



30 September 2016  
 Research Director  
 Finance and Administration Committee  
 Parliament House  
 George Street  
 Brisbane Qld 4000

LET6473.gg.ti-Exidir2016

By Email: [FAC@parliament.qld.gov.au](mailto:FAC@parliament.qld.gov.au)

Dear Sir/Madam,

**Submission: Industrial Relations Bill 2016**

Thank you for the opportunity to comment on the *Industrial Relations Bill 2016*.

As you may be aware Master Builders is the peak industry body for building and construction in Queensland, and represents the interests of over 8,000 building-related members. The vast majority of our members who are employers are now, post the referral of the Queensland government's industrial relations powers in 2009, subject to federal industrial relations law. As such, most of the provisions contained in the *Industrial Relations Bill 2016* (hereafter "the IR Bill") do not apply to our members. There are however, two distinct aspects of the IR Bill that are directly applicable to Master Builders and our members:

1. Master Builders is registered as Queensland Master Builders Association, Industrial Organisation of Employers (QMBA) under the *Industrial Relations Act 1999* (IR Act) and as a registered organisation will be covered by Chapter 12 of the IR Bill.
2. Chapter 19 of the IR Bill, which proposes to now refer work-related discrimination complaints for adjudication to the Queensland Industrial Relations Commission, will apply to our members who are national system employers.

Our submission therefore will focus on the above two areas. In summary:

1. The amendments to governance of industrial organisations as proposed in the IR Bill results in *less* transparency and *less* accountability for registered industrial organisations. This flies in the face of developments in the Federal jurisdiction, where the Trade Union Royal Commission (hereafter "the TURC") strongly recommended, since 2014, an increased transparency and accountability for industrial organisations, and as evidenced through the introduction of the *Fair Work (Registered Organisations) Amendment Bill 2014* (hereafter "the RO Bill"). The IR Bill will cause Queensland to lag behind existing community expectations on proper governance of unions and employer bodies. In light of the above, the Committee is urged to request a review of the IR Bill's governance framework to ensure closer alignment with the federal governance framework.



2. It is Master Builder's position that the IR Bill should not be used for the purposes of providing QIRC with jurisdiction to determine any matter that involves national system employers and employees, unless there is no other opportunity under the FWA to have the matter so dealt with. Referral of new adjudication powers to the Queensland Industrial Relations Commission (QIRC) appears contrary to the referral of Queensland's industrial powers to the Commonwealth in 2009. The Committee is therefore urged to question the legality and congruency of these provision in the IR Bill with the Queensland government's *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (the Referral Act) and related provisions in the *Fair Work Act 2009* (the FWA).

## Governance of Registered Industrial Organisations

### Current state of governance for Industrial Organisations

Industrial organisations share a unique status under Australian laws as 'not for profit' entities, which provide advantages not available to the commercial sector. Notwithstanding this special role, each organisation must also be a viable business in the ordinary sense and many have built up substantial assets through years of careful management and investment. Accountability to their members and transparency in their dealings is therefore as important as it is for registered corporations.

Despite the good record of most organisations, it is now in the public domain that there is a problem with the regulation of unions. The media, courts and federal government and its agencies have each participated in bringing to account the cases of corruption, individual misappropriation of funds and maladministration within unions. The scandals leading up to the TURC exposed (at its best) a culture of distorted benevolence and self-interests by officials, which is out of step with the behaviour expected in the public arena. At its worst, it exposed some officers of some unions using the organisation's accounts as a personal line of credit. The most notorious cases continue to be investigated by law enforcement agencies and prosecuted through the courts.

The federal government went to the 2016 election with a commitment to support the TURC recommendations. The TURC reports are unambiguous: there needs to be an improvement in accountability, regulation and transparency of industrial organisations. The federal government has translated those recommendations into the RO Bill. The RO Bill was part of the core policy platform for the Coalition's re-election campaign.

The Explanatory Memorandum for the RO Bill goes to the heart of the problem exposed by the TURC.

*"The level of non-compliance with the reporting obligations, combined with the findings of the FWC investigations into the HSU, demonstrate that the existing regulation of registered organisations is not sufficiently strong to protect members' interests, particularly in relation to financial management. The financial accountability and transparency provisions of the RO Act require amendments to ensure more adequate oversight and enforcement to effectively prevent the malfeasance at which they are directed. The RO Amendment addressed some of these problems, however, it did not provide a strong deterrent for wrongdoing, in the form of criminal sanctions, or give the regulator adequate powers to thoroughly investigate and pursue litigation of contraventions of the RO Act and FW Act in a timely and responsive manner."*

The RO Bill will provide members of federal organisations with a stronger regime to deter non-compliance. The RO Bill will mean registered organisations and their officials will be subject to similar



penalties as company directors, with maximum civil penalties and criminal sanctions to be aligned more closely with those in the Corporations Act.

### **Misalignment of the IR Bill's proposed governance and the federal governance framework**

Recommendation 50 of "A Review of the Industrial Relations Framework in Queensland – A Report of the Industrial Relations Legislative Reform Reference Group, December 2015" (hereafter "the 2015 IR Review"), recommended:

*"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."*

The 2015 IR Review found there were 45 industrial organisations registered in Queensland as of June 2015: 27 employee and 18 employer organisations. More than half (15) of the employee organisations have federally registered counterpart bodies. The 2015 IR Review makes much of how different governance frameworks in the State and federal jurisdiction lead to: "...complexity, duplication and increase in the potential errors without any substantive increase in accountability to members. Differential reporting for the same entity also risks reducing the effectiveness of reporting." For these reasons, the 2015 IR Review recommended an alignment between State and Federal governance.

Master Builders submits that the IR Bill as currently proposed does not give effect to the intent of aligning State and federal governance frameworks. Curiously though, the 2015 IR Review, as well as the Explanatory Memorandum to the IR Bill ignore significant recent developments and proposed changes to legislation in the Federal jurisdiction. The TURC issued its interim report to the federal government on 19 December 2014. The final report was provided on 28 December 2015. There is no mention in either of the IR review documents to the TURC findings or its recommendations for improved governance of registered organisations. No attempt has been made in the IR Bill to align itself with community expectations resulting from the significant body of work and evidence produced by TURC.

Even if it is conceded there was no ability to assess the IR Bill against the RO Bill at the time of its first draft, this is no longer the case. That step can be, and should, be taken by the Committee now. If this comparison was suitable at the time of the original review of the IR Act (to compare the IR Bill with federal counterpart), then it is equally vital today under the new direction in the federal governance framework.

### **The IR Bill's watering down of governance of Industrial Organisations**

The amendments to governance as proposed in the IR Bill results in less transparency and less accountability for industrial organisations. The IR Bill leaves compliance 'underdone', and relies too much on self-regulation in organisation governance. The IR Bill will wind back the previous government's initiatives for improved governance and accountability for all industrial organizations, by:

- reducing transparency by removing the requirement to publish registers of gifts, hospitality and other benefits, and instead this information will only be available to members upon written request;
- removing the requirement on Officers to lodge a statement of interests with the Industrial Registrar within one month of appointment to an office; instead, it will be left up to Officers



to declare material personal interest should they judge a conflict of interest arises in the carrying out of their duties;

- removing the requirement on registered organisations to report and publish any political purpose spending of more than \$10,000;
- removing the requirement to annually disclose all spending for political purposes;
- removing the requirement for disclose affiliation fees.

For a more detailed analysis of the extent to which the IR Bill fails to align with federal legislation and the recommendations of the TURC, as embodied in the RO Bill, please refer to attached **Table**.

## **Clothing of QIRC with powers already referred to the Federal jurisdiction**

### **Proposed changes to adjudication of work-related discrimination claims**

A further concern with the Bill are the changes to the role of the Anti-Discrimination Commission of Queensland (ADCQ) and the Queensland Industrial Relations Commission (QIRC), involving applications for work related discrimination. If the application is first made to the ADCQ and not resolved in mediation the Bill requires the ADCQ to then refer all such applications to QIRC. The QIRC will have the jurisdiction to arbitrate the application. Presently, if a matter before ADCQ is not settled in conference it is referred to the Queensland Civil and Administrative Tribunal (QTAC) for arbitration.

### **Significant concerns about referred matters**

The above changes result in QIRC dealing with applications by employees of national system employers. Currently under the FWA the QIRC cannot hear and determine an alleged work related discrimination matter concerning a national system employee. The employee can only apply to ADCQ, or the Fair Work Commission. The purpose of redirecting national system employee applications from ADCQ to QIRC (as the IR Bill proposes) is not apparent in the EN. The EN canvasses the virtues of a 'one stop shop', however this is only relevant to state system employees who would or could apply to QIRC under the initial application for a remedy. The EN does not adequately justify the capture of national system employers in the new ADCQ/QIRC joint arrangement.

Master Builders submits that the ADCQ referral is a partial retraction of the Queensland government's Referral Act. The IR Bill will lead to a national system employer having to face a member of QIRC in an employment related discrimination matter, despite the FWC having the primary jurisdiction. This is contrary to the Referral Act's intention. The amendment is flawed from its conceptions. It is overly complex, triplicating an already curious process, and will lead to national system employers being subjected to the jurisdiction of the state industrial regulator.

For example, in Court 1 a QIRC member is arbitrating over allegations a national system employer had allegedly breached laws of work related discrimination. In Court 2, another QIRC member is hearing an application by a state system employee, under the new proposed General Protections of the IR Bill, of an alleged discrimination arising out of employment. The same national system employee may have also made an application under s 351 of the FW Act to the Fair Work Commission (FWC). The IR Bill does not limit the QIRC from arbitrating the matter, despite the FWC having received the application. This is unacceptable. It exposes the employer to two litigation fronts and ties up the QIRC and the ADCQ. The purpose of the Referral Act was to simplify and remove overlapping jurisdiction, and reduce costs all round.

The IR Bill now opens a doorway that is not anticipated in the FWA, or the Referral Act. The FWA provides carefully drafted exclusions and exemptions, to accommodate the transition from State jurisdictions of the industrial relations powers. To this end, the FWA sets aside for the states, discrete, pre-existing State laws dealing with discrimination at the time of the FWA, i.e. mid 2009. The Anti-Discrimination Act 1991 Qld is identified in Section 27 of the FWA as an excluded law.

However, the FWA section 30A, under 'referred subject matters' identifies, (ii) protection from discrimination relating to employment. The intention is to allow employees of non-constitutional corporations access to the General Protections. The overlap is unfortunately a reflection of the Constitution, but at the ground level it clearly provides FWC carriage of such matters. The IR Bill, in the referral to QIRC from ADCQ, appears to have changed the principle of a standalone anti-discrimination law and tribunal contrary to the understanding in 2009.

It is Master Builder's position that the IR Bill should not be used for the purposes of providing QIRC with jurisdiction to determine any matter that involves national system employers and employees, unless there is no other opportunity under the FWA to have the matter so dealt with. The Committee is therefore urged to question the legality and congruency of these provision in the IR Bill with the Referral Act and related provisions in the FWA.

Master Builders appreciates the opportunity to provide comment and trusts that these comments are of assistance in your consideration of this matter.

We would welcome the opportunity to be involved in any further consultation on the issue.

Yours sincerely,

Grant Galvin

Chief Executive Officer



<b>Reporting requirements</b>	<b>IR Act Qld</b>	<b>IR Bill Qld</b>	<b>RO Bill (federal)</b>
<b>Register of material personal interests of Members of Committee Of Management (COM)</b>	Yes, must also be filed with Industrial Registrar. S 530A	Yes. But not required to be filed with Industrial Registrar. cl 743	Yes, s 293C, limited to interests that relate to organization affairs. Disclose to COM, members on request and Registered Organisations Commission.
<b>Register of highest remunerated officers</b>	Yes. Top 10, must be published in financial disclosure and publicly available. S 557Q	Yes, Top 5 officers. Cl 746. Must be provided to members in Operating Report. Not publicly available.	Yes, Top 5. s 293 B. Report to COM under Officer and Related Party Disclosure Statement (ORPDS)
<b>Disclose payments made to officers from related parties</b>	No.	No, but possible through the gifts register.	Yes, part of ORPDS.
<b>Register of credit card/taxi transaction for unions</b>	Yes, details must be available to members & public S 557C	No.	No.
<b>Register of Gifts received</b>	Yes, details must be available to members and public S 557A	Yes. cl 742. Members have to specifically request register.	If received by officer then must be included in ORPDS.
<b>Register of political object funding of \$10000 or more</b>	Yes, must be published in financial disclosure – publicly available. S557B and S 557S	No register as such. Can be covered by Register of loans, subject to COM approval, and Rules must include approval over \$1000.	No
<b>Ballot of members to approve political spending</b>	Yes, where exceeds \$10000	No.	No.
<b>Register of Loans/grants/donations exceeding \$1000 per matter</b>	Yes, must be published in financial disclosure and publicly available. S 557E	Yes. cl 748. provided to members in operating report, not publicly available	Yes, s149 , Rules to require COM approval and annual statement to FWC GM. (Includes political donations)
<b>COM financial training</b>	Yes, must be published in financial disclosure and publicly available. s557V & 557O	Yes, cl 741	Yes, s 293K
<b>Independent Regulator of industrial organizations.</b>	No	No.	Yes. Part 3A, new Registered Organisations Commission

*Attachment to Master Builders submission; Industrial Relations Bill 2016*