## Industrial Relations and Other Legislation Amendment Bill 2022

**Submission No:** 32

**Submitted by:** Queensland Police Union of Employees

**Publication:**

**Attachments:**

**Submitter Comments:**

**Submitter Recommendations:**

# Queensland Police Union of Employees

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20 July 2022

Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
Brisbane QLD 4000
By email: eetc@parliament.qld.gov.au

Dear Committee Secretary,

**Re: *Industrial Relations and Other Legislation Amendment Bill 2022***

Thank you for consulting with the Queensland Police Union ("QPU") in relation to the above Bill. As you would be aware the QPU represents over 12,500 police officers, watchhouse officers, liaison officers and band members throughout Queensland.

The proposed amendments assure a future for the orderly relations between workers and their employers. It is designed to protect the fundamental interest of workers by removing predatory risk and maintaining a system of registration that promotes democracy and regulatory oversight.

While some difference of opinion arises[1] in relation to substance of some proposals, generally the QPU supports the proposals.

**Sexual, Sex and Gender Based Harassment**

The QPU is supportive of the amendment to the definition of 'industrial matter' to include sexual harassment and sex- or gender-based harassment. Workplaces need to be free from sexual harassment and giving the Commission powers to address sexual, sex- or gender-based harassment expands the scope of legal protections all workers should enjoy.

These new laws will build on the current provisions in Queensland modern awards that require any grievance made about sexual harassment to be elevated directly to the chief executive of an organisation or their delegate, and for referral to the Queensland Industrial Relations Commission for resolution if the matter is not resolved within 14 days.

Accountability matters and the employees need to see serious matters being given serious consideration by chief executives of organisations. The changes to the Bill proposed will provide protections and deterrents against harassment.

**Gender Equity and Modern Leave Arrangements**

The QPU supports the changes to leave standards, particularly the standards relating to parental leave. Our members are parents and granting greater access to paternity leave

[1] For example, whether the trigger for registration is achieving 100 members or 50 members as the QPU propose, which are matters going to the freedom of association and in relation to which the union acknowledges that there is no precise answer as to what the relevant number should be.

through this reform is a welcome step. Police are mothers and fathers and removing parts of the legislation that imply gendered divisions in parental care is a vital step.

The gender breakdown in the Police Service swings towards men and these law reforms empower fathers to access leave to be a part of their child's life. The QPU is aware of claims of "woke laws" being used to describe these provisions. Our union supports these law reforms because the change from overtly gendered language removes barriers that prevent fathers from accessing parental leave.

The joy of fatherhood and motherhood is something that our members and all workers in Queensland should be entitled too. We have a system of leave in place to facilitate the bonding that is necessary for the healthy development of children and the creation of healthy families. The QPU supports the proposed changes in so far that they help facilitate this process, sometimes we need to look at the outcomes we are seeking as the vehicle for particular language choices. The current wording in the act enforced a culture that saw leave at the birth of a child as something that was more the responsibility of mothers, this is not the case in the workforce and these changes empower the situation people want to see.

The QPU fundamentally believes that it is a normal part of parenthood for both mothers and fathers to share parental care roles. We support the flexible unpaid parental leave provisions in an unbroken or broken period to allow both parents the opportunity to care for and bond with their child.

Parenthood is a significant moment in a person's life and the provisions in the legislation give parents greater flexibility and access to leave that suits their needs and their plan to care for their child and return to work.

It is disappointing to see an attack on Clause 10 of the bill, the change proposed recognizes that these days, men and women equally participate in the birth of child as parents. The change to section 59(3)(a) proposed gives parents the opportunity to share in the first steps of their child's life together.

Clauses 6 and 7

The QPU is supportive of the changes proposed to section 41 and 45 of the *IR Act* changing the requirements around evidence for sick leave will make the system fairer and easier on working people. The treatment options available to people now have changed and evidence from other health professionals who provide treatment to workers should be sufficient.

**Registered Organisations**

The QPU has existed to advance the needs of its members and serve their interests industrially for over one hundred years. Over this time, the QPU and its members have fought to build the successful industrial relations system that now exists and which services the needs of Queensland's police.

Two of the purposes of the *IR Act* are to encourage:

- fairness and representation at work, and the prevention of discrimination, by recognising the right to freedom of association, the right to organise, and the right to be represented, and

- the representation of employees and employers by organisations that are registered under the *Act*.[2]

In recognising a key purpose as encouraging the representation of employees by registered organisations, the *IR Act* confers certain rights and protections. It also, however, requires those organisations to be accountable. That accountability can only be achieved through registration and compliance.

While the *IR Act* extends some of those rights i.e., general protections, to an 'industrial association', it does so only where that body has been established with a view to seeking registration, subject to the registration requirements in the *Act*, including assuring effective representation and convenience in belonging. An industrial association cannot be, and should not be, an association incorporated under the *Associated Incorporations Act 1981* (Qld) (the *AI Act*), nor a corporation incorporated under the *Corporations Act 2001, C'w*.

In recent years there have been a number of instances where 'groups' not registered under the *IR Act* have sought to have the same rights and privileges as a registered union, albeit without the responsibilities and accountabilities that registration brings. Most recently, this has occurred where a group (NAPQ registered as an Incorporated Association) with no intention or ability to seek registration, sought to use the general protection provisions of the *IR Act* to represent themselves as a purported trade union.

In *Gilbert v Metro North Hospital Health Service & Ors*, a recent decision of the QIRC[3], the Commission determined the NAPQ was neither an industrial association nor a trade union within the meaning of the *IR Act.* Nonetheless, the position of the QPU is that it is desirable in the interests of certainty to provide for further clarity in the *IR Act* to ensure that groups such as NAPQ are not able to, or attempt to, masquerade as a trade union or as an industrial association under the:

- *IR Act*
- *Human Rights Act 2019* (the *HR Act*), or
- *Anti Discrimination Act 1991* (the *AD Act*).

Amendments are therefore, in the view of the QPU, desirable to ensure that:

- a 'trade union' is defined as an organisation registered under the *FW Act* or the *IR Act* in both the *HR Act* and the *AD Act*, and
- an industrial association under the *IR Act* cannot include an association incorporated under the *AI Act,* and only applies to a body able to be, and seeking to be, registered under the *IR Act*, subject to the registration requirements under the Act.

<u>Changes to the definition of what is a Industrial Organisation</u>

Freedom of association is a human right under the *HR Act* which includes the right of individuals in Queensland to form and join trade unions.[4] Freedom of association is also a general protection under the *IR Act*.[5] However, the human right of freedom of association may also be reasonably limited in law having regard to several factors, including the purpose of the legislation.

[2] *Industrial Relations Act* ss 4 (m), (n).
[3] *Gilbert v Metro North Hospital Health Service & Ors* [2021] QIRC 255, 86-7 [409]-[417].
[4] *Human Rights Act* s 22(2).
[5] *IR Act* Chapter 8.

Section 13 of the *HR Act* provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality, and freedom. The factors which guide what is a justifiable, reasonable limitation on a human right are set out in Section 13(2) of the *HR Act* and were intended to align with the *proportionality principle* applied by the courts.[6]

This proportionality principle has been approved by the High Court and considers three issues:[7]

1. Is the limitation suitable – does it have a rational connection to the purpose of the statutory provision?
2. Is it necessary – is there no obvious and compelling alternative, reasonably practicable means of achieving the same purpose which has a less restrictive effect on the freedom?
3. Is it adequate in its balance – between the importance of the purpose serviced by the restrictive measure and the extent of the restriction it imposes on the freedom?

Therefore, in considering how the human right of freedom of association may be justifiably restricted in so far as they protect freedom of association requires consideration of the *IR Act* and inter alia the system of registration of industrial organisations, which must be viewed in the context of what the *IR Act* is seeking to achieve:

- promoting collective bargaining and the primacy of collective over individual agreements[8]
- encouraging fairness and representation at work, and the prevention of discrimination, by recognising the right to freedom of association, the right to organise, and the right to be represented[9]
- encouraging representation of employees and employers by organisations that are registered under the Act,[10] and
- assisting in giving effect to Australia's international obligations on labour standards such as the:
    - Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87, and
    - the Right to Organise and Collective Bargaining Convention, 1949, No. 98.[11]

The framework of the *IR Act* is intrinsically linked to collective rights to organise and be represented by employee organisations registered under the *IR Act*.

In applying the second step of the proportionality principle, it is necessary to consider whether there is no other obvious, compelling, reasonably practicable means of achieving the same purpose. Arguments to remove the restriction on representation of employees by registered organisations under the *Act* would create a chaotic system when it came to the making of modern awards and bargaining instruments, which are the current method of regulating employment, and where both employers and employees have expectations that their rights and conditions are stable and settled.

It is also a matter of recent history that the number of employee organisations representing workers was reduced, in so far as status was granted to organisations having principal status on worksites. This occurred to ensure a more streamlined approach to bargaining

[6] Explanatory Notes, Human Rights Bill 2018 (Qld), 16-17.
[7] *McCloy v NSW* (2015) 257 CLR 178.
[8] *IR Act* s 4(h).
[9] Ibid s 4(i).
[10] Ibid s 4(n).
[11] Ibid s 4*r).

occurred and is consistent with the way in which agreements are balloted. To permit rights to groups other than bona fide groups seeking registration will inevitably return disruption to bargaining processes.

It should also be noted that the importance of restricting representation and freedom of association rights and protections to registered organisations means that there is an orderly system of coverage of employees anchored in the proposition of effective representation and convenience in belonging, as historically provided by the *IR Act*, and that only registered organisations have standing before the QIRC and Industrial Court on behalf of their members. The system of registration also means that registered organisations are made accountable under the provisions of the *IR Act*. For example, the fair and transparent election and governance processes, and an objective including that the organisations are free from influence and control by employers.[12]

The *IR Act* also restricts the ability of a body seeking registration as an employee organisation by excluding a corporation which for the purposes of the *IR Act* includes, among other matters, a corporation under the *Corporations Act 2001* (Cth) and an incorporated association under the *AI Act* (Qld).[13]

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

Clause 36

The changes to misrepresentation will limit the ability for charlatans to purport to represent the industrial interests of a person or a particular group of persons. Police, like other workers, are hard working and often time poor they need to be able to rely that the people representing their industrial interests are capable of doing so.

Clause 36 of the bill provides the certainty that people who falsely claim that they are able to represent working people will be found to have breached the act if they are not able to do so.

Working people deserve protections from organisations, individuals and agendas that attempt to subvert industrial processes for their own profit. The industrial relations system has developed over generations of employees and has structures in place to allow the emergence of new industrial associations.

We have seen in Queensland organisations emerge to play in the industrial space who do not seek to form legitimate associations but simply want to grandstand, acquire membership dues and run their own agendas. The structure of the system requires this law reform and we support the changes to section 293A of the IR Act.

Clauses 46 to 57

The QPU draws the committee's attention to two issues of technical concern:

First, there is tension in the language used in proposed sections 483A and section 608: Proposed sections 483A and 608 relevantly provides:

[12] Ibid Chapter 12.
[13] Ibid ss 596, 602(1)).

***s 483A***

*(1) For this subdivision, an entity is eligible for registration under chapter 12 as an employee organisation if the entity—*

*…*

*(e) has applied for registration as an employee organisation under chapter 12 if the entity has—*

*(i) had at least 20 members who are employees for a continuous period of at least 12 months; or*

*(ii) had at least 100 members who are employees for a continuous period of at least 4 weeks; and*

***s 608***

*(1) If the application is for registration as an employee organisation, the commission must also be satisfied of the following—*

***…***

*(ca) the application was made—*

*(i) within 12 months after the applicant gained its 20th member who is an employee; or*

*(ii) within 4 weeks after the applicant gained its 100th member who is an employee;*

(emphasis added)

The QPU considers that the sensible approach is to adopt the language of proposed section 608 as that proposition is much simpler to action from the perspective of the entity that is to seek registration.

Second, in submissions on the exposure draft, the QPU raised concerns in relation to it being desirable for an organisation, in accessing proposed section 293A, misrepresentation (in relation to the right of representation), to not only have an avenue of address against the entity (that is misrepresenting) but those who promote it by means of a corporate entity.

The proposal was to empower the Commission, in determining an application under section 474 for injunctive relief in respect of a breach of section 293A, to also make orders under proposed section 483D.

The QPU accepts that if an order is made under section 474 then the power of the Chief Executive (incorporated associations) to deregister becomes live. That proposition only goes however to the entity and not to the protagonists utilising the entity.

The QPU also accepts that such conduct may give rise to action under the proposed section 483A – F (proposed Subdivision 10A) regime, however it would be more practical, efficient and effective in relation to the use of resources of the Commission if the Act clearly gave the Commission the necessary powers for both aspects. The power would of course be discretionary in so far as Commission's exercises of it is concerned.

Adopting this proposition will avoid lengthy technical argument in relation to whether the ancillary orders, expressly appearing in one part of the Act and not the other, can lawfully be otherwise applied.

The proposition will be straightforward in its enactment of the proviso to section 474 e.g. '*…provided that when an application under this section is made in relation to section 293A the Commission is also entitled to grant the ancillary orders provided by section 483D '*.

The QPU broadly supports the Bill, the need to extend the power of industrial matters to include sexual, sex- and gender-based harassment is important to a safe and secure industrial relations system.

We are supportive of the need for leave entitlements to use language that greatly empowers the access of fathers to parental leave that is fit for purpose. We need to recognise that male dominated industries have been denied the joy of the early stages of a child's life and this law reform provides fathers this option.

The need to crack down on associations who purport to undertake industrial matters in the interests of workers is paramount. We cannot allow for loop holes inside the system to let organisations not held to the same high standards as unions to operate and profit of working people.

I am available on 3259 1900 should you wish to discuss this matter further.

Yours faithfully.

**IAN LEAVERS APM**
**GENERAL PRESIDENT & CEO**