society, as a membership organisation, it is very important that we also offer that role. The difficulty is that it is a question of who pays, but it is also a question of what is the humane thing to do. Many employers—we are not all BHP—have a very close relationship with those they work with. Most employers, although it is a cost to them, tend to offer the hand of friendship and of understanding to people in distress. The question, I suspect, is where to draw the line and in what way the compensation can be paid. Money may help in finding a house for a person in distress, but time off, understanding and some counselling may go a long way to help.

Mr PEGG: I guess what I am asking is: from a productivity perspective even, would it not be better that someone who is suffering from domestic and family violence has the opportunity to take some time off rather than actually be in the workplace and potentially be a danger not only to themselves but also others?

Mr Potts: More importantly, to be there to support those others—it is invariably the kids who suffer, and extended family—and more often than not it is time they are taking to get their lives back together. As I understood the question of the member for Mermaid Beach, though, it was a question of who bears the cost. That is where the balance always has to lie. On the one hand, it would be a humane thing to do but, on the other hand, it may be something where the cost is so expensive—and defining what is domestic violence and what deserves time off may give a significant burden to industry which may in fact chill that type of industry. There is a balance to be struck, but I suspect it is something where many people will struggle to find exactly where the papers fall.

Mr WEIR: Domestic abuse does not always carry bruises and scars, so how do you define domestic violence, the magnitude of time off and so on? How does that work? What consultation was there in the presenting of this bill towards including that in this bill?

Mr Potts: I cannot answer the consultation question, but I can address the first part. You are quite right: it is more often the psychiatric and psychological issues—the family issues that flow from it—which cause the greatest difficulties. A definition of domestic violence is clearly contained within the domestic violence legislation itself. I have been a harsh critic of that, because I think the definition is extraordinarily wide and includes a subjective element. That is, if you believe you are a victim of domestic violence then that is a test which the courts can include. It can include verbal abuse, withdrawal of affection; it can include the great panoply of human interactions. The thing is, in translating that, that might be fine if you are getting a restraining order under the act, but in determining the cost to an employer and what time is to be taken off, it may be that the definition would have to be tightened up to have regard to significant psychiatric or psychological injury, physical injury—something which requires a significant period of time of recovery. Where the balance lies I suspect is something you will have to consider deeply.

CHAIR: That brings this part of the committee hearing to a conclusion. I thank you for your appearance and your input.

Committee adjourned at 12.16 pm