



## Industrial Relations Bill 2016 (Qld)

Submission to the  
Finance and Administration Committee

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[Queensland Teachers' Union](#)

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## About the QTU

1. The Queensland Teachers' Union of Employees (QTU) was founded in 1889 and currently represents over 42,500 teachers employed in Queensland state schools (including high schools, special schools and other specialist educational institutions) and TAFE institutes. Currently the wages and conditions of all of these members are regulated in the Queensland jurisdiction through state industrial instruments, legislation, directives and policy. In common with many unions of professionals, the QTU represents the interests of its members in relation to professional, as well as industrial matters. In the context of the QTU, these professional issues include matters such as curriculum and assessment issues, teacher registration, professional standards and rights, and school behaviour management. The QTU is also a strong advocate for state schools and public education generally, including matters relating to school funding.

## Overview

2. As part of the Palaszczuk government's election commitments to review the state's industrial relations laws and tribunals, the Industrial Relations Legislative Reform Reference Group was established in August 2015.<sup>1</sup> The Industrial Relations Legislative Reform Reference Group, chaired by Mr Jim McGowan AM was comprised of representatives of key Queensland industrial relations stakeholders including representatives of unions and employer organisations, government agencies, the Bar Association of Queensland, Queensland Law Society and the Local Government Association of Queensland.<sup>2</sup> The review of the state's industrial relations laws and tribunals was the first review since 1998 which led to the current *Industrial Relations Act 1999* (Qld).<sup>3</sup> Consultation was also undertaken with the President and the Deputy President of the Queensland Industrial Relations Court and Commission.<sup>4</sup> Given the fact that the *Industrial Relations Act 1999* (Qld) has been amended on 75 occasions, including 19 times during the period of the former

<sup>1</sup> Qld, *A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group*, (Mr J. McGowan AM, Chair), Brisbane, December 2015.

<sup>2</sup> Explanatory Notes, Industrial Relations Bill 2016 (Qld) 1.

<sup>3</sup> Queensland, *Explanatory Speech*, Legislative Assembly, 1 September 2016, 3327 (Grace Grace, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs).

<sup>4</sup> Explanatory Notes, Industrial Relations Bill 2016 (Qld) 6.

Newman led LNP government, the QTU notes that the review was not only timely, but necessary.<sup>5</sup>

3. The QTU notes the purpose of the Industrial Relations Bill 2016 (Qld) (the Bill), namely, to provide a framework for the conduct of industrial relations within the state's industrial relations jurisdiction that is fair and balanced and supports the delivery of high quality services, economic prosperity and social justice for Queenslanders. This is a significant legislative step towards the reestablishment of a fair and equitable legislative framework for Queensland workers, particularly in light of the unprecedented draconian legislation imposed on Queensland workers as a result of the Newman led former LNP government's industrial relations policies.
4. The QTU commends the Bill and notes that the government is leading the country in relation to a number of contemporary industrial relations issues, namely:
  - domestic violence provisions;
  - legislating for implied mutual trust within an employment relationship;
  - flexible working; and
  - a modernised and collaborative system of collective bargaining which will reduce the need and scope of extensive litigation.
5. This has been a significant body of work and the Queensland public service, namely the Office of Industrial Relations and the Office of the Queensland Parliamentary Counsel have completed a fulsome and comprehensive drafting of the Bill and ought to be commended for their work. In essence, the QTU supports the Bill with the exception of a few particularised issues discussed within this submission.
6. The QTU notes and supports the submission made by the Queensland Council of Unions as the peak body of affiliated unions in Queensland.
7. The QTU notes and supports the submission made by the Together Union of Employees, specifically in relation to the fact that the *Public Service Act 2008* (Qld) does not allow the Queensland Industrial Relations Commission to consider the facts relating to the performance of work and the remuneration of the worker or the employment relationship for workers employed under the *Public Service Act 2008*

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<sup>5</sup> Office of the Queensland Parliamentary Counsel (Qld), *Industrial Relations Act 1999* (current legislation), <[https://www.legislation.qld.gov.au/Acts\\_SLs/Superseded/SUPERS\\_1/IndustRelA99.htm](https://www.legislation.qld.gov.au/Acts_SLs/Superseded/SUPERS_1/IndustRelA99.htm)>

(Qld), as is the case under the common law and in the Commonwealth jurisdiction under the *Fair Work Act 2009* (Cth).

8. In addition, the QTU notes and supports the submission made by the Together Union of Employees, specifically in relation to recommendation 11 of the *A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group*<sup>6</sup> (the Report) and individual public sector appeal rights. As a general prospect, all relevant appeal rights ought to be transferred and conducted by the Queensland Industrial Relations Commission. Further, there has been no consultation between the QTU and the Public Service Commission in relation to implementing recommendation 11.

### **Particularised Analysis of Relevant Sections in Issue**

#### Section 141(2) of the Bill – General requirements for the commission exercising powers

9. Section 141(2) provides for matters which the commission must have regard to when exercising its powers in relation to a modern award. The QTU notes the language of the Minister's Award Modernisation Variation Notices<sup>7</sup> issued by the relevant Labor government Industrial Relations Ministers which is consistent with principles of restoring fairness for Queensland workers, namely:

*Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards.*

10. This ought to be a foundation principle in the context of a general requirement for the commission when exercising their powers in relation to making or varying any award. Conceptually, this aligns to restoring fairness principles as per the purpose of the Bill. It also counteracts the potential of award stripping as an inadvertent consequence and provides a threshold test for the commission around the making and varying of awards.

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<sup>6</sup> Qld, *A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group*, (Mr J. McGowan AM, Chair), Brisbane, December 2015, pp 46 and 47.

<sup>7</sup> Queensland Industrial Relations Commission, *Minister's Award Modernisation Variation Notices* (17 July 2015, 14 October 2015 and 6 June 2016)  
<[http://www.qirc.qld.gov.au/qirc/agreement\\_award/modern\\_awards/index.htm](http://www.qirc.qld.gov.au/qirc/agreement_award/modern_awards/index.htm)>

*Recommendation 1: THAT an additional subsection is added to the Bill, namely: 141(3)  
The making or varying of an award is not intended to reduce or remove existing  
employee entitlements and conditions.*

#### Part 8 – Protected industrial action.

11. Part 8 of the Bill has attempted to provide some clarity in relation to the process of taking of protected industrial action, yet some provisions, and the obligations attached to the provisions, remain unclear. The Review clearly stated that rules and procedures to access protected industrial action ought not to be costly, complex or onerous and ought to be sufficiently flexible and fit for purpose.<sup>8</sup> This aligns with broader views in relation to the scope of protected industrial action.

12. The process needs to be clear and concise. Section 235, for example, attempts to provide a process, approved by the registrar, in relation to taking industrial action. However, the process remains unclear. Further, the democratic functions inherent within individual trade unions are not reflected within this particular section or, in fact within the entirety of Part 8.

*Recommendation 2: THAT the Bill be amended at Part 8 to reflect the democratic practice inherent in trade unions in relation to garnishing the views of the membership about taking industrial action.*

#### Chapter 6 – Industrial disputes

13. Australia has ratified the *Freedom of Association and Protection of the Right to Organise Convention*, 1948, No. 87, an instrument which has been read so as to protect the right to strike as an exercise of union autonomy.<sup>9</sup> Although this does not provide an express right to strike, the right to strike is implicit through the principle of freedom of association and is an intrinsic part of trade union activities to further and defend industrial conditions.<sup>10</sup> The Bill continues to perpetrate the position that there is no general right to strike. Protected industrial action must occur within the confines

<sup>8</sup> Qld, *A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group*, (Mr J. McGowan AM, Chair), Brisbane, December 2015, p 73.

<sup>9</sup> Breen Creighton and Shae McCrystal, 'Strike ballots and the law in comparative perspective' (2016) 29 *Australian Journal of Labour Law* 2.

<sup>10</sup> McCrystal S. (2010) *The Right to Strike in Australia*, Federation Press, Annandale NSW.

of either action to further a bargaining claim or action where an employee has a reasonable fear of imminent danger to health or safety.

14. The right to take industrial action ought to be considered a key industrial and human right. The right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests.<sup>11</sup> These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to workers.<sup>12</sup>
15. Immunity is provided in the industrial relations context to protect industrial action which might otherwise amount to a tortious claim. In the usual context of industrial relations, this is where the concept of “protected industrial action” applies to individuals and trade unions to advance a proposed certified agreement.<sup>13</sup>
16. However, the effects of only providing very limited immunity is such that this Bill cannot be said to provide adequate protection of the internationally recognised right of employees to take industrial action.
17. It should be noted that section 4(r) specifically states that:

*The main purpose of this Act is to be primarily achieved by –  
(r) assisting in giving effect to Australia’s international obligations in relation to labour standards*

*Examples of ILO conventions ratified by Australia –*

- *the Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87*

18. It can therefore be said that the Bill has acknowledged formally of the existence of the right to strike as it exists in international law yet the Bill still places limitations on

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<sup>11</sup> Australian Institute of Employment Rights, *Australian Law Reform Commission Inquiry: Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (Submission - February 2015) <[https://www.alrc.gov.au/sites/default/files/subs/15.\\_org\\_aier.pdf](https://www.alrc.gov.au/sites/default/files/subs/15._org_aier.pdf)>

<sup>12</sup> Australian Institute of Employment Rights, *Australian Law Reform Commission Inquiry: Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (Submission - February 2015) <[https://www.alrc.gov.au/sites/default/files/subs/15.\\_org\\_aier.pdf](https://www.alrc.gov.au/sites/default/files/subs/15._org_aier.pdf)>

<sup>13</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, Report No 129 (December 2015) < <https://www.alrc.gov.au/publications/laws-give-immunity-civil-liability-0>>

workers by not fully providing adequate protection as recognised by the same convention.

*Recommendation 3: THAT relevant sections are included in Chapter 6 – Industrial disputes to provide immunity to employees when strike action is taken to address changes to circumstances that arise following the certification of an agreement, contrary to the no further claims clause contained within a certified agreement.*

#### Section 412 – Functions of the president

19. Recommendations 61 and 62 of the Report specifically expressed that provisions be inserted under the powers of the President to enable the President to develop and issue performance measures for the Commission and to develop and issue a 'code of conduct/behaviour' for users of the QIRC and members of the Commission. The rationale behind this is clearly articulated in the Report; firstly accountability can be improved through the development of key performance measures and benchmarks to gauge the tribunal's performance.<sup>14</sup> Secondly, the development and use of a code of conduct applying to all participants in the QIRC (including commission members) can establish expectations about appropriate standards of behaviour.<sup>15</sup>

20. Section 412 of the Bill provides that:

*(1) The president has the functions given to the president under this Act or another Act.*

*(2) The functions of the president include –*

*(a) managing and administering the court, including deciding who constitutes the court for a proceeding; and*

*(b) .....*

*(3) The president has the power to do all things necessary or convenient to be done for the performance of the president's functions.*

<sup>14</sup> Qld, *A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group*, (Mr J. McGowan AM, Chair), Brisbane, December 2015, p 139.

<sup>15</sup> *Ibid.*

21. The syntax in relation to the drafting differs slightly from the current section 242E of the *Industrial Relations Act* (Qld). However, the gravamen of the section has not been altered sufficiently to contemplate the new powers envisioned in the Report in relation to the president having the capacity to enact measures around accountability.

*Recommendation 4: THAT the Bill insert the requisite provisions under section 142 to enable the president to develop and issue performance measures for the Commission and to develop and issue a 'code of conduct/behaviour' for users of the QIRC and the members of the Commission.*

## Chapter 12 of the Bill – Industrial organisations and associated entities

### *Federal counterpart bodies*

22. The take-over of private sector industrial relations by the Commonwealth has exacerbated requirements for duplicate reporting, according to different standards, by registered organisations.
23. The QTU is primarily a state-registered organisation operating in the state jurisdiction, with a manifestation, through joint membership, in the federal system in the Australian Education Union (Queensland branch). Other organisations are primarily federally registered organisations with membership largely covered by the national system but with a small number of members employed by state and local government within the state jurisdiction. In between are organisations with varying percentages of membership distributed between the two jurisdictions.
24. The Bill provides exemptions for nationally registered organisations (counterpart federal bodies (s. 597)) with coverage of employees in the state system from duplicate requirements in state legislation in relation to:
- elections to officer positions when an election has been held for a corresponding federal office (s. 802);
  - maintenance of separate members and officers registers (s. 804); and
  - accounting and audit obligations (s. 808).



25. Such exemptions are subject to approval by registrar following application by the organisation and subject to the requirements of Commonwealth legislation being met.
26. While the QTU will not be directly affected by these exemptions, the Union strongly supports them for removing unnecessary duplication in the accountability regime of registered organisations.

### *Branches of organisations*

20. The definition of a “branch” in the Bill (s. 595), combined with the definition of “office” (s. 599) and the definition of a “reporting unit (s. 752) leads to unnecessary demands on organisations and on the registrar which should be remedied.
21. The definition of “branch” of an organisation “means a constituent part of the organisation, however called, that has a management committee or officers.”
22. The definition of an “office”, each therefore held by an “officer”, in a branch of an organisation includes:
- the office of president, vice president, secretary or assistance secretary (subsection (a));
  - the office of a member of the management committee of the branch (subsection (b)); etc.
23. If an organisation is divided into branches, each branch will be a reporting unit for the purposes of Division 6 (Accounts and audit) of Part 11 of Chapter 12.
24. Except through what should be an unnecessary application for exemption to the registrar, elections for all branch positions are to be conducted by the Electoral Commission of Queensland at state expense and each branch is to maintain accounting records, prepare a general purpose financial report and operating report and have them audited.
25. As stated at paragraph 1 of this submission, the QTU has over 42,500 members. It has one set of accounts covering the entire organisation. Its principal decision-

making bodies are an elected State Council of around 120 members and an elected Executive of 20 members.

26. Leaving aside the TAFE Division, the QTU is divided into over 90 geographical branches. Their purpose is to provide a local forum for discussion of employment, professional and union issues. Most no longer have a bank account. Those that do have an annual quota or allowance of \$200.00. Each has a president, vice president, and secretary who together with a treasurer and a women's contact (all of whom are honorary officials) form a committee of management for the branch. The branch does not determine union policy or the allocation of resources but can move resolutions for consideration and decision by the principal decision making bodies. The application of legislative requirements to the election for these offices and the scrutiny of their affairs is absurd. The requirement to exempt them by means of an application to the registrar is needlessly bureaucratic.

*Recommendation 5: THAT the solution to this absurdity is to amend the definition of branch to encompass a part of an organisation that:*

- *has autonomy of decision making and action within the organisation;*
- *allocates significant resources at its disposal which are allocated according to its decision; and*
- *operates a separate accounting and membership system as part of the organisation.*

#### *Financial policies, training and registers*

27. The QTU supports the amendments in this area of the legislation since the election of the Palaszczuk government and the current proposals. The previous government:

- failed to acknowledge the importance and value of the involvement of rank-and-file member as honorary officials, volunteering their time, in the democratic control of industrial organisations;
- equated the operation of unions and the role of honorary officials with the operation of larger, profit-based corporations with professional, paid directors;

- based its prescriptions on ideology rather than any balanced assessment of any governance issues in Queensland trade unions;
- imposed bureaucratic and inefficient requirement on organisations without adequate, or at times, any consultation (red tape reduction was not a government objective in relation to the trade union movement);
- applied requirements to employee organisations but not to employer organisations; and
- carried legislation in breach of the implied freedom of political communication in the Australian Constitution in spite of the cautions of the Office of the Queensland Parliamentary Counsel and a committee of the Parliament.

28. The QTU supports, as it has historically, the transparent and accountable operation of the QTU in the interests of its members.

29. Some of the changes in the Bill that the QTU specifically supports are:

- the removal of the requirement for financial management training for qualified professionals in financial management;
- the removal of the requirement for annual financial training; and
- the publication of financial statements and registers to the members of the relevant union rather than generally.

*Recommendation 6: THAT the following suggestions for minor amendments are made to the Bill:*

- *Publication of the financial reports should be allowed on a union website, including in a members only section of the website (s. 781).*
- *Section 784 only appears to envisage consideration of the financial reports by a general meeting as supposed to a meeting of the committee of management of the organisation provided elsewhere in the Bill.*
- *There is an apparent inconsistency in the timeframe for consideration of the financial reports between sections 780 and 782.*
- *Section 801 provides that the costs of an examination of the registrar's auditor should be paid by the state rather than by the organisation.*
- *There appears to be no basis or reasons for section 824(2)(e)(iii) which should be deleted.*