

Industrial Relations and Other Legislation Amendment Bill 2022

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Submission to Education, Employment and Training Committee

Industrial Relations and other legislation Amendment Bill 2022

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Contents

Introduction	3
Recommendations	4
Preventing and eliminating sexual and sex-based harassment.....	5
	
Minimum employment standards	6
Queensland Minimum Wage	8
Bargaining and Equal Remuneration	8
Redundant and Superfluous provisions.....	8
References	10

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Education, Employment and Training Committee (the Committee) for the opportunity to comment on the *Industrial Relations and Other Legislation Amendment Bill 2022* ('the IR bill').

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN) and students who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 65,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is also the peak professional body for nurses and midwives in Queensland.

At a time of great professional stress to our members, we thank the reviewers of the *Industrial Relations Act 2016* (IR Act), consulting academics and the Office of Industrial Relations (OIR) for their consideration of the working lives of Queensland's nurses, midwives and other health workers who have kept the community safe during the COVID-19 pandemic.

We believe the bill addresses the majority of matters we raised in our initial submissions to the review. Therefore, this submission will only focus on those outstanding matters where we ask the Committee to give further consideration.

In this submission we have marked up our proposed changes to the relevant clauses in the bill.

Recommendations

The QNMU recommends:

- Amending clause 31(3) to codify that annual leave is exclusive of public holidays;
- Amending clause 63 to provide that paid parental leave is exclusive of public holidays;
- Amending s 63(4) as the evidentiary requirement might unnecessarily broaden the scope. Evidence should include that from a medical professional and a registered midwife only;
- Amending s 40(2) of the IR Act to allow for accrual of annual and sick leave whilst an employee is on worker's compensation;
- Reviewing proposed amendments to s 459A regarding the state wage case.

Preventing and eliminating sexual and sex-based harassment

The QNMU welcomes the proposed amendments to strengthen protections for workers against sexual and sex or gender-based harassment. More specifically, the QNMU supports defining sexual and sex-based harassment as industrial matters to enable the Queensland Industrial Relations Commission (QIRC) to exercise the full scope of its powers, including the capacity to issue injunctions as well as a range of conciliation and arbitration powers. The reforms will also allow the QIRC to protect workers from being dismissed or threatened with harm if they make a work-related complaint about harassment or discrimination.

The QNMU commends the IR bill for taking a national lead on the prevention and elimination of sexual and sex-based harassment in the Queensland jurisdiction. We view these provisions as a positive step towards implementing all the Respect@Work Report recommendations (Australian Human Rights Commission, 2020).

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Minimum employment standards

Annual leave

The QNMU has long advocated for the IR Act to be amended to remove the exemption s31(3) that states that annual leave is inclusive of public holidays. Queensland is the only jurisdiction in Australia in which there is an exemption to annual leave being exclusive of public holidays. This places employees in a position where they are worse off working in Queensland than any other jurisdiction and imposes a significant disadvantage on many of our members working in public hospitals.

The QNMU recommends:

- Amending clause 31 of the IR Act (amendments in **bold**)

Section 31 Entitlement

*(3) However, if an employee is entitled to additional annual leave as compensation for working on a particular public holiday, annual leave is **inclusive** ~~exclusive~~ of the particular public holiday.*

Parental Leave

Currently, parental leave is not exclusive of public holidays under the IR Act. This may be because the Act only provides for unpaid parental leave. All Queensland public sector employees have an entitlement to paid parental leave and they make up the great majority of employees covered by the Act. We note clause 63 of the bill inserts transitional provisions declaring sick leave is exclusive of public holidays. We therefore recommend an additional declaration be included to cover paid parental leave.

¹ See *Gilbert v Metro North Hospital Health Service & Ors* [2021] QIRC 255, 86-7 [409]-[417] – subject to appeal.

The QNMU recommends:

- amending clause 63 (additions in bold)

Section 63 insert –

To remove any doubt, it is declared that where employees are in receipt of paid parental leave, this leave is and always has been, exclusive of a public holiday that falls during the leave.

Although the QNMU commends the intended inclusion of midwives in section 63 of the bill to enable midwives to provide a certificate as evidence of pregnancy, we raise concerns that the use of the term ‘health practitioner’ provides a broader scope than is necessary. Under section 5 (Definitions) of the *Health Practitioner Regulation National Law (Queensland)* a health practitioner is defined as a person registered to practice a health profession. This includes chiropractors, dentists, medical radiation practitioners, optometrists, and other listed professions. The QNMU considers that such a broad scope may give rise to unintended consequences.

We recommend the following amendments to ensure the intent of the changes are achieved.

The QNMU recommends:

- Amending section 63 (amendments in bold)

Section 63—

(4) Without limiting subsection (3)(a), the employer may require the evidence to be a medical or midwife ~~health practitioner’s~~ certificate confirming the matters mentioned in that subsection.

Accrual of annual and sick leave while on workers’ compensation

Two recent cases heard in the QIRC - *Leonard v State of Queensland (Queensland Health) & Anor* and *Rankin v State of Queensland (Queensland Health)*² - provide the impetus to update the IR Act to reflect these decisions.

These decisions entitle employees to accrue annual and sick leave while on workers’ compensation for the whole period of compensation as opposed to the first three months of compensation prior to 13 September 2019, the date on which the *Public Service Directive 01/19*³ declared -

Public service officers employed under section 8 of the Public Service Act 2008 and employees engaged under sections 147(2)(a) and 148(2)(a) of this Act (except casuals) are to have leave without salary credited as service for leave and salary purposes as provided in the schedule set out in the Directive.

² See *Leonard v State of Queensland (Queensland Health) & Anor* [2020] QIRC 207; *Rankin v State of Queensland (Queensland Health)* [2021] QIRC 048

³ See Office of Industrial Relations, Public Sector Industrial Relations (2019) *Minister for Industrial Relations Directive: Leave without Salary Credited as Service*, Directive 01/19.

To reflect these decisions, we seek codification of provisions around paid sick leave on workers' compensation in the IR Act.

The QNMU recommends:

- amending section 40(2) (additions in bold)

Insert new subsection –

(2) An employee's entitlement to paid sick leave accumulates –

- (a) Progressively during a year of employment according to the employee's ordinary hours of work; and*
- (b) **For the whole period of time an employee is on workers' compensation***
- (c) From year to year*

Queensland Minimum Wage

The QNMU disagrees with the amendments to s 459A. We express general support for the position of the Queensland Council of Unions submission.

Bargaining and Equal Remuneration

The QNMU is of the view that while equal remuneration can be monitored in award reviews, a more proactive approach is required to ensure parties address the need to achieve equal remuneration in the course of bargaining.

The QNMU supports the amendments as necessary to provide express requirements for parties to address equal remuneration for men and women in bargaining and to consider the gender pay gap at an agreement level. We specifically welcome the amendments to s201 to require the inclusion of specific information in agreements, setting out how equal remuneration for work of equal or comparable value between men and women workers will be achieved in practice. This places a stronger obligation than previously required for employers to provide this information in the wording of an agreement, meaning the processes which are outlined in the agreement can be enforced during its operation.

Redundant and Superfluous provisions

The QNMU welcomes the repeal of ss 947-953 of the IR bill. These provisions originated from the Liberal National Party (LNP) government's first set of amendments to the 1999 IR Act in 2012 and relate to problems generated by the introduction of a flawed payroll system in Queensland Health in 2010 by the previous Labor government.

Since these provisions were first introduced, the QNMU has argued consistently and emphatically for their removal. In effect, these provisions punished health workers twice for a monumental system

failure that was not of their making. The QNMU has continued to assist hundreds of members with historical overpayments. This practice and the process of recovering overpayments have placed needless trauma and excessive hardship on already vulnerable members who have served their state and the community through their work as nurses and midwives.

As such, we commend the insertion of s1101 - Health employment overpayments and health employment transition loans (chapter 18, pt 6). The provisions will prevent Queensland Health from seeking recovery of overpayments and transition loans that have occurred prior to the 14th of August 2012. This is a significant and long-awaited resolution for our members.

References

Australian Human Rights Commission. (2020). Respect@Work: Sexual Harassment National Inquiry Report (2020). Retrieved from: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>