

Submission - Industrial Relations Bill 2016

1. "3 Main purpose of Act

The main purpose of this Act is to provide for a framework for cooperative industrial relations that—

- (a) is fair and balanced; and
- (b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders"

2. "4 How main purpose is primarily achieved

- (d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements; and
- (e) promoting productive and cooperative workplace relations including by recognising mutual obligations of trust and confidence in the employment relationship; and
- (f) providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland Employment Standards; and
- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community;
- (h) promoting collective bargaining, including by—
 - (i) providing for good faith bargaining; and
 - (ii) establishing the primacy of collective agreements over individual agreements; and
- (i) preventing and eliminating discrimination, bullying and other unfair treatment in employment; and"

3. This submission will begin by discussing the aforementioned criteria in respect of the main purpose of the Act and how the main purpose of the proposed Industrial Relations Bill 2016 will primarily be achieved.

4. There are people in Queensland who would say that the Queensland Industrial Relations Commission (QIRC) is incapable of determining a worker's application for reinstatement or re-employment fairly, reasonably and justly, and they may well be right.

it was
the Howard Federal Government who introduced "WorkChoices" a highly disliked and controversial Industrial Relations system.

The primary aim of WorkChoices was to individualise employment relations and, as a consequence, to marginalise both trade unions and industrial tribunals. Further aims of WorkChoices included:

- To offer employers greater flexibility in the terms and conditions on which they could employ workers;
- To reduce the role played by the Australian Industrial Relations Commission in determining employment conditions and resolving industrial disputes;
- To make it more difficult for unions to enter workplaces or organise industrial action; and
- To reduce the exposure of employers to unfair dismissal claims.

The system was heavily criticised on the basis that many low-income earners and small business employees were being hurt by the legislation. They argued that as a result of WorkChoices they were

losing conditions at work, penalty rates and overtime were being taken away, and too many of them were being unfairly dismissed, with little remedial action available.

Part of promoting the 'public good' is setting an example for every Australian, especially our young people, that ethical standards matter.

8. The Industrial Relations Bill 2016 makes no proposal on how Commissioners with such strong “on the record” political affiliations will be managed nor does the bill guarantee that such Commissioner’s decisions will be fair, unbiased and free of their political persuasions and motivations.

How will the President of the QIRC regulate the behaviours, opinions and actions of such Commissioners for example Commissioner Knight?

Can Queensland workers and employers trust and have confidence in the decisions of QIRC Commissioners and other QIRC members?

10. These are the people who are the backbone of industry in this state and her outspoken (on public record) contempt of unions the defenders of the underdog and working class people. Is this the calibre of Commissioner the Queensland government wants presiding over cases of any type at the QIRC?

The Office of Industrial Relations briefing paper to the Finance and Administration Committee – Industrial Relations Bill 2016 in September 2016 said ...

“

The Bill’s objectives are to:

d. promote the Queensland Government as a model employer;”

Two examples of Commissioner Knight's written work are provided below:

“Costello vs Dept National Parks, Recreation, Sport and Racing TD/2013/7

<http://www.sclqld.org.au/caselaw/QIRC/2014/064>

“Murphy vs Darling Downs Hospital and Health Service TD/2018/78 Reinstatement Application”

<http://www.sclqld.org.au/caselaw/QIRC/2015/145>

15. **“4 How main purpose is primarily achieved**

“(i) preventing and eliminating discrimination, bullying and other unfair treatment in employment; and”

17. “AMMA executive director for industry Minna Knight said in the AMMA submission to the Federal Government’s House of Representatives Standing Committee on Education and Employment *Inquiry into workplace bullying in* July 2012 that the regulatory framework for bullying already in place was adequate from a legal perspective and more regulation was not the answer.

18. A program for the increased education of both employers and workers would be more effective in achieving our common goal of eradicating bullying from Australian workplaces, Ms Knight said.

19. Government could assist industry in raising awareness about bullying in the workplace, providing employers with the training and tools needed to manage these sensitive situations in the most effective way.

20. An equal onus should be on workers not to engage in behaviour that would affect the health and safety of others.

21. The Department of Workplace Health and Safety defines workplace bullying as the repeated less

favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice and included behaviour that intimidates, offends, degrades or humiliates a worker.

22. An employer has duty of care and needs to respect the rights of both the alleged perpetrator and the victim in the workplace, Ms Knight said. Employers often face a double edged sword in that appropriate sensitivity and procedural obligation must be granted to both parties to these allegations.

23. The regulations should not allow for an employer to be exposed to adverse action claims or other discrimination claims simply for doing the right thing and investigating claims of bullying.

24. AMMA also highlighted how union-related bullying remained prevalent among the construction and resource industries and intimidation tactics had been used on non-union workers who didn't support strike action. AMMA says improving education for employers and workers is more effective in stamping out workplace bullying than added regulations."

25. In the same submission to the federal government enquiry, the Australian Mines and Metals Association (AMMA) said its member's recognised workplace bullying as a serious issue and wanted to eliminate it from the Australian resource industry.

31. Yet the Industrial Relations Bill 2016 describes the characteristics of an appointed Commissioner to be ...

“(2) The person must have—

(a) a high level of experience in business or industry or a relevant entity; or

(b) suitable experience, and standing in the community to be appointed as an industrial commissioner.”

33. Yet the Industrial Relations Bill 2016 (page 339) requires Commissioners to:

“442 Industrial commissioners

(1) The Governor in Council may, by gazette notice, appoint a person as an industrial commissioner.

(2) The person must have—

(a) a high level of experience in business or industry or a relevant entity; or

(b) suitable experience, qualifications and standing in the community to be appointed as an industrial

commissioner.”

34. The Industrial Relations Bill 2016 has attempted to make remedy for such Commissioners as set out in Section 436 of the Bill and has left the benchmarking of Commissioners and other members of the QIRC at the discretion of the President. There is no clarification how these measurements of performance, conduct and behaviours will be measured and announced to the Minister for Industrial Relations or the wider public of Queensland. Perhaps it will be through the non-transparent Ministerial Consultative committee?

35. It is not enough that the President of the QIRC be responsible for the performance of his staff. There needs to be more rigorous and regulated QIRC member accountable audits ensuring that tax payer funded QIRC members and services are indeed serving not only the workers, employers and unions of Queensland but in general that Queensland tax payer money is being spent appropriately.

36. Who will be measuring the President's performance, conduct and behaviour? The Industrial Relations Bill 2016 has not made provisions for the President's performance review? In other words who is minding the minder?

37. Recent statistics at the QIRC Industrial Court show that not many people appeal the negative decisions handed down at the QIRC. Advice I have been given is that the President is considered a stumbling block, he has been described as an unknown commodity and "a black letter lawyer". I was unfamiliar with this term and learned later that meant he did not support human rights. In other words he did not support workers. Interestingly his appointment to the QIRC was made by the Newman Government.

38. Appellants who take the brave stance and appeal QIRC decisions usually feel the full strength of the QIRC's Industrial Court when another negative outcome for their appeal effort is handed down

and this is further compounded when costs are subsequently awarded against them. I gather this mechanism is designed to act as a deterrent to anyone who challenges the decisions of the QIRC.

39. I believe it is reasonable to ask the Finance and Administration Committee how such Commissioners and other members at the QIRC will be managed given their entrenched political ideologies, their reluctance to evaluate evidence in an unbiased and reasonable way. What guarantees do the public of Queensland have that such practices as discussed above will be stopped?

40. Lastly, what retrospective remedial actions will be instituted for reinstatement/reemployment cases at the QIRC (that have been discussed in the body of this submission) and heard during the Campbell Newman Government administration? It is clear that the workers who presented their cases before the QIRC during the Campbell Newman Government administration were not dealt with fairly, justly or reasonably and that social justice was not carried out as highlighted in this submission.

41. The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 saw the introduction of the retrospective reinstatement of workers' rights under that bill.

42. I assert that a group of workers who submitted reinstatement/reemployment applications have been unfairly impacted by not only the improper removal of their rights by the Newman LNP government and the 2013 Legislation reforms but by the political appointments at the QIRC during the Newman Government administration in particular Ms Knight.

43. The government's election platform was a commitment to reinstate rights for workers at the QIRC. This submission asserts that a part of that commitment should include affording justice and fairness to those people/workers who have been unfairly and unjustly treated by adverse outcomes at the QIRC by members of the QIRC during the Campbell Newman Government administration who were "Newmanised".

How will this group of people be afforded justice under the current proposed Industrial Relations Bill 2016? That has not been clearly articulated in the bill.

45. “To inform the Review, the Reference Group and its Chair undertook an extensive process of consultation with other stakeholders and included: meetings of the Reference Group; meetings with individual stakeholders and groups of stakeholders; and a public consultation process that included the release of a series of Issues Papers and invitation to make submissions. Twenty-six formal submissions were made to the review. The Report was publicly released on 4 March 2016.

Consultations and submissions are listed in Appendix 4 and 5 of the Report (Office of Industrial Relations briefing paper to the Finance and Administration Committee – Industrial Relations Bill 2016, September 2016)”.

46. **“Appendix 5: Schedule of the persons and organisations who made written submissions to the Review²⁶⁶”**

At the base of page 162 of “A review of the industrial relations framework in Queensland A report of the Industrial Relations Legislative Reform Reference Group December 2015”.

Footnote 266 is listed and says ...

“266 There were some submissions received from individuals which have not been published.”

47. The purpose of the Bill according to the September 2016 Office of Industrial Relations briefing paper to the Finance and Administration Committee is set out as follows...

“Proposals

The Bill repeals the IR Act and provides for an industrial relations system based upon the recommendations of the Report and policy issues determined by Government.

Key proposals made by the Bill include: a set of minimum standards; collective bargaining as the cornerstone for setting wages and conditions; a set of individual rights to fair treatment; effective, transparent and accountable governance and reporting obligations for registered organisations; and an independent commission and court.”

48. I find this statement extraordinary when Appendix 5 “A review of the industrial relations framework in Queensland A report of the Industrial Relations Legislative Reform Reference Group December 2015 says otherwise. The footnote 266 says some submissions were not published but gives no explanation as to why those submissions were not published and read by the Queensland public who had an interest in the Industrial Relations reform.

49. According to the IR Review’s “View submissions” webpage

<https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations-legislative-reform/review-submissions.php> found on the Queensland Government’s Treasury website only **16 of the 26**

submissions were published 10 submissions were not published without an account who compiled and submitted these submissions or indeed an explanation of why those submissions were not published.

50. Two of the 10 unpublished submissions to the Industrial Relations Legislative Reform Reference Group review guided by the “Terms of Reference” of the inquiry will be included with this submission for the Finance and Administration Committees consideration.

Recommendations:

- Invite authors of unpublished submissions to the Industrial Relations Legislative Reform Reference Group inquiry 2015 to provide oral submissions to the Finance & Administration Committee Industrial Relations Bill 2016 inquiry
- Introduce retrospective reviews of QIRC decisions made by Newman Government QIRC recruitment and subsequent member appointments
- Review all of Commissioner Knight's reinstatement/reemployment decisions
- Overturn Commissioner Knight's harsh, unjust and unreasonable decisions
- Allow workers to have another chance of presenting their cases to the QIRC for an unbiased hearing
- Cease politically motivated appointments
- Recruit appropriately educated and qualified applicants to QIRC employment vacancies
- Return the QIRC to a jurisdiction where costly litigation does not occur
- Restore the processes of natural justice, impartiality and fairness to the workers, employers and unions of Queensland at the QIRC
- Legislate changes as soon as practicable

Thank you for the opportunity to present my submission and recommendations regarding the proposed Industrial Relations Bill 2016

Regards,

Lesleigh Murphy

