

Industrial Relations and Other Legislation Amendment Bill 2022

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Industrial Relations and Other Legislation Amendment Bill 2022 - Submissions by Together Queensland, Industrial Union of Employees.



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Introduction

1. Together is one of the largest public sector unions in Queensland, representing over 28, 000 workers from across the public sector in health, education, public services, as well as workers in the private sector. Together has consistently advocated for a fairer industrial relations system in the state, and our members have been at the forefront of improving the conditions of Queensland public sector workers and the services they deliver.
2. Together Queensland:
 - a. is an Industrial Organisation of Employees under the *Industrial Relations Act 2016* (Qld).
 - b. is a counterpart of the Australian Municipal, Administrative, Clerical and Services Union, Queensland Together Branch (Queensland Together Branch of the ASU). The ASU is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).
3. Together generally welcomes the proposed Bill, in particular the reforms that are most relevant to our members in the Public Sector that:
 - a. prevent and limit forms of harassment in the workplace,
 - b. improve achievement of gender pay equity through the collective agreements, and
 - c. introduce accessible consumer law protections to protect workers against misrepresentation and clarify the status of registered unions.
4. Further, Together Queensland is affiliated with the peak union body, the Queensland Council of Unions ('QCU'). Together has had the benefit of seeing a draft of the submission made by the QCU to the Committee, and supports that submission.
5. Together however is deeply concerned with the provision in the Bill that seeks improperly influence the Queensland Industrial Relations Commission in its performance of its obligation under s458 to make an annual general ruling about the minimum wage.

Positive Aspects

6. **Prevention and elimination of gender-based violence.** The addition to the objects of the Act of the requirement prevent and eliminate sexual harassment and sex or gender-based harassment is a welcome addition. The *Respect@Work: Sexual Harassment National Inquiry Report (2020)* by Kate Jenkins observed that the most recent Human Rights Commission Survey in 2018 showed that sexual harassment in Australian workplaces is widespread and pervasive; with one in three people experiencing sexual harassment at work in the past five years.

7. On that basis, the provisions in the Bill which clarify that sexual, sex or gender-based harassment are an industrial matter and can form the basis of a dispute before the Queensland Industrial Relations Commission are to be commended.

8. **Improving gender pay equity.** The Bill requirements for agreements to include specific information setting out how equal remuneration for work of equal or comparable value between men and women workers will be achieved in practice is supported. This includes the requirement to provide detailed information as part of good faith bargaining including, where requested:

- a. the distribution of employees by gender
- b. the details of the gender pay gap
- c. any major factors identified as contributing to the gender pay gap
- d. if appropriate, the projected effect of the proposed agreement on the gender pay gap, and
- e. any other information relevant to the gender pay gap reasonably requested by another bargaining party

9. **Clarifying the role and responsibilities of Industrial Organisations and preventing misrepresentation.** Under the Industrial relations Act 2016, and its predecessors, Industrial Organisations have had to comply with clear requirements that ensure they are properly elected, democratically run and regulated and audited. Unions are proud of the fact that they are member run and strive every day to improve members' lives. The current loop-holes which allow entities to purport

to be able to act as unions, without those checks and balance, put employees' rights and entitlements at risk and ultimately serve the interests of employers by dividing workforces.

Issue of Concern

10. **'Guidance' to the Queensland Industrial Relations Commission.** One aspect of the Bill

Together is strongly opposed to is the inclusion of a new section, s459A. This provides that should an increase to Award rates through the State Wage Case result in the Award rates equaling or exceeding the wages payable to employees under a certified agreement or arbitration, or a ruling under the *Public Service Act 2008*, the ruling may provide that the increase does not apply to the wages payable to the employees, or the class of employees, under the award.

11. The Explanatory Notes provide the following:

Clause 43 inserts a new section 459A (Provision about general ruling for State wage case) to provide the Commission with express discretion when considering whether to apply a State Wage Case general ruling to awards. A unique feature of the Queensland industrial relations jurisdiction is that awards, including increases to rates of pay, can be amended by a variety of means, including through rolling up of provisions from expired agreements. Section 145 provides for the flow-on of clauses (including clauses regarding rates of pay) in a certified agreement or determination into a parent award on application to the Commission.

The State Wage Case also facilitates increases in awards when the Commission determines to flow on the outcome. Since 2011 the full bench of the QIRC has mirrored the outcome of the Fair Work Commission's Expert Panel in its decision in the Annual Wage Review and all awards, regardless of whether they have received rate increases through other means have been increased. As of result of SWC outcomes being flowed on to all awards and the unique features under the IR Act, from time to time some award rates have exceeded the relevant agreement or determination rates for employees, most specifically in relation to public sector awards. Clause 43 provides the QIRC with discretion to limit the application of a State Wage Case increase so that it does not apply to an award or awards that would result in the increase exceeding award rates above the agreement or determination. This amendment is consistent with of the main purposes of the Act in relation to the primacy of collective bargaining as the means for determining wages and conditions for employees.

12. This provision seeks to solve a problem that does not exist, is based on a flawed understanding of the status of rates of pay contained in Modern Awards and is designed to improperly influence the

independence of the Queensland Industrial Relations Commission (QIRC) in order to enable the Government, as employer, to suppress public sector wage growth.

13. **A solution without a problem.** The proposed section is unnecessary; stemming from a finding in the *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report* (“the Five-year review”) which is simply wrong.

14. Recommendation 25 of The Five-year review states at page 45, in discussing circumstances in which minimum award rates may exceed the minimum pay rates included in a certified agreement, that, *“The QIRC does not have the discretion to take account of this phenomenon when determining SWC outcomes.”* This statement is fundamentally incorrect.

15. The QIRC already has the power to exclude any award from a General Ruling under s.459(2), which provides as follows:

- (2) A ruling may exclude from the operation of any of its provisions—
 - (a) a class of employers or employees; or
 - (b) employers or employees in a particular locality; or
 - (c) an industrial instrument or part of an industrial instrument.

16. The State of Queensland has, in fact, sought to rely on that power to seek to have the State Wage Case general ruling not be applied to particular Public Sector Awards in the 2019¹ and 2021² State Wage Cases and those submissions have been rejected by the Full Bench on both occasions.

17. In 2019, the Full Bench of the QIRC considered all the issues canvassed by the 5 year review in detail and found:

“[63] The State's position seems to be premised on the notion that a general ruling in a State Wage Case affecting the QMW and minimum wage rates in awards is an appropriate vehicle to treat a class of award differently to other awards by denying them the benefit of the general ruling. It appears incongruous with the State's submissions before the 2018 State Wage Case that all existing awards in the State provided for fair and just employment conditions to now,

¹ Declaration of General Ruling (State Wage Case 2019) [2019] QIRC 169

² Declaration of General Ruling (State Wage Case 2021) [2021] QIRC 293

one year later, seek to treat a class of such an award differently. As will be explored below, the reasons presented by the State do not provide a compelling reason to adopt such an approach.”

and

“[72] Further, there is no evidence to suggest that there is presently a disincentive to collectively bargain.

[73] The State further invites the Full Bench to infer that the impact on bargaining will be further exacerbated if award rates of pay continue to overtake certified agreement rates of pay. As noted above, the State has included indicative modelling which depicts the purported increase in labour costs brought about by an increase of 3%. Further modelling is included with respect to possible further increases made in future State Wage Cases. Other than identifying that labour costs will increase, the State does not call any additional evidence with respect to the proposed impact of the increase in such costs. As noted above, the State does not raise any capacity to pay arguments.

[74] Given that there is presently no evidence to support the State's position about the present impact on bargaining let alone how it will be further exacerbated in the future if award rates of pay continue to overtake certified agreements rates of pay, we decline to draw such an inference.”

18. Having failed to convince the Full Bench of QIRC of the validity of the same considerations raised in the 5 Year Review, the Government now proposes to amend the legislation to provide the QIRC a power it already has.

19. The provision, and the explanatory notes, represent a fundamental undermining of the concept of Award Wages providing fair and just minimum regularly maintained through the mechanism of the annual State Wage Case.

20. **Status of Award Rates of Pay.** The rates in all Modern Awards were originally set by the Commission with due regard to the Consolidated Request made by the Minister for Employment and Industrial Relations, Minister Grace, on 6 June 2016 (See Appendix 1). Relevantly, that request contained the following:

“Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards. Having regard to this, the Commission shall ensure wages and employment conditions continue to provide fair conditions in relation to the living standards prevailing in the community and what is afforded to employees and employers in the relevant pre-modernisation award/s.”

21. This was confirmed by the State Submissions to Queensland Industrial Relations Commission during the 2018 State Wage Case in the following terms:

“...the main purpose of the Act provides for cooperative industrial relations which are "fair and balanced" and which support the delivery of high quality services, economic prosperity and social justice for Queenslanders. The main purpose of the Act is achieved, inter alia, by:

- (a) fair and equitable framework of employment standards, awards, determinations, orders and agreement (s3(a));*
- providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland employment standards, of which the QMW was part (s4(d)); and*
- ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community (s4(f)).”³*

22. Further, the State submitted that the Act requires the Commission to:

“ensure modern awards for "fair and just" wages and employment conditions that are at least as favourable as the Queensland Employment Standards, which includes the QMW (s 141(1)(a));

- ensure that a modern award generally reflects the prevailing employment conditions of employees covered by the award (s 141(1)(b));*
- establish and maintain minimum wages that are fair and just, having regard to those matters mentioned in s 141(2)(a) to (d) and (f); and*

³ Declaration of General Ruling (State Wage Case 2018) [2018] QIRC 113, [14] and [15].

- *ensure a modern award provides fair standards for employees in the context of living standards generally prevailing in the community (s 143(1)(i)).*

and

“... Queensland's existing awards, and the conditions contained within them, were made in conformity with the obligations imposed upon the Commission under s 125 of the 1999 Act (pre-2013 amendments) and were, through the award modernisation process, modernised to continue to provide fair and just employment conditions.”⁴

23. Wages rates are set in Awards by a variety of paths, whether that be the inclusion of a wage structure as part of a new Award⁵, adopting new rates as part of an equal remuneration order⁶ or incorporating certified agreement rates. Once the Commission has decided that the rates are appropriate, taking into account those matters it is required to do so by law, those rates assume the equal status as *‘secure, relevant and consistent wages and employment conditions’*.

24. The proposed section appears to wish to treat the rates of pay in one class of award differently to others, based on a rationale that has already been rejected by the Full Bench of the QIRC.⁷

25. **Improper influence.** The ‘elephant in the room’ is the motivation for the proposed amendment. While it is the case that in 2011 a number of Awards had their rates of pay updated to incorporate expired agreement rates, at the time the average gap between Award rates and *State Government Departments Certified Agreement 2009*, the agreement covering most Government Departments, was over 6%. Successive Government wages policies since that time have suppressed wages below the Wage Prices Index and the benchmark for fair wages that is CPI plus Labour Productivity. As a result, that gap narrowed to the extent that Award wages overtook a number of Certified Agreement rates in 2017.

26. The overtaking of Award wages has not resulted from the incorporation of agreement rates over a decade ago, nor is it a product of the annual Award increases that, by their very nature, have

⁴ 9 Declaration of General Ruling (State Wage Case 2018) [2018] QIRC 113, [16].

⁵ Eg. Health Practitioners and Dental Officers (Queensland Health) Award - State 2014 (discussed later)

⁶ E.g. Child Care Industry Award - State 2003 (Matters B/2003/2133)

⁷ [2019] QIRC 169 at [63]

been found by the presiding Full Benches of the QIRC to be fair and just. It is result of Government wage caps suppressing wages.

27. It should be noted that the statement that Government wage caps are suppressing wages is supported by no lesser authority than the Governor of the Reserve Bank, Philip Lowe who, in evidence before the House of Representatives Economics Committee on August 9, 2019, made mention of the fact that he “would like to see stronger wage growth in the country” and drew attention to the way in which the public sector “wage caps are cementing low wage norms across the country.

28. Dr Lowe told the Committee that:

“...the wage caps in the public sector are cementing low wage growth across the country because the norm is now two to 2½ per cent, and partly that’s coming from decisions that are taken by the state governments.”

He also told the Committee that:

“In the medium term, I think wages should be increasing at three point something. The reason I say that is that we are trying to deliver an average rate of inflation of 2½ per cent. I’m hoping labour productivity growth is at least one percent – and I’m hoping we can do better than that – but 2½ plus one equals 3½. I think that’s a reasonable medium-term aspiration; I think we can do better, but I think we should be able to do that. So I would like to see the system return to wage growth starting with three. We have seen that with the minimum wage increase in the last three years. I think we had 3.3, 3.5 and three. They seem reasonable outcomes. Over time, I hope the whole system, including the public sector, could see wages rising at three point something.

We are in a situation now where wage norms have drifted down to two to 2½ per cent. At the Reserve Bank we talk a lot about inflation expectations lowering as a result of low inflation. But what is really important is the wage norms in the country. Most people are accepting wage increases of two to 2½ per cent. And the public sector wage norm I think is to some degree influencing private sector outcomes as well—because, after all, a third of the workforce work directly or indirectly for the public sector.”

29. It is notable that Dr Lowe talks about the minimum wage increases of 3.3%, 3.5% and 3% being reasonable, because these are the very wage increases that were applied in the State Wage Cases of 2017, 2018 and 2019 that the section in question is designed to stop being applied in the future.

30. It also should be noted that most public sector certified agreements include provisions which ensure that certified agreement rates do not fall below the award rates. In the absence of such certified agreement provisions, or a state government directive, awards rate would not apply during the term of a certified agreement as they are only considered at certification of agreements for the purpose of the “no-disadvantage test”. This is because the Queensland *Industrial Relations Act 2016* already does not mirror section 206 of the FW Act, which provides that base rates of pay under an enterprise agreement must not be less than the modern award rate or the national minimum wage order rate.

31. If a party is concerned about the potential for published wage rates included in certified agreement documents falling below minimum award rates, then the best opportunity to address the concern is during certified agreement negotiations.

32. Instead, the government is seeking to include a provision designed to influence the independent umpire to prevent Award rates overtaking Agreement rates by suppressing Award increases. This is an unreasonably impingement on the independence of the QIRC and should not be countenanced or supported by the Parliament.

Authorised by Alex Scott, Branch Secretary