30 September 2016

The Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Research Director

Re: Industrial Relations Bill 2016

We refer to the above Bill.

Together Queensland, Industrial Union of Employees (**Together**) covers employees of the core departments of the State Government, public service offices and statutory authorities and many other employees affected by the IR Act.

Together supports the overall intent of the Bill and the majority of the provisions and policy positions of government.

Together notes and supports the submission made by the Queensland Council of Unions as the peak body of affiliated unions in Queensland.

We seek in our submission to raise a number of areas where the Bill does not address concerns of workers in the public sector and/or does not go far enough in its proposed resolution of those issues.

We seek to be heard by the Committee at the public hearing. Additionally we would seek permission to post these submissions on our website for our members' viewing.

Yours sincerely,

Alex Scott

Together Secretary

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Finance and Administration Committee

Industrial Relations Bill 2016

Submissions

by

Together Queensland

Industrial Union of Employees

Contents

Terms and abbreviations

Together	Together Queensland, Industrial Union of Employees
FW Act	*Fair Work Act 2007* (Cth)
IR Act	*Industrial Relations Act 1999* (Qld)
PS Act	*Public Service Act 2008* (Qld)
QIRC	Queensland Industrial Relations Commission
PSC CE	Public Service Commission Chief Executive
IR Minister	Minister for Industrial Relations

Together Queensland

Submission to the Finance and Administration Committee

Industrial Relations Bill 2016

1 Background

Together Queensland, Industrial Union of Employees (**Together**) is the leading industrial union representing the interests of Queensland public servants.[1]

Together Queensland covers employees of the core departments of the State Government, public service offices and statutory authorities and many other employees affected by the IR Act.

Together Queensland:

- is an Industrial Organisation of Employees under the IR Act;
- is a transitionally recognised State association under the *Fair Work (Registered Organisations) Act 2009* (Cth) (FWRO Act);
- is a counterpart of the Australian Municipal, Administrative, Clerical and Services Union (ASU) Central and Southern Queensland Clerical and Administrative Branch. The ASU is a registered organisation under the FWRO Act.

Together supports the overall intent of the Bill and the majority of the provisions and policy positions of government.

Together notes and supports the submission made by the Queensland Council of Unions as the peak body of affiliated unions in Queensland.

We seek in our submission to raise a number of areas where the Bill does not address concerns of workers in the public sector and/or does not go far enough in its proposed resolution of those issues.

[1] Together does not cover police, nurses, schoolteachers or railway employees

The major issues we raise in our submission are:

- The need for a broader legislative basis for appeal rights for public service employees under the Public Service Act and legislated protections for "fair treatment" at work.

- The current disparity of rights between public sector and private sector workers in regards to access to an independent umpire on certain industrial issues such as classification level and permanence of employment.

- The prevalence of precarious forms of employment in the Queensland Public Sector and the lack of determinative relief.

- Protections from the unilateral or ultra vires exercise of directive making power to the detriment of public servants

2 Public Service Appeals

2.1 Right to Appeal

Currently there are two separate jurisdictions for Queensland Public Servants to seek a remedy in respect of their employment.

The Queensland Industrial Relations Commission has a broad jurisdiction to deal with industrial matters, to conciliate and arbitrate disputes and to make binding orders on employees, employers and industrial organisations.

While this jurisdiction is potentially very broad there have been specific limits placed on the jurisdiction of the Commission by the operation of the Public Service Act and other Queensland statutes that govern the employment of public servants in Queensland. Most concerning, is the operation of these statutes to remove the capacity of the Commission to consider the true nature of the employment relationship and to provide a remedy where there has been an act, error or omission in regards to the nature of the appointment of an employee under these statutes. This is acknowledged in the IR Taskforce report which states "*The ability of the QIRC to determine some appeals has been also been limited by provisions relating to employment which are reserved for Directors-General under the PS Act*[2]". This is discussed in more detail elsewhere in this submission.

There is also a statutory basis for appeals under the *Public Service Act 2008* (PS Act). While these appeals are also to members of the QIRC, they hear and determine these appeals as Appeals Officers under an entirely separate jurisdiction, with different rules and processes and relying on different authority, with different powers and remedies.

[2] A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform Reference Group, 2015, 46.

It was our submission to the IR taskforce that the transfer of public service appeals to the QIRC and the designation of QIRC members as appeals officers under the PS Act has not worked and that the change of jurisdiction should have been accompanied by proper and relevant changes to the nature of the appeals, which were heard under the PS Act and not the IR Act. We submitted that this failure to develop coherent policy and to ensure proper support for appeals officers resulted in a diminution of the QIRC's authority and reduction in the confidence that employees and their industrial representatives have in the system.

The appeal rights provided under the Public Service Act are limited in the Act itself and in large part rely on the existence of a "directive" or ruling under the Act by the Chief Executive of the Public Service Commission, which provides a right to appeal. This takes the form of either or both a stand-alone directive relating to the subject matter, and/or the inclusion of a specific right to appeal in the "Appeals Directive". As use of directives as industrial instruments in the public service reduces, as identified in the review, so too will the grounds of appeal diminish over time.

This directive based mechanism for employee rights has been problematic for public servants due to the action taken by successive Chief Executives of the PSC since 2010 to erode the rights of public servants through the use of their directive making power, contrary to industrial settlements between the government and Together members as part of certified agreement negotiations.

- In 2010 under the Bligh Government, the Chief Executive of Public Service Commission unilaterally amended the Temporary Employment Directive in such a way as to remove or reduce employment security measures for temporary employees agreed in Certified Agreement settlement negotiations in 2006 and 2009.

- Directives relating to appeals, complaints management and performance management were also unilaterally amended despite significant concerns raised by our union and inconsistency with the agreed position between the government and unions.

- In 2012, under the Newman Government, the Chief Executive of the Public Service Commission sought to introduce a directive to override clauses in industrial instruments and reduce the conditions employment of members under their certified agreements and awards. Directives were also unilaterally amended in relation to conditions of employment such as processes to support employment security, leave and other conditions.

- Last year, the Palaszczuk government committed to reinstating rights unilaterally removed from directives by the Newman government. We note that while almost all of the matters relating to remuneration and terms and conditions of employment in Ministerial Directives have been restored, a range of employee rights contained in PSC Directives, most notably provisions that govern complaint processes, direct appointment and limited applicant processes to support employment security under the recruitment and selection directive, have to date not been reinstated by the Chief Executive of the Public Service Commission.

The Taskforce report concluded that the use of directives to set or vary terms and conditions of employment should be limited.

Specifically with respect to appeals, successive Chief Executives of the PSC have refused to make directives in line with collective bargaining outcomes and have eroded the appeals jurisdiction through their unilateral power to make or repeal directives.

Mental or physical incapacity

- A commitment was made by the Bligh government to provide an appeal mechanism for decisions made under Part 7 of the Public Service Act 2008 relating to medical assessment processes.

- The PS Act was amended in 2010 to provide for a Directive to be issued by the PSC CE in order to create a right of appeal under this Act.

- There has been no progress made to give effect to this commitment to provide for a directive relating to medical assessment and retirement processes under Part 7 of the Public Service Act 2008.

- The absence of such a directive negates an appeal right with respect to these matters.

- Further the QIRC also has limited capacity to intervene due to the employer exercising lawful powers under the Public Service Act, powers that are largely unconstrained by any effective appeals mechanism or oversight by independent umpire.

Fair Treatment

- The *Public Service Act 2008* and its predecessor provide for an appeal to be made about a decision to take, or not take, action under a directive. Prior to 2010, the Appeals Directive and the Grievance Directive provided an avenue for a "fair treatment appeal" on the basis that the directive provided that "Employees must be treated fairly and reasonably".

- In 2010 this ground was removed from the Appeals Directive and replaced with a mechanism where there was an appeal avenue through an agency complaint process and the Managing Employee Complaints Directive which replaced the Grievance Directive. These were made with limited consultation and despite significant concerns raised by our union, particularly with respect to appeal rights relating to temporary employment.

- In June 2013, the Chief Executive of the Public Service Commission unilaterally repealed the Managing Employee Complaints Directive, removing entirely a general right to appeal an unfair or unreasonable decision. This led to a reduction in appeals of 38% in the 2013/14 year[3].

2.2 Determinative powers

At the departmental briefing the Public Service Commission appeared to brief the Committee that the QIRC has the jurisdiction to hear an appeal by a temporary public servant in relation to a failure of their employer to convert them to permanent employment and to substitute a new decision.

We submit this is not the case. The QIRC (under its native jurisdiction) is not able to make a decision relating to the appointment or classification level of an employee appointed under the Public Service Act for reasons set out in detail elsewhere in this submission. Together notes that there is no such restriction on employees employed under the Fair Work Act or at common law. It is the operation of the current Public Service Act that denies a public service employee these rights that are enjoyed by employees in the private sector.

[3] Annual Report to Premier: Public service appeals 2013-14
https://www.qld.gov.au/gov/file/15266/download?token=vF5eCnUU

Further, members of the QIRC who are sitting as Appeals Officers (or IRC members under the proposed Bill) under the Public Service Act only have powers to substitute another decision in an appeal relating to discipline or a decision to take or not take action under a directive or a transfer decision. This power is expressly denied in relation to appeals relating to promotion or temporary employment and there are also no appeal rights in relation to classification level or in relation to fair treatment (other than in limited circumstances of a specific decision under a directive).

A commitment was made by the government as part of the 2006 Core Agreement settlement process that a central dispute resolution process would be in place by March 2007, for temporary employees seeking tenured employment, and would include determinative powers.

The Office of Industrial Relations provided advice that in the private sector the legislation was not the instrument of conversion, but rather policies were such instruments and that directives were the public sector equivalent. In fact the instrument of conversion for such a process under the Fair Work Act is often the modern award or enterprise bargaining agreement, which provides an avenue of "appeal" to the tribunal. On that basis, if conversion processes are not contained in legislation as we submit they should be, then these rights are properly construed as conditions of employment and belong in an industrial instrument such as an award or certified agreement.

However, without legislative change, the Public Service Act will continue to prevent an employee seeking a decision of either the QIRC or the Public Service Appeals body to decide their true classification or permanent appointment.

Further, regardless of the existence or otherwise of a conversion process contained in an instrument, a private sector employee who is employed on a casual or fixed term basis has the right to seek from the Fair Work Commission a decision that the nature of their employment is in fact permanent.

This is denied to Queensland Public servants by the Public Service Act 2008 and the *Carey* decisions discussed in detail elsewhere in this submission.

The Chair of the Committee at the public briefing asked the question: *Do there need to be amendments to bring public sector employees in line with private sector employees?* Together believes strongly that this is the case.

2.3 Taskforce Recommendations and discussion

Individual public sector appeal rights[4]

The nature of public sector employment is characterised by administrative and industrial decision making within a legislative environment which is framed particularly by PS Act and the IR Act and their interaction. Individual appeal rights are important in the public sector employment, and are detailed in Chapter 7 of the PS Act, 'Appeals and Review'. The main basis for appeals relates to 'a decision to take, or not take, action under a directive'.

However TQ has argued that the ability to take such appeals has been significantly reduced over a number of years and culminated in the repeal of the 'Complaints' directive in 2013.

The ability of the QIRC to determine some appeals has been also been limited by provisions relating to employment which are reserved for Directors-General under the PS Act.

Consistent with the values of an apolitical public service, an important principle of public employment should be the capacity for an external review (of decisions) where local and agency processes have failed to satisfactorily resolve the issues in dispute. This avenue should be available across the range of employment issues including promotion, transfer, deployment and performance management as well as those which are already provided for in the IR Act as industrial matters.

It is important to note here that recommendations in Chapter 9 of this Report would extend the concept of workplace rights into the jurisdictions covered by a new Act.

[4] McGowan, J. 2015, *A review of the industrial relations framework in Queensland*, viewed 13 September 2016 https://www.treasury.qld.gov.au/publications-resources/industrial-relations/review-of-qld-industrial-relations-framework.pdf, p46.

Negotiations should occur between the PSC, Office of Industrial Relations and public sector unions in order to develop a framework for appeals which provides that the QIRC has the jurisdiction to hear appeals where the matters have been unable to be resolved at the agency level.

Recommendation 11

That the appeal rights for employees covered by the Public Service Act 2008 (Qld) be reviewed to ensure that the Queensland Industrial Relations Commission has the jurisdiction to consider appeals where the matters have been unable to be resolved at the workplace or agency level.

This recommendation has been accepted by government and the Office of Industrial Relations has provided advice to the parliamentary committee that this Bill has addressed all legislative recommendations.

It is our submission however that this Bill does not address this recommendation and no such negotiations have occurred with either the Office of Industrial Relations or the Public Service Commission.

2.4 Together submission to the IR Taskforce

Together's submission relating to appeal rights to the IR Taskforce, on which it relied in its report, was that:

Public employment decisions are required under the PS Act to be made on grounds of merit. Together Queensland supports merit as the basis for public sector employment decisions, and as discussed about considers merit to be fundamental the Westminster style government and the foundation of an expert and competent public service.

The State, to be constitutional government, is subject to the rule of law, and that includes employment decisions.

The merit principle and the rule of law together require decisions about public employment to be made on rational grounds, and imply that decision makers should be accountable and to be able to be brought to account.

The IR Act, despite the industrial jurisdiction being almost exclusively public sector, in no way reflects this major difference from the private sector. When the QIRC is considering employment matters, it has no reference point in its own legislation to these fundamental public employment issues.

An important part of that accountability is that public servants be entitled to be treated fairly and to be able to assert the right to fair treatment, including by way of raising grievances and making complaints about unfair treatment or abuse of authority.

Together Queensland's view is that the right to fair treatment must be enshrined in primary legislation and not be subject to industrial trade off or unilateral removal by way of directive or subordinate legislation.

Together Queensland will make separate submissions to government about the details of such provisions in public employment legislation. For the purposes of this review, Together Queensland's preference is for the rights to be enshrined in the PS Act, not the IR Act, because fair treatment and handling grievance and complaint are fundamentally matters best characterised as about employment, not industrial relations. The question of the appropriate tribunal (which may be the QIRC) is separate.

Together Queensland does not believe that the transfer of public service appeals to the QIRC, and the designation of QIRC members as Appeals Officers under the PS Act, has worked. The change of jurisdiction should have been accompanied by proper and relevant changes to the nature of the appeals, which were heard under the PS Act and not the IR Act. This failure to develop coherent policy, and to ensure proper support for appeals officers, resulted in a diminution of the QIRC's authority and reduction in the confidence that employees and their industrial representative have in the system.

2.5 Outcomes sought – Public Service Appeals

Together seeks for the Public Service Act to require decisions in relation to public sector employment to be made fairly and reasonably. Further, IRC members should be required to consider this requirement in any hearing of an appeal under the Public Service Act. This should also be something considered by the QIRC in any relevant process under the IR Act.

Public servants should be expressly able to assert this right to fair treatment, including by way of raising grievances and making complaints about unfair treatment or abuse of authority and to be able to appeal to the IRC members in the public service appeal jurisdiction and seek a determinative remedy.

Specifically Together seeks for a clear legislative right to appeal to the QIRC and seek a determinative remedy in relation to the following matters, in addition to current appeal rights in the act:

- a decision made under Part 7 of the Public Service Act (other than a decision to retire)
- a decision about public sector employment with respect to the fairness and reasonableness of the decision
- a decision made in relation to a complaint or grievance

3 Precarious employment

3.1 Background

The International Labour Organisation has identified the rise in employment insecurity as one of the most important trends in the world of work over recent decades. In clause 9 of its *R198 - Employment Relationship Recommendation, 2006* the ILO stated:

> *9. For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.*[5]

With respect to the use of precarious employments arrangements in the Public Sector, Part 3.4 of the IR Taskforce Report notes that:

> *except for the impact of significant downsizing of the sector during the previous LNP Government - both the number and proportion of temporary and contract employees has increased markedly over the last decade."*[6]; and
>
> *"In the context of government as a model employer, government agencies can and should do more to support the principles of employment security and merit. Anecdotally, casual and temporary employment are used as de facto probationary arrangements; 'a try before you buy' approach.*[7]

In the Fair Work Jurisdiction the independent industrial umpire is able to consider the employment relationship and deem an employee as permanent. This is a power exercised by the Fair Work Commission and the courts.

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[5] International Labour Organisation, 2006, *R198 - Employment Relationship Recommendation*, viewed 13 September 2016, http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312535

[6] McGowan, J. 2015, *A review of the industrial relations framework in Queensland*, viewed 13 September 2016 https://www.treasury.qld.gov.au/publications-resources/industrial-relations/review-of-qld-industrial-relations-framework.pdf, p48.

[7] Ibid. P49

3.2 Issues

The main purpose of the *Public Service Act 2008* includes to:

- provide for the administration of the public service and the employment and management of public service employees;
- to provide for the rights and obligations of public service employees; and
- to promote equality of employment opportunity in the public service.

The PS Act sets out the management and employment principles which include that:

> *Public service employment is to be directed towards promoting*
>
> *(a) best practice human resource management; and*
>
> *(b) equitable and flexible working environments in which all public service employees are*
>
> *(i) treated fairly and reasonably; and*
>
> *(ii) remunerated at rates appropriate to their responsibilities; and*
>
> *(c) a diverse and highly skilled workforce*

The main functions of the Public Service Commission include promoting these principles. Despite the inclusion of these principles in the Act, the construction of the Act itself interferes with the application of these principles to public service employment.

Changes to the IR Act and the PS Act are required to fully realise the public service management and employment principles and apply them to public service employment in Queensland.

3.2.1 Temporary and Casual Employment

The current *Public Service Act 2008* does not allow the Queensland Industrial Relations Commission to consider the "*the facts relating to the performance of work and the remuneration of the worker*" or the employment relationship for workers employed under the PS Act, as is the case under the common law and in the commonwealth jurisdiction under the Fair Work Act.

This was confirmed in *Dept. of Justice and Attorney-General v Carey (25 June 2002)*[8] when the Industrial Court overturned a decision of the Commission on appeal.

Originally the QIRC made a decision that a temporary employee had been dismissed by the employer when their temporary engagement was not renewed, after continuous employment under a series of rolling temporary contracts for 7 years. This decision was made on the basis of the evidence of the relationship between the parties and the principles applying to contracts of employment under the common law.

The rationale for the decision on appeal was that the construction of the (then) *Public Service Act 1996* precluded the Commission from considering these matters and making such a finding.

> *"Whatever scope there may be for notions of conscionability in the construction and enforcement of contracts of employment the requirements of good conscience cannot confer upon an employee and impose upon the Crown an engagement that the Public Service Act 1996 does not allow"*

Together submits that the right to have the independent umpire consider the relationship between the parties, the principles applying under the common law, and notions of conscionability in the construction and enforcement of their employment arrangements is a fundamental employment right.

While there is a conversion process under the PS Act, and an appeal right, there is no power under the appeals jurisdiction to substitute a decision and referring the matter back to the employer is the only remedy.

[8] *[2002] QIC 37; 170 QGIG 306*

There is also a Directive which seeks to provide severance benefits to temporary employees who are terminated. This Directive does not apply to employees of the Department of Health or the Hospital and Health Services.

Private sector employees have access to both conversion processes (if contained in their award or enterprise bargain) and also the right to seek to be deemed as a permanent employee by the Fair Work Commission or the courts.

3.2.2 Classification Level

The Public Service Act has also been held to prevent the Commission from intervening in respect of classification level and performing work at a higher level.

In *Perry Langley v Queensland Police Service (18 September 2009)*[9] the Commission at first instance decided that the employer had an obligation to pay an employee at the higher classification level due to performance of work at that level.

> *The Commission is to be guided in its decisions by equity, good conscience and the substantial merits of the case (see s. 320 of the Industrial Relations Act 1999). It would be a travesty of justice if a department which took nearly 18 months to process and finalise a re-submitted request for a job evaluation (and more than 2 years from the misplaced initial request) could "profit" from its own inadequacies in circumstances where the employee concerned has been deprived of a reclassification, and wage increase, which the facts clearly establish he was entitled to.*

However, President Hall held in *Minister for Industrial Relations AND Perry Keith Langley*[10] that the Public Service Act overrode the rights that a public service employee might otherwise have to be paid the salary appropriate to the duties which he performed.

[9] *[2009] QIRComm 72; 192 QGIG 75*
[10] *(C/2009/46)*

> *It is not a grant of authority to the Commission to retrospectively arbitrate a "fair" or "reasonable" wage for a particular public service employee in an action to recover outstanding wages.*
>
> *It is unnecessary to investigate whether Mr Langley had a "contractual" right to be paid the salary appropriate to the duties which he performed because any such "contract" would be overborne by the PS Act 1996 and the Award and the Certified Agreements made under the Industrial Relations Act 1999. Indeed, though it is not strictly necessary to decide the point, I apprehend that payment in accordance with such a "contract" may be unlawful, compare Attorney-General v Gray2 per Hutley JA.*

There is also no equivalent appeal right under the Public Service Act.

3.2.3 Higher Duties Employment

Anecdotal evidence suggests that as well as the growth in temporary employment, there has also been a related rise on the reliance by government agencies on long term higher duties or acting arrangements, outside of short term backfill arrangements. This appears to have been exacerbated by restrictions on permanently filling vacancies under the Newman government and “try before you buy” recruitment practices.

This creates a common scenario where though an employee may own a substantive permanent position, they have been effectively been employed in a higher role for many years. This is another form of precarious employment that is not only unfair to individual employees, but is also inconsistent with the principles of Westminster government and permanent and impartial public service. It also offends the public service management and employment principles as expressed in the PS Act, including that public service employment is to be directed towards promoting best practice human resource management and equitable and flexible working environments in which all public service employees are treated fairly and reasonably; and remunerated at rates appropriate to their responsibilities.

In conjunction with high temporary employment rates, these practices create significant instability within agency structures and churn in roles as structures are constantly in a state of flux. Together members report that it is common to have significant segments of an organisational structure filled through cascading higher duties and temporary arrangements on a long term basis.

These arrangements are often extended over and over again and employees often will have significant continuous service at a range of classification levels above their substantive appointment. Where recruitment practices for the initial acting opportunity are poor, these employees are often not currently able to be permanently appointed to these roles without an additional time consuming external application process.

Employees in higher duties arrangements, even with many years of service at the higher level, have no rights in relation to that role and can be unilaterally reduced in classification level. This has significant impacts on remuneration, superannuation and career paths. There is no right of appeal from these decisions, which are often made unilaterally by individual managers.

Members also report that the decision to return to their substantive level is often not related to the requirements of the role or the demand for their expertise and members often report that they continue to utilise their skills and experience gained in higher duties, and continue to perform work at the higher level, without appropriate remuneration.

These member experiences are illustrated in more detail in 3.3.

3.2.4 Labour Hire and Contract Employment

Under the Newman government there was an explosion in the use of labour hire arrangements, agency temps and consultants by government agencies due to the neutering of contracting out provisions and the artificial cap placed on public service employment. The reinstatement of government policy on contracting-out of government services has, in our assessment, significantly reduced the use of consultants and contracting out, however there remain issues across government with the use of agency temporaries and labour-hire arrangements instead of directly employed temporary or permanent staff.

Poor practices include outsourced recruitment processes where employees remain employed by the recruitment firm, use of agency temporaries instead of temporary employees under the PS Act and highly paid per day consultants, where internal capacity has been lost though staff cuts.

This significantly distorts the available data about the use of temporary employment and the size of the government workforce but it also has the potential to create significant costs to government through agency costs, while simultaneously undermining the pay and conditions of workers in the public service.

Together notes the recent inquiry into Labour Hire employment conducted by this Committee and the evidence before the Committee of the potential for exploitation and use of labour hire arrangements to avoid industrial obligations. The State Government should be a model employer and should have legislative responsibilities for labour hire work on behalf of government.

Currently, labour hire employees of government agencies work side by side with directly employed staff and perform the same work; however, they do not receive the same wages and conditions as staff employed under the PS Act.

The host relationship does not provide the same obligations on the host or entitlements on the worker to government policies such as special leave, or support when experiencing domestic violence.

The PS Act should provide for labour hire and contract workers to be subject to the same remuneration and terms and conditions of employment as employees under the PS Act and provide for a mechanism to allow the conversion of these arm's length arrangements into direct employment under the PS Act and the relevant industrial instruments. In the Fair Work jurisdiction, service in a labour hire or temp agency role can be recognised as service when converted to direct employment[11].

3.3 Member case studies

This is not merely an academic industrial issue. Together members have provided extensive insight into the real world implications of precarious employment in the Queensland public sector and some of their stories are provided here:

> *"In 2011, I applied for a position. I was offered the job and told that although it was initially a fixed term contract; the position was intended to be converted to permanent after one year. Years later, I remain a temporary worker. Recently some of my co-workers in my team were converted, yet I was overlooked. The process also occurred during my leave, and I only found out about the situation through chance (not consultation). My manager later responded to my request for an explanation, by saying that I was a committed and talented member of staff. Why then was I the only team member to be overlooked for permanency?*
>
> *Most importantly, the feelings of hurt and fear felt by me as a result of being overlooked in the recent round of conversions to permanency has culminated in symptoms of stress, anxiety, panic attacks and a lack of general well-being. I am currently engaged in therapy."*
>
> *…*

[11] Nicole Burdziejko v ERGT Australia Pty Ltd [2015] FWC 2308. (U2015/139). DEPUTY PRESIDENT GOOLEY. MELBOURNE, 1 APRIL 2015

"Over the years, I have had to organise my life decisions around the fact that I am a temporary worker. There has been a negative impact on my finances and investments. However, the greatest impact has been the sense of exposure, vulnerability and lack of value I have felt as a temporary worker. Where permanent workers in my work unit had the sense of empowerment, borne from their job security, to say 'no' to unfair workloads, there have been times in the past when I carried far more work than a reasonable share. Threats to my [employment] were made at that time if I put up any resistance."

…

"Overall, I have been placed on five consecutive contracts over a period of six years. Temporary contracts allow employers a bolt on, bolt off workforce to adapt to feast and famine environments. If the work dries up, the temporary worker, is the first to go - just as their role was designed: to be cut loose without consequence to the employer."

…

"I feel that being denied permanency implies that there is something wrong with me or my performance. When you share the information with friends and family when you seek solace, you feel that others are thinking, you must be 'dispensable' to be placed in this sort of position. As a committed and talented employee, I take umbrage to the message that being 'temporary' sends out to our community about our role in the public service. Is the choice between commerce or investing in the human knowledge capital of our people?

Temporary workers are giving 150% to their roles and responsibilities, to prove their worth for the acknowledgement required that may lead to their permanent tenure. On the other hand, employers are protecting themselves by placing all the risk on the worker at the expense of the service clients."

…

"I have been on 4 different contracts in the last 12 months, whilst in the same temporary position. I have worked for the Queensland Government since 2006 and never had a permanent position; I have either been on a temporary contract or worked through a labour hire company.

I am aware that as a temporary public servant, I do not have the same rights and conditions as my colleagues who are permanent.
As a temporary employee in the Queensland public sector, job security is an ongoing concern for me. I support changes to legislation that would provide better access to permanency for temporary public sector workers who can demonstrate their suitability for employment.

I urge the Committee to support changes to the bill to make the independent umpire, the Queensland Industrial Relations Commission, the final arbiter on whether a long-term temporary employee is entitled to permanency".

…

"I am a temporary worker and have been on a temporary contract for over 12 months. This has led to insecurity for me personally, including affecting my application for a home loan. I do not see any prospects of a permanent role becoming available in my office any time soon and I am one of numerous temporary staff in this role that would compete for a permanent position if it arose.

I do not think it is fair for the government to ask employees to support vulnerable Queensland families to improve their financial situations and the stability of their living situations while not providing working conditions that support employees to do the same for themselves.

I am committed to my job in child protection but I do not feel the government is committed to their employees who work in difficult front line positions. I have been reassured that no temporary staff member in this role has ever been let go and I believe this warrants making our positions permanent".

…

"I have been temporarily acting in a higher level role since 2008. I sought permanent appointment to this role, but it was knocked back on the basis that my employer was 'no longer hiring' anyone at that level."

…

"I was acting in my role since 2008. The only reason given by my manager for not permanently appointing me was "operational requirements" and that my manager had discretion."

…

"I've been acting in this Administration Officer level 5 (AO5) position since 2010, before which I was acting in an Administration Officer level 4 (AO4) position for three years. The reason given for not appointing me permanently was that there were no vacancies, however it was evident from the establishment documentation that the positions in which I was acting were substantively vacant."

…

"When I made my application, the employer lost my paperwork from four years previous, which they told me meant that I couldn't be made permanent."

…

"When I started my role in 2009, I was told I couldn't be made permanent because we were being outsourced to the private sector. I am still here in 2016."

…

"My employer claimed in 2010 they don't know their future staffing needs so they refused to consider making the role permanent, even though the work unit continues to be understaffed."

…

"I have been acting AO4 for almost 10 years. When I was first recruited there was a defect in the recruitment process, so this meant I couldn't be made permanent, and I had to go through a new recruitment process to seek appointment to the job I had been doing for 10 years."

…

"My substantive position is an AO3 and I have been Acting as an AO4 for approximately 10 years in Finance. I have been unsuccessful in getting placed in either the temporary AO4 or AO5 role. I have 10 years' experience in accounting and for the past 4 years have been a valuable member of the finance team, acting in level 5 and 4 roles. I have a good HR record. The recruitment procedure for permanent roles was focussed on role playing as a call centre operator and participating in a meeting discussion which was not applicable to our working environment. Finance/accounting questions were not asked.

In addition, after being interviewed, I was unsuccessful for an AO5 temporary position that was available. I have now been advised that I will be sharing a vacant temporary level 4 position with another substantive AO3 that I have trained on the job

My ex-Team Leaders and resume referees, have made comment to me about the injustice of the outcome of the recruitment process.

Until recently, I was enthusiastic and enjoyed my job and enjoyed finding new ways to assist clients. My strength is my accounting and technical skills and I am a person that is always willing to assist and train staff and be a team player. I have given my fullest capabilities. As a result of the recent recruitment process I feel that my experience and that of others, has not been valued. It has become difficult to believe in a fair, transparent system and stay positive".

This qualitative information from Together members shows the severity of this problem for individual members across the public service and the IR Taskforce itself considered the data relating to the rising levels of temporary employment across the sector.

3.4 Outcomes sought – Precarious Employment

Together seeks for the Industrial Relations Commission to be given specific powers in the Industrial Relations Act to allow the Commission, in the exercise of any of its functions in respect of a public service employee, to consider evidence of the

employment relationship and to make determinative and binding decisions in respect of that relationship including whether an employee is truly permanent; the appropriate classification level of an employee; and the date from which this should have effect.

Together seeks for the temporary to permanent conversion process under the PS Act be strengthened in accordance with the IR Taskforce (Recommendation 13); and be extended to casual and labour hire employees (Recommendation 14). The details of conversion rights should be contained in the PS Act rather than a Directive, so as to be protected from the whims of the Public Service Commission Chief Executive of the day.

4 Directives

Together supports the introduction of a requirement for CE of the PSC or the Minister for Industrial Relations to consult with union and agencies about a proposed directive. However we also seek for the QIRC, to be given express powers under the IR Act to make a ruling with respect to whether the proposed directives are within the powers of the PSC CE or the Minister as set out below.

Together supports the amendment to the PS Act that provides that the CE of the PSC cannot make a ruling about the remuneration or conditions of employment of employees covered by industrial instruments. Together seeks that the QIRC be given the power to make a ruling with respect to whether a proposed PSC Directive is within the powers of the PSC CE or whether it is a ruling about the remuneration or conditions of employment of a public service employee covered by an industrial instrument.

Further Together seeks for the wording of the subject matter to which the Minister for Industrial Relations will have sole directive making power to be amended to read "*remuneration or* terms and *conditions of employment*" in line with the Taskforce recommendation.

Together supports the amendments to the PS Act that provide that an industrial instrument prevails over a directive to the extent of any inconsistency, unless the remuneration and conditions of employment provided for in the directive are at least as favourable as those provided for in the industrial instrument. However, Together seeks that the QIRC be given the power to make a ruling as to whether the proposed directive is a directive dealing with a matter all or part of which is dealt with under an industrial instrument, and whether the remuneration and conditions of employment provided for in the directive are at least as favourable as the remuneration and conditions of employment provided for in the industrial instrument.

The Bill provides for a "sunset clause" for a range of rulings already made that in our view interfere with the operation of the provisions above.

Section 289(1) is a catch all provision that allows for existing directives made contrary to the separation of power between the CE of the PSC and the IR Minister established in the new IR Act to remain on foot. Together believes this is contrary to the recommendations of the IR Taskforce and contrary to the intent of the act to separate the powers of the IR Minister and the PSC CE and ensure there is no longer any overlap or confusion about the exercise of these powers. Together submits that this provision should be removed.

289 (2) is similarly a provision that is inconsistent with the intent of the Act. For this provision to remain in place undermines the position of the parliament expressed in this Act and the position of the taskforce that the industrial instruments must have primacy over unilateral instruments of the PSC CE or the Minister for Industrial Relations. The instruments governing the employment of health employees have, or are open for Queensland Health to seek to include these arrangements in these instruments.

289 (3) provides that directive 09/16 relating to field staff continues to prevail over an industrial instrument to the extent of any inconsistency between the directive and the industrial instrument, until the end of 30 September 2017. Once again this is

inconsistent with these provisions and agencies utilising the directive to reduce remuneration and conditions of employment under an industrial instrument have had the opportunity to bargain to include these provisions in industrial instruments.

5 Industrial action

Together supports the submission of the QTU in relation to the right to take industrial action as a key industrial and human right and one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests.[12]

6 Other matters

Section 1127 of the Bill amends s 193 of the PS Act (Appeals) and inserts a note:

> *Note The Industrial Relations Act 2016 does not apply in relation to a matter that has been, or is, the subject of an appeal under this part except to the extent the matter relates to bullying in the workplace see sections 425 and 449 of that Act.*

Together submits that this note does not accurately characterise the effect of sections 425 and 449 of the IR Act, which provides that the Commission and the Court lack jurisdiction to hear a matter that has been, or is, the subject of an appeal under the Public Service Act 2008, chapter 7, part 1. It does not provide that the IR Act does not apply to that matter.

7 Summary of main outcomes sought

Appeals

Together seeks for the Public Service Act to require decisions in relation to public sector employment to be made fairly and reasonably. Further, IRC members, sitting as Appeals Officers, should be required to consider this requirement in any hearing of an appeal

[12] 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

under the Public Service Act. This should also be something considered by the QIRC in any relevant process under the IR Act.

Public servants should be expressly able to assert this right to fair treatment, including by way of raising grievances and making complaints about unfair treatment or abuse of authority and to be able to appeal to the IRC members in the public service appeal jurisdiction and seek a determinative remedy.

Together seeks for a clear legislative right to appeal to the QIRC and seek a determinative remedy in relation to the following matters, in addition to current appeal rights in the act:

- a decision made under Part 7 of the Public Service Act (other than a decision to retire)
- a decision about public sector employment with respect to the fairness and reasonableness of the decision
- a decision made in relation to a complaint or grievance

Precarious Employment

Together seeks for the Industrial Relations Commission to be given specific powers in the Industrial Relations Act to allow the Commission, in the exercise of any of its functions in respect of a public service employee to consider evidence of the employment relationship and to make determinative and binding decisions in respect of that relationship including whether an employee is truly permanent; the appropriate classification level of an employee; and the date from which this should have effect.

Together seeks for the temporary to permanent conversion process under the PS Act be strengthened in accordance with the IR Taskforce (Recommendation 13); and be extended to casual and labour hire employees (Recommendation 14). The details of conversion rights should be contained in the PS Act rather than a Directive, so as to be protected from the whims of the Public Service Commission Chief Executive of the day.

Directives

Together seeks for the QIRC, to be given express powers under the IR Act to make a ruling with respect to whether proposed directives are within the powers of the PSC CE or the Minister.

Together seeks that the QIRC be given the power to make a ruling with respect to whether a proposed PSC Directive is within the powers of the PSC CE or whether it is a ruling about the remuneration or conditions of employment of a public service employee covered by an industrial instrument.

Together seeks that the QIRC be given the power to make a ruling as to whether the proposed directive is a directive dealing with a matter all or part of which is dealt with under an industrial instrument, and whether the remuneration and terms and conditions of employment provided for in the directive are at least as favourable as the remuneration and conditions of employment provided for in the industrial instrument.

Together seeks the removal of the s289 "sunset clause" for a range of rulings already made that in our view interfere with the operation of the substantive provisions relating to directives.