

Our Ref: 521288/2, 3428786, 03529-2016

Queensland Treasury

Mr Peter Russo MP
Chair
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Russo

I refer to the recent public department briefing held by the Finance and Administration Committee (the Committee) in its consideration of the Industrial Relations Bill 2016 (the Bill) on 14 September 2016. This briefing was attended by Dr Simon Blackwood, Deputy Director-General and Mr Tony James, Executive Director of the Office of Industrial Relations (OIR).

During the hearing, the Committee sought a list of provisions from the current *Industrial Relations Act 1999* (Qld) that are not included in the proposed Bill, and the reasons for not including these provisions. The matter was taken on notice. In reply, please find enclosed a response to the Committee's question.

This response supplements the original briefing paper provided by OIR to assist the Committee's inquiry process dated 8 September 2016.

If the Committee requires further information or assistance, please contact Mr Tony James, Executive Director, Industrial Relations, OIR, on (07) 3225 2353.

I trust this information is of assistance.

Yours sincerely



Jim Murphy
Under Treasurer

23/9/16

Encl.

QUESTION ON NOTICE

Can you provide to the committee a list of provisions from the current Industrial Relations Act 1999 that are not included in the proposed Bill, and the reasons for not including these provisions?

RESPONSE

Background

The Industrial Relations Bill 2016 responds to Recommendation 1 of the Industrial Relations Legislative Reform Reference Group Report (the Report) that a new Act be drafted due to the significant changes in the jurisdiction covered by the provisions of the *Industrial Relations Act 1999* (Qld) (IR Act).

Provisions from the current IR Act not included in the Bill

Current IR Act provision	Reason provision not included in Bill
Chapter 1 Preliminary, Section 3 Principal object of this Act (subsections 3(f), (h), (l))	The following subsections of section 3 Principal object of this Act subsections have not been carried forward in the new purpose clause: <ul style="list-style-type: none"> • section 3(f) – promoting the effective and efficient operation of enterprises and industries • section 3(h) – promoting participation in industrial relations by employees and employers • section 3(l) – promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs This is because they have been adopted in a different form in the new purpose (clause 3) of the Bill or because they are no longer relevant to the changed state jurisdiction. Recommendation 3 of the Report recommended: <i>The principal object should address the issues set out in section 2.3 of this report.</i> In response, the main purpose at clause 3 has adopted the provisions for inclusion as developed by the Review.
Chapter 2 Pre-modernisation employment conditions, Section 8B Wage structuring to develop employee skills	Section 8B exists in current Chapter 2 and there is no similar provision in Chapter 2A. Chapter 2 provisions only apply to employees bound by pre-modernised industrial instruments. Chapter 2A applies to all other employees in the Queensland jurisdiction. The Report in its commentary about minimum employment standards provided at 9.2 <i>“The standards should be called the QES and be based on the current QES.”</i> As the Review sought the retention of Chapter 2A, this provision has been omitted.
Section 8C Pay and conditions for workers working from home etc. and not covered by award or federal award	Section 8C exists in the current Chapter 2 and there is no similar provision in Chapter 2A. As the Review sought the retention of Chapter 2A, this provision has been omitted.
Section 9 Working time for an employee under an industrial instrument made on or before 1 September 2005 etc.	Section 9 has not been retained. This section applies to industrial instruments made on or before 1 September 2005 and made provision for a maximum 40 hour working week. The proposed hours provision of the Bill is based on Recommendation 41 which sought the retention of maximum periods of work consistent with the entitlements currently contained in section 9A of the IR Act. Proposed clause 1007 Continuation of working time provision for

	an employee under old section 9 or 9A is a transitional arrangement which provides that the hours' arrangements in industrial instruments which were underpinned by these current clauses continue to apply.
Section 58 Review of general employment conditions	Section 58 has not been retained. Section 58 applies to pre-modernisation employment conditions. No similar provision exists under the IR Act in relation to the QES under chapter 2A. The Review sought to retain the QES with amendments where specified, as this section does not apply to the QES it has not been carried forward in the current Bill.
Chapter 3 Dismissals	Chapter 3 (Dismissals) has been mostly retained but the concept of 'invalid reason' dismissals and associated references have been removed throughout because new chapter 8 (Rights and responsibilities of employees, employers, etc) covers this content (and provides broader protections overall) than current chapter 3 invalid reason dismissals.
Section 80 Sanctions for unfair dismissal – invalid reason	Section 80 has been omitted as it relates to civil penalties that may be ordered for invalid reason dismissals. As invalid reason dismissals no longer exist and instead general protections dismissal disputes can arise under clause 309 and civil penalties can be ordered in relation to these matters, this provision is no longer required.
Part 3 Requirements for dismissal (sections 83-85)	Chapter 3, Part 3 of the IRA has been omitted as it replicates QES provisions in the Bill at Chapter 2, Division 13, Subdivision 1 Notice of termination.
Part 4 Additional requirements for dismissal, division 1AA (sections 85A-85C)	Chapter 3, Part 4, Division 1AA has been omitted from this chapter and housed as a transitional at clause 1019 to continue to apply to employees to whom it applied to before the commencement of the new Act. This is because this division applies to prescribed employees under certain instruments. Provisions dealing with these additional requirements for dismissal for the majority of employees continue to be provided for in the QES.
Chapter 4 Freedom of association	Chapter 4 (Freedom of association) has been removed because new chapter 8 (Rights and responsibilities of employees, employers, etc), part 1 (general protections) covers this content and provides broader protections overall than current chapter 4.
Chapter 5 Awards (Pre-Modernisation)	Existing chapter 5 deals with pre-modernisation awards. The modern award chapter in the Bill includes many provisions based on these, and other new provisions to give effect to the modern award arrangements as set out in the Review and its recommendations. Generally, references to 'determinations' have generally been removed from the modern award chapter. The intent is that reference to a determination is used specifically in relation to the commission's arbitration function. Specific omissions are set out below.
Section 122B Application of ch 5	This application clause has been omitted as it is not required.
Section 133 Enforceability of awards	Pre-modern condition – not retained in Bill. Would have become obsolete under existing Act upon modernisation of all awards, and not required in legislation as can be dealt with in enforcement procedures.
Part 8 Modernisation of Awards (sections 140B-	Part 8 has been omitted. As the modernisation process is due to be completed prior to the Bill's commencement, is no requirement

140CE)	for machinery provisions for how the award modernisation process is conducted.
Chapter 5A Modern Awards, Section 140DA Definitions for chapter	Definitions housed in Schedule 5 (this is a structural change). Work value definition is not retained as not required as work value reference not continued in drafting.
Part 3 Making, varying and revoking modern awards, Division 1 Periodic reviews of modern awards (sections 140F-140FA).	Periodic reviews of modern awards have not been provided for in the Bill consistent with Recommendation 20 and text of the Report (page 63). A provision empowering the commission to review an award on its own initiative or on application has been provided (Bill clause 156).
Section 140GB Variation to update or omit name of employer or organisation	Not specifically provided for as the drafting in the Bill is more general in its treatment of making, varying and revoking modern awards. The commission could still exercise the same power as at section 140GB under clause 147.
Section 140GD Variation on referral by Anti-Discrimination Commission	No specific provision but able to be dealt with. See note above, and see also commission is to ensure a modern award does not include a provision that discriminates against an employee (clause 143(1(a))).
Section 140H Requirements about revoking a modern award	The new provision at clause 140(2) is intended to simplify what needs to be considered by the commission to revoke an award and provides that the commission must not make the order unless satisfied no employees will be adversely affected by the revocation of the award, rather than the award being obsolete or no longer operative.
Chapter 6 Certified Agreements	The Bill gives effect to the collective bargaining model as set out in the Report in new chapter 4. The model is different to the existing Chapter 6 certified agreements chapter, including a focus on parties working to reach agreement; the commission's role in conciliation to facilitate this. However, many existing provisions are continued largely as is. Timeframes around when bargaining may commence are amended. Effectively Chapter 6 of the existing Act is replaced by new Chapter 4 in the Bill. Specific omissions are set out below.
Section 147A Employer may ask employees to approve proposed agreement being negotiated with employee organisation	This provision is omitted by the Bill. It was inserted in 2012 by the <i>Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012</i> to allow an employer to side step negotiating with unions despite employees wanting to be represented. This provision does not fit with the main purpose of the Act which is to be achieved by encouraging representation of employees by organisations registered under the Act (see clause 4(n)).
Section 149A Arbitration period	Section 149A is omitted. No statutory timeframe imposed.
Section 149B Full bench to determine matters by arbitration unless president directs otherwise	This is omitted. The collective bargaining model arising from the report provides for arbitration to be by full bench. This provision allows for arbitration by commissioner sitting alone. Inconsistent with model being provided for in drafting and so omitted.
Section 149C Arbitration powers of full bench	This provision is partially omitted. Elements that are inconsistent with the collective bargaining model being provided in the Bill have been omitted. It is provided for in Chapter 4, Part 3, Division 2, in particular clause 180 and 181, however the specific reference to the commission's arbitration powers under existing section 230 (at 149(1)(a)) and the prohibition on the full bench

	ordering an interim increase in wages (section 149(1)(c)) have both been omitted as inconsistent with the Report's collective bargaining model).
Section 150A No protected industrial action during conciliation and arbitration periods	Provision omitted in this location. The protected action part of the Chapter (part 8) sets out when protected action is and is not available.
Section 170 Amendment if discrimination between unionists and non-unionists	Provision omitted. This is a long-standing provision that reflects the inclusion of the private sector in the jurisdiction to deal with potential demarcation or closed shop issues. This is not relevant for the collective bargaining model being set out in the Bill. In any case, scope orders are also available, as well as the more general powers to amend.
Section 171 Other options open to commission instead of refusing to approve amendment of agreement	Provisions of this section relating to 'undertakings' have been omitted as inconsistent with the collective bargaining model being provided in the Bill. The commission is still able to give opportunity to take action that may be necessary to enable the commission to grant the application (clause 194).
Section 186 Industrial Action organised, engaged in, in good faith on basis of protected action ballot; Schedule 4 Provisions for Protected Action Ballots	<p>The non-inclusion of section 186 and Schedule 4 in the Bill gives partial effect to Recommendation 26 of the Report, which recommended:</p> <p><i>That the current provisions in relation to the requirement for ballots for protected action to be conducted by the Electoral Commission Queensland be replaced by a requirement that unions demonstrate to the Queensland Industrial Relations Commission/Registrar that the proposed process allows members who are likely to be impacted by the action to express their democratic views in relation to that proposed protected action.</i></p> <p>To give effect to the remainder of this recommendation, the Bill provides a new and more simplified process for approval to engage in protected action – see Chapter 4 Collective Bargaining, Part 8 Protected industrial action of the Bill.</p> <p>However, many existing provisions form the basis of the new provisions. Some are very little changed – for example notice about taking action, protections and remedies. Effectively Chapter 6, Divisions 6, 6A, and 8 of the existing Act are replaced by new Chapter 4, Part 8 Protected industrial action in the Bill.</p> <p>Specific omissions are set out below.</p>
Division 6 Industrial Action	The Bill gives effect to a new protected action schema to be available as part of collective bargaining, as set out in the Report in new chapter 4. The model is very different to the existing Chapter 6, divisions 6 and 8 provisions of the existing Act.
Sections 175, 177 and 177A Requirements for industrial action in response to industrial action by another party, Requirements for other industrial action by an employer, Provision about notice of industrial action	Specific provision omitted. However, broader provisions about giving notice, taking steps to notify etc apply and are considered to provide the same effect more simply.
Division 6A Termination Of	Recommendation 27 of the Report recommended: <i>That the</i>

Protected Industrial Action By Minister (sections 181A-181F)	<p><i>provisions which enable the Minister for Industrial Relations to order that protected industrial action cease be removed.</i></p> <p>The removal of Division 6A gives effect to this recommendation and is justified for the following reasons:</p> <ul style="list-style-type: none"> • This reflects the historical arrangements under the IR Act where, prior to the introduction of the ministerial power in 2012 by the <i>Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012</i>, there was no separate ministerial power to terminate industrial action and this was only available to the QIRC as the independent umpire. • There is another mechanism available, as the Bill preserves the ability for a party to industrial action or dispute to seek an order from the QIRC that the industrial action cease (s277(2)(a) of current Act and has been preserved in clause 473 of Bill). • The power has never been used.
Division 8, sections 186 and 187	<p>These provisions dealing with protected action being taken in good faith on the basis of a ballot, and dealing with technical breaches not affecting the validity of a protected action ballot or order etc, have been omitted. It is considered that the Bill's provisions which provide that the approval to engage in industrial action, which remains in force for the period stated by the registrar (clause 235) as well as broader powers (eg disputes) provide adequately for these possibilities without requiring specific provisions.</p>
Chapter 7 Industrial disputes, Part 3 Ballots (sections 235 and 236)	<p>Existing sections 235 and 236 have been omitted. The Bill deals expressly with protected industrial action as a part of collective bargaining. For any other strike action, where an application is made either under the industrial dispute chapter or for an injunction or other order under the commission's general powers, the commission has a wide range of functions and powers available to it. Given the Bill setting out a schema for where protected action may be taken, it is quite clear that any action which is not protected action is therefore unprotected action. Whether or not employees or members voted in support of unprotected action does not alter the fact that the action is not protected, therefore these provisions are not required.</p>
Chapter 8 Industrial tribunals and registry, Section 259AA Dealing with matters as commissioner and ombudsman	<p>Section 259AA has been omitted as the position of ombudsman doesn't exist. Note chapter 8A of the IR Act provided for the appointment of the ombudsman and this chapter was repealed by the <i>Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013</i>.</p>
Chapter 9 Appeals, Section 349 Finality of decisions	<p>Section 349 has been omitted as it does not fit with the new scheme of appeal provisions. This omission is in response to Recommendation 66 of the Report which recommended: <i>That the Act provide for appeals from decisions of the Industrial Court of Queensland to the Court of Appeal.</i></p>
Chapter 11 Records and wages, Section 391A Deduction for industrial association membership prohibited	<p>Section 391A has been omitted to give effect to Recommendation 28 of the Report which recommended: <i>That the provisions which prevent payroll deductions for union fees be removed.</i></p>
Chapter 12 Industrial	

organisations and associated entities	
Section 439 Meaning of collegiate electoral system	Section 439 has been omitted as the meaning of collegiate electoral system is well known. Collegiate electoral system means a system for election of an organisation's officers where persons are elected to offices by a direct voting system and at a subsequent stage, persons are elected to offices by an electoral college (which consists of the persons elected at the last stage).
Section 458 Model rules apply if election rules do not comply with pt 4	Section 458 has been omitted as it was a transitional provision and is now redundant.
Division 5 Statement of interests of officers holding management offices (sections 530B-530G)	<p>Division 5 Statement of interests of officers holding management officers is comprised of the following:</p> <ul style="list-style-type: none"> • section 530B Application of div 5 • section 530C Definitions of div 5 • section 530D Officer must file statement of interests • section 530E Officer must file updated particulars • section 530F Exemption • section 530G Inspection of statement of interests <p>These provisions have been omitted to give effect to Recommendation 50 of the Report which recommended: <i>That the Act provide for reporting, accountability and training requirements that are consistent with the reporting and training requirements (including financial reporting) of the Fair Work (Registered Organisations) Act 2009 (Cth).</i></p>
Part 12 Finances and accountability	Chapter 12, Part 12 of the current IR Act has been substantially amended to reflect the introduction of transparency, accountability and reporting arrangements similar to those of the <i>Fair Work (Registered Organisations) Act 2009 (Cth)</i> . These changes give effect to recommendation 50 of the Report (set out above). Specific omissions are set out below.
Section 552A When does an organisation spend money for a <i>political purpose</i>	Section 552A has been omitted to give effect to Recommendation 50 (set out above) and Recommendation 55 which recommended: <i>That reporting and disclosure thresholds for political donations be aligned with section 149 of the Fair Work (Registered Organisations) Act 2009 (Cth) and the requirements of the Electoral Commission of Queensland under state legislation.</i>
Section 553 Part applies to branches with separate financial affairs	Section 553 has been omitted to give effect to Recommendations 50 and 55 (set out above).
Section 557A Register of gifts, hospitality and other benefits given and received must be kept	Section 557A has been mainly retained in the Bill at clause 742 (register of gifts, hospitality and other benefits given and received must be kept). Section 557A has been changed in order to introduce a minimum threshold reporting level per occasion (\$150). This responds to Recommendation 50 (set out above).
Section 557B Register of political spending	Section 557B has been omitted to give effect to Recommendations 50 and 55 (set out above).
Section 557C Register of credit card and cab charge account spending	Section 557C has been omitted to give effect to Recommendation 50 (set out above) and Recommendation 49 which recommended: <i>That the Act ensure that the provisions in relation to registered industrial organisations apply equally to both employer and employee organisations in relation to reporting, including financial reporting and other obligations.</i>
Section 557D Register of credit card and cab charge	Section 557D has been omitted to give effect to Recommendations 49 and 50 (set out above).

account spending for 2012-13 financial year	
Section 557F Publication of financial registers	Section 557F has been omitted to give effect to Recommendation 50 (set out above).
Section 557G Updating financial registers	Section 557G has been omitted to give effect to Recommendation 50 (set out above).
Section 557L Initial financial disclosure statement	Section 557L has been omitted as it is no longer of any effect.
Section 557M Publication of initial financial disclosure statement	Section 557M has been omitted as it is no longer of any effect.
Section 557N Financial year for first annual financial disclosure statement	Section 557N has been omitted as it is no longer of any effect.
Section 557Q Remuneration and benefits for highest paid officers	Section 557Q has been mainly retained at clause 746 (organisation must prepare remuneration register). This is in accordance with Recommendation 50 (set out above).
Section 557R Financial registers	Section 557R has been omitted to give effect to Recommendation 50 (set out above).
Section 557S Spending for political purposes	Section 557S has been omitted to give effect to Recommendations 50 and 55 (set out above).
Section 557T Political party affiliation fees	Section 557T has been omitted to give effect to Recommendation 50 (set out above).
Section 557U Financial policies	Section 557U has been omitted to give effect to Recommendation 50 (set out above).
Section 557V Officers' financial management training	Section 557V has been omitted to give effect to Recommendation 50 (set out above).
Section 557W Mid-year financial disclosure statement	Section 557W has been omitted to give effect to Recommendation 50 (set out above).
Section 557X Publication of mid-year financial disclosure statement	Section 557X has been omitted to give effect to Recommendation 50 (set out above).
Section 557Z Inspection of financial disclosure statements	Section 557Z has been omitted to give effect to Recommendation 50 (set out above).
Section 570 Report and statement must be filed and published	Section 570 has been mainly retained at clause 784 (reports etc. to be lodged with registrar), with the only change being the publishing requirement.
Section 570A Compliance functions of registrar	Section 570A has been omitted as it is no longer required.
Section 571A Notification of particular matters to chief executive	Section 571A has been omitted to give effect to Recommendation 53 which recommended: <i>That the Act remove the powers for the Chief Executive of the Department in favour of vesting relevant powers with the Registrar. In relation to the appointment of an administrator to an industrial organisation, the legislation should provide that such an appointment can only be made by order of the Industrial Court on application of the Registrar or Minister.</i>
Section 571B Chief executive may discontinue	Section 571B has been omitted to give effect to Recommendation 53 (set out above).

registrar's investigation	
Section 574A Registrar to report to chief executive	Section 574A has been omitted to give effect to Recommendation 53 (set out above).
Section 579A When is an organisation affiliated with a political party	Section 579A has been omitted to give effect to Recommendation 50 (set out above).
Section 579B Political party affiliation must be stated in political advertising	Section 579B has been omitted to give effect to Recommendation 50 (set out above).
Section 636E Ministerial direction	Section 636E has been omitted to give effect to Recommendation 53 (set out above).
Section 636F Application of div 2	Section 636F has been omitted to give effect to Recommendation 53 (set out above).
Section 636G Dealing with notice or report	Section 636G has been omitted to give effect to Recommendation 53 (set out above).
Section 636H Person to whom matter relates must be advised of matter	Section 636H has been omitted to give effect to Recommendation 53 (set out above).
Section 636P Organisation or branch must be advised of intention to appoint administrator	Section 636P has been omitted to give effect to Recommendation 53 (set out above).
Section 655A Requirements for publishing particular documents	Section 665A has been omitted to give effect to Recommendation 50 (set out above).
Chapter 13 Offences, Section 664A Interference with protected action ballot or secret ballot conducted by commission etc.	Section 664A has been omitted and replaced with clause 490 (person must not interfere with secret ballot). This clause reinstates section 285(5)-(8) of the IR Act in relation to conducting a secret ballot, as it existed prior to passage of <i>Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012</i> which introduced the protected action ballot order regime.
Chapter 15 Employees in employment of state, Section 686 Application of Act to State, subsections(2)(a)-(e)	Section 686(2)(a) to (e) and section 686(3) have been omitted. Section 686(2) of the IR Act provides certain provisions of the IR Act that do not apply to public service employees who are subject to rulings (or directives) that provide for the same matter as the IR Act provisions. Generally, the rationale for the removal of these provisions is that chapter 2 (pre-modernisation employment conditions) is replaced by chapter 2 (modern employment conditions) and so no longer have work to do. In any event, conditions of this nature are provided in industrial instruments and to provide anything less by way of directive would be contrary to Recommendation 6 of the Report which recommended: <i>That the legislation provide that directives of the Minister for Industrial Relations cannot be used to reduce or provide for wages and conditions of employment which are less favourable than those contained in awards or agreements (as currently provided for in the Hospital and Health Boards Act 2011 (Qld)).</i>
Chapter 19 Saving and transitional provisions; Chapter 20 Other transitional provisions	Chapter 19 and Chapter 20 transitional provisions have been omitted as the new transitional provisions at chapter 18 of the Bill provide transitional provisions relevant to the IR Act 1999.

Schedule 3 Minimum redundancy payment under ch 3, pt 4, div 1AA	Schedule 3 has been omitted as the minimum redundancy payment it relates to (division 1AA under the current IR Act) is now a transitional provision at clause 1019. Minimum redundancy payments have been provided for in the QES since 2013 and continue to be (see clause 126 for Bill provision).
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General structural changes or replacements of note

- Chapter 2 (Pre-modernisation employment conditions) and chapter 2A (Modern employment conditions) have been condensed into one group of conditions in the Bill (see chapter 2 Modern employment conditions). These conditions are based on the current chapter 2A of the IR Act, with some modifications in accordance with the Report recommendations. This approach is consistent with the Report at 9.2 which provides *"The Review considers that there should only be one set of statutory minimum employment standards for all employees covered by the legislation, supplemented by awards and bargaining. The standards should be called the QES and be based on the current QES."*
- Chapter 3 (Dismissals) has been retained but the concept of 'invalid reason' dismissals and associated provisions have been removed because new chapter 8 (Rights and responsibilities of employees, employers, etc) covers this content (and provides broader protections overall) than current chapter 3 invalid reason dismissals.
- Chapter 4 (Freedom of association) has been removed because new chapter 8 (Rights and responsibilities of employees, employers, etc) covers this content (and provides broader protections overall) than current chapter 4.
- Chapter 5 (Awards – pre-modernisation) and chapter 5A (Modern awards) have been condensed into one chapter in the Bill (see chapter 3 Modern awards).