



# ***FINANCE AND ADMINISTRATION COMMITTEE***

**Members present:**

Mr MJ Crandon MP (Chair)  
Mr R Gulley MP  
Mrs FK Ostapovitch MP  
Mr MA Stewart MP  
Mrs D Scott MP (substitute member)

**Staff present:**

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

## **PUBLIC BRIEFING—INQUIRY INTO THE PUBLIC SERVICE AND OTHER LEGISLATION AMENDMENT BILL 2012**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 8 AUGUST 2012**

**Brisbane**

## WEDNESDAY, 8 AUGUST 2012

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Committee met at 12.03 pm

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

**COOPER, Ms Sonia, Acting Senior Executive Director, Workplace Strategy and Performance, Public Service Commission**

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

**POINER, Ms Kim, Principal Adviser, Public Service Commission**

**ROONEY, Ms Tricia, Manager, Strategic Planning and Coordination Group, Health and Safety Delivery Directorate, Department of Justice and Attorney-General**

**CHAIR:** Good afternoon, ladies and gentlemen. I declare this public departmental briefing of the Finance and Administration Committee's inquiry into the Public Service and Other Legislation Amendment Bill 2012 open. I am Michael Crandon, the chair of the committee and the member for Coomera. The other members of the committee are: Mr Reg Gulley MP, member for Murrumba; Mrs Freya Ostapovitch, member for Stretton; and Mr Mark Stewart MP, member for Sunnybank. Mrs Desley Scott MP, member for Woodridge, is a substitute member here today. The members of the committee who are unavailable to attend the briefing today are: Mr Curtis Pitt MP, deputy chair and member for Mulgrave; Mr Ian Kaye MP, member for Greenslopes; Mr Tim Mulherin MP, member for Mackay; and Mr Ted Sorensen MP, member for Hervey Bay.

The purpose of this hearing is to receive information from the department about the bill, which was referred to the committee on 31 July 2012. The objective of the bill is to transfer the administrative arrangements for Public Service appeals under the Public Service Act 2008 to the Queensland Industrial Relations Commission, the QIRC, so it can have responsibility for the administrative aspects attached to its members carrying out the Public Service appeals function; amend the Public Sector Ethics Act 1994 to replace annual ethics training with an emphasis on employees having education and training in ethical standards at induction and regularly throughout the employment; transfer the public interest disclosure oversight agency function from the Public Service Commission to the Queensland Ombudsman; and, finally, transfer the administrative functions from the president to the vice president of the QIRC and expand the ability for parties to access legal representation in matters before the QIRC.

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 you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. The committee appreciates your assistance at such short notice. You have previously been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with a transcript.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. I remind committee members that officers are here to provide factual or technical information. They are not here to give opinions about the merits or otherwise of the policy behind the bills or alternative approaches. Any questions about the government or opposition policy that the bill seeks to implement should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. I also require that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room.

First of all, I invite you to make an opening statement. Would anyone like to make an opening statement? There being no opening statements, we will kick across to Reg Gulley, the member for Murrumba.

**Mr GULLEY:** Can someone please explain to the committee the reasons for the urgency of the bill?

**CHAIR:** Looks like it is you, Sonia. Everyone is looking at you.

**Ms Cooper:** Yes, it does. On behalf of the Public Service Commission, I thank the committee. The urgency follows in relation to the transfer of the Public Service appeals registry functions. The act that was assented to and became operative from 1 July that saw the hearing and deciding of appeals transition to Brisbane

the Queensland Industrial Relations Commission has of course taken effect and is in practice. The administrative functions that supported the hearing and deciding of appeals, the registry function, remains with the Public Service Commission. So the urgency is really to ensure that we finalise the transition of the appeals function fully to the Queensland Industrial Relations Commission. We are transitioning that function as we speak. It is really just a matter of bringing that to finalisation as soon as possible so that the QIRC can take over properly and the Public Service Commission can get on with the rest of its business government has set us with.

With respect to the urgency of the other matters, in terms of the public interest disclosure transition to the Ombudsman, once again it is a matter of ensuring that we have that function, in respect of the government's policy decision, happening from the best place within the public sector that it can occur. The Public Service Commission is very keen to transition that to the Ombudsman to align with the Ombudsman's existing powers to receive public interest disclosures in relation to other matters of maladministration. So the urgency is to see the finalisation of that transfer as well.

In terms of the annual ethics training—again, in respect of the government's policy outlook in the sense of reducing red tape and administrative burden and overly bureaucratic processes—the particular requirement in relation to the mandating of stand-alone ethics training each year for all employees as opposed to it being able to be integrated with other code of conduct training and other regular training that is delivered to the workforce is really just one that the government wants to once again tidy up as soon as possible.

**Mr James:** With regard to the amendments to the Industrial Relations Act, certainly the transfer of powers from the president to the vice president is about ensuring that the commission is operating effectively and extending the right of representation in legal matters is extending the rights of individuals in matters before the commission.

**CHAIR:** Thank you. Desley?

**Mrs SCOTT:** How long have you been developing this legislation and can you give some detail of that?

**Ms Poiner:** We have been developing the Public Service Act, Public Sector Ethics Act and Public Interest Disclosure Act legislation for three months.

**Mr James:** With respect to the Industrial Relations Act, certainly we have been monitoring the operations of the commission for some time, but we have been developing these particular amendments probably for about two months or a month and a half.

**CHAIR:** Mark?

**Mr STEWART:** Tony, you mentioned before about the transfer of administrative functions from the president to the vice president. Can you explain to the committee why that change is necessary?

**Mr James:** Prior to 2002 there was a commissioner-administrator who had these functions. There were some amendments made in 2009 which transferred powers back to the president. It was just felt that for the better operation of the commission the president remains as the head of authority for the commission, the registry and the court; however, the function of the day-to-day operation and the allocation of work was best situated with the vice president. So the administrative functions and duties have been returned to the vice president. The president himself still remains as the head of authority.

**CHAIR:** Freya, have you got some questions?

**Mrs OSTAPOVITCH:** This question is for anyone to answer. Could you please explain how the proposed amendments will provide more efficient alignment and better streamlining of the government's public sector integrity functions?

**Ms Poiner:** The integrity functions catch matters that go to the Ombudsman's office—Public Service appeals, ethics and crime and misconduct matters. The integrity functions that this bill will impact upon are other appeals function, the ethics training and education and the public interest disclosures, which are formerly whistleblower matters.

In terms of aligning the Public Service appeals function, Public Service appeals are heard by the Queensland Industrial Relations Commission but the administrative responsibility still rests with the Public Service Commission. So we are streamlining that, in that the administrative management will go down to the Queensland Industrial Relations Commission along with the hearing and deciding of appeals.

In terms of the ethics matters, they are being streamlined probably with general performance management to allow training to be streamlined with other things. So it is not just 'This is your code of ethics. This is what you have to learn.' It has application to every day Public Service work.

In terms of the public interest disclosure function, it is a function that the Public Service Commission administers at the moment but it applies to the whole of the public sector, which is a lot broader than the Public Service Act and it catches local governments and various other public sector agencies. So in transferring that function to the Queensland Ombudsman, who already handles a much broader range of public sector agencies than we do, they are already set up with administrative systems to deal with those matters.

**CHAIR:** Just coming back to the member for Sunnybank's question, the ETU advised the committee that changes were made in 2009 because devolution of responsibilities caused some difficulties with respect to the two roles and functions. Could you please advise whether the president of the commission has been consulted on these proposed changes and what are the reasons for the reversal of the amendments made in 2009? So could you just drill down a little bit further there?

**Mr James:** If I could, I will go back to give a bit of history. Prior to 1999 the administrative responsibility for the Queensland Industrial Relations Commission was vested in the president, and amendments to the IR Act at that time introduced a position of commission administrator who was responsible to the president to administer the QIRC. In 2001 the commission administrator was given autonomy from the president to remove the confusion that had developed between the two positions as to their respective spheres of responsibility.

In 2002, in association with the amendments recommended by RJ Hawke in relation to enterprise bargaining, the Queensland public sector's administrative responsibility in the QIRC was transferred to the vice-president and the position of commission administrator was then abolished. This was the result of some administrative difficulties in the QIRC which were then perceived to be affecting the expertise and consistency applied to the conciliation and arbitration of public sector bargaining.

In 2009, amendments were introduced to return the administrative responsibility of the QIRC to the president. The stated reasons for those changes were to align the administrative arrangements of the QIRC with those of other jurisdictions, especially the Australian commission. Currently, the IR Act imposes a statutory duty on the president and the QIRC to allocate work to commissioners to determine which commissioners would constitute a full bench. The commissioners are obliged to comply with the president's directions.

There have been some concerns raised about the orderly and expeditious exercise of the QIRC's jurisdictions. There have been Q-Comp matters ranging through the commission which has increased their workload, and we have seen in the annual report of the president that the percentage of matters completed within three months were 69 per cent in 2010-11 compared to 80 per cent in 2009-10 and 87 per cent in 2008-09. On the basis of some of those concerns and the backlog of some appeals, it was considered necessary to improve the operations of the commission by giving the powers of the allocation of duties—allocation of administrative functions—to the vice-president from the president.

**Mr STEWART:** It was noted in the Queensland Law Society submission that the proposed amendments will have the effect of removing the president's overall responsibility for the administration of the commission and registry. The Law Society suggested that the amendments should more closely follow the arrangements of the Supreme and District courts, with the president retaining the overall responsibility of the administration of the commission and the vice-president being responsible to the president for various administrative roles. Can you please explain how the proposed amendment differs from the current arrangement?

**Mr James:** The way that the administrative duties have been transferred from president to vice-president is simply a function of going through the act and looking at the various provisions which allow for those functions. So it is a procedural thing that we have done. If you have a look at section 246A, 'Functions of president', the president is still responsible for the efficient operation of the commission and the president still exercises powers for rule making. At section 338, which refers to rules of the Industrial Relations Act, while the Governor in Council may make rules under the act, the Governor in Council can only make those rules with the approval or consent of the president. Subclause 338(4) states—

Rules may be made about the following matters—

- (a) regulating the practice and procedure to be followed and used—
  - (i) in or for proceedings in the court, commission or Industrial Magistrates Court and before the registrar ...

There are a number of other examples including subsection (k), which states—

providing for all matters necessary or expedient to be provided for to allow for—

- (i) the full and effective exercise of jurisdiction and powers of the court, commission, Industrial Magistrates Court and registrar ...

I did see the submission by the Law Society. With respect, I think that what we have effectively done here is simply transfer administrative duties, not the authoritative head of the tribunals.

**CHAIR:** I would like to turn to the reasons for the bill. With regard to page 1 of the explanatory notes, could you please explain the terminology 'public sector efficiency agenda'?

**Ms Cooper:** The government has set a very clear agenda for public sector renewal. The government has set a clearer mandate for the Public Service Commission that is focused on commitments that it has made with regard to establishment controls, for example, with regard to the establishment management program, with regard to ensuring that we had a right sized Public Service. So the commission's activities and agenda that it has now been charged with is very much focusing on working with departments to scrutinise and ensure that the non-front-line establishment—so the workforce, in particular—is as it should be in size.

The Public Service Commission has recently completed an audit of the establishment of all 20 Queensland government departments and is setting about setting establishment controls for non-front-line employees for departments going forward. We are also reviewing the executive management structures

and ensuring that we do not have unnecessary layers of management. We are reviewing spans of control of executive managers and leaders, and ensuring that spans of control are of sufficient size and that we effectively have the minimum necessary layers of management over our Public Service.

The Public Service Commission is not responsible for the entire efficiency agenda so I cannot speak on behalf of the responsibilities of other central agencies such as Queensland Treasury and Trade and the Department of Premier and Cabinet. However, the Public Service Commission is really focused on the renewal of the workforce and an efficiency agenda looking at the size of the workforce and where it is located. The audit that I mentioned focused very much on the levels of corporate services and policy and program workforce that is in place, because the government is clearly focused on redirecting and ensuring as many front-line positions are continued as possible and that we are as efficient as we can be in those service delivery functions.

**Mrs SCOTT:** Could you explain the number of staff in the Public Service Commission that are involved in integrity issues—more from the point of view of your own staffing levels?

**Ms Cooper:** The integrity functions?

**Mrs SCOTT:** Yes.

**Ms Cooper:** So I will be quite specific about those.

**Mrs SCOTT:** Yes, the integrity functions that are outlined in the bill.

**Ms Cooper:** The organisation of the Public Service Commission is a relatively small organisation, as you may be aware. We have around 70 employees overall. We have provided an ethics advisory service and the public interest disclosure function that is covered in the bill. The FTE—or full-time equivalent—staffing numbers that are allocated to that function are in the order of five at present. The ethics advisory function has an FTE in the order of 3 FTE, and the public interest disclosure function has an FTE in the order of 2 FTE.

I beg your pardon, my colleague Kim Poiner is reminding me of the appeals function so I should focus on that as well. As you are aware, the appeals officer role is no longer with the Public Service Commission so that officer has been tasked with other priorities that have been assigned to the Public Service Commission. The registry staff are effectively 1.5 full-time equivalent staff members that handle the registering and receiving of the appeals and the handling and the communication of the appeals decisions once made.

**Mrs SCOTT:** Are there any other resources that have been applied?

**Ms Cooper:** I suppose in terms of management there would be a small component of oversight of those five staff in the ethics and public interest disclosure and the 1½ in the registry, so effectively very small above that.

**Mr GULLEY:** One of the submissions suggested that the use of legal representation increases cost for both parties and that this is not consistent with the government's cost-cutting regime. Lengthy and protracted matters before the commission will only add unnecessary red tape. Would anybody like to respond to those criticisms?

**Mr James:** Certainly it is a balancing act. I think the commission was traditionally seen as a layman's court, and I think one of the submissions actually made that comment. I think that was made at the time when industrial relations matters were not as complex. We are now dealing with particularly complex issues, and availing people a right to legal representation is considered to be significant in that regard. So I would say it is a matter of balance.

**Mrs OSTAPOVITCH:** On page 3 of the explanatory notes discussing FLPs, can you please explain what this statement means about the consistency of the FLPs? It is unclear as to whether the OQPC has not yet been consulted, whether the bill is in the process of being examined or whether there were not inconsistencies with any FLPs.

**Ms Poiner:** The consistency with fundamental legislative principles was asked in relation to the Public Service Act, Public Sector Ethics Act and Public Interest Disclosure Act amendments when they were being drafted. Parliamentary Counsel advised that they were not aware of any fundamental legislative principles which would be breached with respect to those acts being amended.

**Mr Anderson:** Similarly, with regard to the proposed amendments to the Industrial Relations Act, the Office of Parliamentary Counsel did not raise any inconsistencies with the FLP issues. So the matter was put before them and they did not raise any issues at all.

**Mr STEWART:** The committee also notes that there has been no community consultation on the proposal. Can you please explain why no community consultation was undertaken?

**Mr James:** From my perspective, that is government policy.

**Ms Cooper:** In regard to the amendments to the Public Service Act, the Public Interest Disclosure Act and the Public Sector Ethics Act, there was no community consultation. Once again, that was a government policy decision. As you would be aware, we have consulted internally. I guess the matters that are the subject of these proposed amendments were not matters that were considered to be of a high level of interest to the community.

**Mrs OSTAPOVITCH:** You discussed the two acts but could we also have an answer regarding amendments to the Public Interest Disclosure Act and the Public Sector Ethics Act?

**Ms Poiner:** With respect to the fundamental legislative principles?

**Mrs OSTAPOVITCH:** Yes.

**Ms Poiner:** I thought I did mention that with regard to the Public Interest Disclosure Act and the Public Sector Ethics Act amendments no concerns were raised by the Office of Parliamentary Counsel.

**Mrs OSTAPOVITCH:** So there were no concerns raised for any of those four acts?

**Ms Poiner:** I cannot speak for the Industrial Relations Act amendments which were actioned much later than our involvement in the other three acts.

**Mrs SCOTT:** Can you comment on the operation and workload that this transfer will cause within the Ombudsman's office?

**Ms Cooper:** The Public Service Commission has managed the public interest disclosure function, in so far as our responsibilities under the act, for some two years now. There has been an agreement that the resources that the Public Service Commission is currently applying to that work will be transferred to the Ombudsman. So that has been a matter that has been discussed and agreed between the respective public sector organisations.

**Mrs SCOTT:** Have those functions been managed effectively up until now?

**Ms Cooper:** Yes.

**Mrs SCOTT:** Continue on. You might mention the workload that this is going to cause to the Ombudsman's office.

**Ms Cooper:** Effectively, the workload is manageable. It has been managed effectively. There has certainly been a range of work that has been done to ensure that the public interest disclosures are received and are collated across the sector. What the Public Service Commission is also doing is offering to transfer a database that we have developed for this purpose to ensure that the matters are recorded by departments—they are actually data entered by departments—and therefore able to be reported in a much better way than ever before. As I understand it, the Ombudsman is very receptive to being able to receive that database at no cost effectively. It is an investment that the Public Service Commission, the government, has made already in that database which will allow it to continue that smooth transition and continue the management of the function.

**Ms Poiner:** The Public Interest Disclosure Act came into force 18 months ago and there was a lot of work done by the commission in the lead up to that act commencing and in the initial 12 months where we had to set up databases, we needed to communicate with all of the public sector agencies—the several hundred public sector agencies. So a lot of preliminary groundwork has been achieved and things are working quite smoothly to the point that we have two FTE working on public interest disclosure matters. The database has streamlined things even more so, so that being transferred will allow things to transfer fairly effortlessly. We have also offered to host a manager from the Queensland Ombudsman's office in our office for the next six months to help train that person as well as keep one of our existing officers on to help with that and to transfer that resource or the funding.

**Mrs SCOTT:** Thank you.

**CHAIR:** It has been suggested that the proposed transfer of employee appeal functions could potentially open the floodgates to having legal representation matters—such as transfer appeals, discipline appeals, classification appeals and promotion appeals—resulting in protracted litigation which were dealt with expeditiously by the PSC. How would you respond to that criticism?

**Ms Poiner:** The transfer of the appeal function—as far as the administrative responsibilities attach to merits review of decisions made under the Public Service Act—I do not believe will open any floodgates. There has been a transfer of the appeal deciding and hearing function; that happened earlier this year. The appeals will be heard by members of the QIRC. However, those members will be hearing them under the jurisdiction of the Public Service Act, and their appointment as appeals officers is done in accordance with what the act provides for them. So I do not imagine any QIRC matters that are dealt with under the IR Act jurisdiction are going to apply as far as rights to legal representation in the QIRC for matters brought under the IR Act.

**Mr Anderson:** If I could just confirm what my colleague is saying. The amendments that are proposed to section 319 of the Industrial Relations Act relate to legal representation of parties in proceedings before the Queensland Industrial Relations Commission. They do not touch on matters or appeals that are heard under the Public Service Act. It is simply an amendment that is proposed to the Industrial Relations Act, as I said, for proceedings before the Queensland Industrial Relations Commission.

**CHAIR:** Thank you.

**Mrs OSTAPOVITCH:** This question is in regard to the Public Sector Ethics Act 1994 so, Ms Poiner, you might want to take this one again. Could you tell us please what are the benefits from the proposed change to the Public Sector Ethics Act? Also, it has been suggested that there be a new section 2(d)—'the contents of any approved standard of practice that apply to public service agencies—in order to ensure that employees are provided with training in the event of a change to the code of conduct or an agency standard of practice. How would you respond to this suggestion? Do you want me to repeat the first part of the question?

**Ms Poiner:** Yes, just the opening sentence.

**Mrs OSTAPOVITCH:** What are the benefits of the proposed change to the Public Sector Ethics Act?

**Ms Poiner:** The benefits are that, rather than ethics training and education being an annual compliance activity that chief executive officers are required to ensure their officers have, the changes will ensure that any new person gets induction training in ethics as well as any other induction training in relation to their role. It also ensures that there will be ongoing access and knowledge of ethics and their ethics obligations. So it is not something that you tick off once a year; it will be something that a public servant will always need to be aware of. It is importantly an obligation that is put on chief executive officers to make sure that that training is provided. However, it can be done as part of the overall training and education that public servants would receive about their jobs and their other obligations. There is a longer part to it which I am not familiar with. I understand that other quote comes from a submission, does it?

**Mrs OSTAPOVITCH:** Yes, the new section (d).

**CHAIR:** We will move on to Mr Gulley.

**Mr GULLEY:** My question is for Tony James and/or Michael Anderson and it relates to the amendments to the Industrial Relations Act 1999. It relates to section 319 of the IR Act which provides for legal representation in matters before the commission. However, there are concerns that, despite the intention to provide for legal representation in the more complex and legalistic proceedings, some parties may actually be disadvantaged if they do not have legal representation and that this imbalance may result in unfair or unjust outcomes. For example, employers may be in a financial position to engage in legal representation whilst employees are less likely to be in the same financial position. How would you respond to that criticism? What are the advantages and disadvantages?

**Mr James:** Certainly, the amendments that are proposed provide an equal opportunity for both parties to have legal representation. Short of being equal at the law, I cannot offer anything further.

**Mr GULLEY:** Who is providing the representation in this case for both the employee and the employer?

**Mr James:** At the present time?

**Mr GULLEY:** Yes.

**Mr James:** I can actually go through the current arrangements.

**Mr Anderson:** I can do that. In relation to the current arrangements before the Queensland Industrial Relations Commission as contained in the Industrial Relations Act, they are currently set out in section 319(2) (b). Effectively, there are four categories dealing with legal representation in the Queensland commission at present. Firstly, there is a component or a section of matters where neither party can have legal representation. Secondly, there are some proceedings, particularly under chapter 4, which are the freedom of association provisions of the act, where all parties—sometimes there are more than two—are entitled to have legal representation. Thirdly, the parties can consent that there is legal representation, so if they come before the tribunal and everyone is happy then they all have access to legal representation, and that happens quite often. The fourth category is where in certain matters before the tribunal—for example, unfair dismissal applications—where there is no consent, if the consent is withheld, the tribunal member who is hearing the matter can still allow legal representation on application by one party if the tribunal member feels that there are special circumstances or that the person or the party cannot be adequately represented unless they are represented by a lawyer. So those are the current arrangements.

The new arrangements effectively create three categories where legal representation is permitted in the commission. Essentially, firstly, they are in matters that are listed in the amendments where there is the right of any party to be legally represented. The second instance is obviously outside of those matters—again, where the parties give their consent for legal representation. Thirdly, in all other matters, if consent is not forthcoming, they are the same arrangements that currently exist in the act where, on application by one party to the tribunal, the commissioner hearing the matter, if they are satisfied that the requirements of the act are met, can grant legal representation.

Perhaps to just add to what my colleague, Mr James, was saying: legal representation is a feature of the legislation currently and is a feature of proceedings in the Industrial Relations Commission. The changes are effectively streamlining from what the current arrangements are to some new arrangements.

**CHAIR:** Thank you. Desley has a couple of questions for you.

**Mrs SCOTT:** The committee has been advised that the current arrangements for representation have been working well and that there is no justification for amendments. Could you outline the reasons for the change from the present system?

**Mr Anderson:** I guess this is where I cannot stray into government policy. Just to reiterate my earlier comments, the new arrangements create three clear categories where legal representation can be accessed or is allowed in the commission. Previously, there was a fourth category where, notwithstanding that the commission was prepared to allow legal representation, legal representation simply was not permitted in those matters. That will no longer be the case should these amendments proceed through parliament, and as I have indicated there will be the three categories—broadly where either party has an

entitlement to legal representation, and that is spelt out clearly in the amending bill; secondly, where there is consent; and, thirdly, where the tribunal is satisfied on application by one of the parties that it is appropriate for legal representation in the particular proceeding.

**Mr STEWART:** Michael, this might be a question for you as well. It was suggested by the Queensland Law Society that proceedings under chapter 12, parts 2 and 16, be included in the proposed section 319(2) (b) as complex matters in which automatic right to legal representation is available. Has this been considered?

**Mr James:** I did see that suggestion in the submission. I do not recall specifically considering that one as a complex matter. I have not got any advice on what government policy would be in that regard.

**Mrs SCOTT:** I guess the QIRC was always intended to be a layman's tribunal. One further criticism was that the use of lawyers may lead parties to focus on legalities instead of working towards a resolution of the matters in dispute. How will the matters before the commission be resolved if proceedings are tied up in legalities rather than working towards a resolution?

**Mr James:** I mentioned before that the history of the commission is that it was a layman's court. Unfortunately, the world we live in today is rather complex. Industrial relations arrangements are complex matters. These amendments where they allow legal representation is a matter of right and it is not universal; it is in those complex matters. They simply reflect the business of the tribunals in terms of the complexity of the issues involved.

**Mr Anderson:** Just to add to my colleague's comments, it is not unusual for lawyers to appear in the Queensland Industrial Relations Commission, particularly in those more complex legal circumstances, as advocates. Of course, outside of the right to have legal representation in matters, there is still a requirement for consent from the other party. If that consent is not forthcoming, the tribunal member dealing with the matter can, of course, refuse legal representation if they are of the belief that it is not appropriate for those particular proceedings. It is not a case of there will be lawyers in all proceedings before the Queensland Industrial Relations Commission should these amendments go through. There are still likely to be circumstances where lawyers will not be allowed to appear.

**Mr STEWART:** The United Firefighters Union advised the committee in their submission that section 149 deals with proceedings where enterprise bargaining negotiations have ceased and the QIRC is determining the matters at issue during the failed negotiation by arbitration. They noted that the enterprise bargaining rarely involves legal principles or argument but, rather, information about workplace and industrial arrangements. Can you please explain how the inclusion of legal representation will assist in these types of cases?

**Mr Anderson:** Section 149 matters before the commission occur when the parties have been unable to settle an agreement amongst themselves. Firstly, there is a negotiation process amongst the parties. When those negotiations break down, the process moves to what is called a section 148 assisted conciliation process. So, effectively, the commission is trying to bring the parties together using a sort of a mediation process. Where in a small number of cases those matters are unable to be resolved or the commission is not able to bring the parties together through mediation, then the matter is referred to arbitration under section 149. Effectively, arbitration is where the tribunal sits and adjudicates effectively the matter. So it will hear evidence; there will be hearings; there will be, as I said, witnesses; there will be cross-examination; there will be argument on a wide variety of matters including legal argument; and, ultimately, the tribunal will make a binding decision that will, in effect, take the place of a certified agreement for the parties—effectively a section 150 determination.

Those proceedings are often lengthy; they are often complex. I use, for example, the last arbitration before the commission which involved the Queensland Police Service. It went for many days; there were many witnesses and many matters raised. I recollect that there was legal counsel, including Senior Counsel, present in those proceedings and all of the parties were represented by barristers. I do not want to go too much to the submission made by the UFU, but I simply say that the section 149 proceedings result in a binding decision that is handed down by the tribunal that binds all the parties.

**Mrs OSTAPOVITCH:** I think this is a question for Mr Anderson but perhaps Ms Cooper would also like to answer it. How does the commission intend to mitigate delays occurring if the appeals function of the PSC is transferred to the QIRC?

**Ms Poiner:** To mitigate the delays?

**Mrs OSTAPOVITCH:** Yes.

**Ms Cooper:** I will answer it.

**Mrs OSTAPOVITCH:** The appeals function.

**Ms Cooper:** If I can clarify your question, the hearing and deciding of appeals has been transferred and is not the subject of these amendments today except to the extent of the administrative support. So what we are proposing and discussing and what the committee is considering today is the administrative support for the hearing and deciding of appeals. So it is the receiving of appeals from Public Service employees on the grounds on which they may lodge an appeal; it is ensuring that they are promptly and expeditiously provided to the appeals officers who are now Queensland Industrial Relations Commission commissioners. But really at that point it is over to the QIRC commissioners to set the matter down. The



administrative function is probably quite minor, if I may say, in the overall process. It is the receiving, acknowledging, ensuring that they are promptly transmitted to the appeals officers who then handle the matter, decide how and when to hear it and take the matter from there. It is really once the appeals officers—the QIRC commissioners—have reached a decision that it then falls back to the Public Service Commission's current administrative and registry function to ensure that that decision is promptly communicated and transmitted to the person who lodged the appeal and the agency from which that employee comes.

Certainly, the Public Service Commission is working very closely at the moment with the Queensland Industrial Relations Commission. If I may offer, I think the QIRC, the current registrar and—certainly it is our information that—the commissioners are very pleased with the support that they have received to date. Obviously, the Public Service Commission continues to be concerned in terms of the broader responsibilities we have that appeals are heard within the required time lines and are dealt with expeditiously. We are doing all that we can to support the commissioners in their new task and certainly not diminishing in any way, shape or form our current registry support. We will continue to work very closely with the commission over the coming months to ensure that that continues.

**Mrs OSTAPOVITCH:** I have another question. It is probably for Mr Anderson. Clause 24 inserts a new chapter 20. Did you want to find that so you know what I am talking about? It is part 15, after part 14. In examining the act the committee has found that there are, in fact, two part 13s and no part 14. Also the new part 15 commences with section 787 whilst the second part 13 in the act ends with section 785. Could you just explain these discrepancies?

**Mr James:** I will certainly take that back and have a look at that. We also made some amendments to the Industrial Relations Act in the last sitting. There is a chance that the current printed version by Goprint has not captured those last amendments which also had transitional provisions which should be sitting in the act about where these ones are. It could simply be a numbering issue as a consequence of former amendments. I will take that on and have a look at that. It would be unlikely that the drafters would miss something as large as that.

**Mrs SCOTT:** I am just wondering if you have done any modelling on the impact that this is going to have on the commission's workload and if there is any potential for it to delay cases?

**Ms Cooper:** May I ask a clarification in relation to the—

**Mrs SCOTT:** —the commission.

**Ms Cooper:** So it is about delayed cases and Public Service appeals?

**Mrs SCOTT:** Yes.

**Ms Cooper:** I do not know that I can add a great deal to what I said before that at present all appeals that have been lodged since 1 July that are now being heard by the Industrial Relations Commissioners—there are no appeals that have been lodged that have not been dealt with in accordance with the time lines that are required in the act.

**Mrs SCOTT:** Do you think that will continue on in the future, that there will not be a backlog?

**Ms Cooper:** That is certainly our intention, absolutely. There is no doubt that the workload of the Queensland Industrial Relations Commissioners has increased significantly. That is why we are doing everything that we can to ensure that we support them in their new responsibilities in relation to the Public Service appeals. The lady who was the appeals officer has actually been working hand in hand with commissioners to ensure that there are no delays that are not able to be overcome.

**Ms Poiner:** We are also transferring down a \$70,000 newly developed database, a case management system, which automates a lot of the processes. We anticipate the extra impact on the QIRC registry will be negligible.

**CHAIR:** If there are no further questions from any of my colleagues, I do have one final question for you. The committee notes that there has been no community consultation on the proposal. Can you please explain why no community consultation was undertaken? Can we have another rundown or a reminder of why no community consultation was undertaken?

**Mr James:** Again, it was a matter of government policy.

**CHAIR:** Ladies and gentlemen, we are not at the end of the allotted time. However, having said that and there being no further questions, we will now conclude this public departmental briefing. If members require any further information we will contact you. Thank you for your attendance today. The committee appreciates your assistance. I declare the briefing closed with the exception that Tony will come back to us with regard to that material that he is taking on board. Is it the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 52A of the Parliament of Queensland Act 2001?

**Mr STEWART:** Yes.

**Mrs SCOTT:** Yes.

**CHAIR:** It is so authorised. Thank you very much for your time, ladies and gentlemen.

**Committee adjourned at 12.58 pm**