FINANCE AND ADMINISTRATION COMMITTEE

Members present:
Ms DE Farmer MP (Chair)
Ms VM Barton MP
Mr MJ Crandon MP
Mr CD Crawford MP
Mr DA Pegg MP
Mr PT Weir MP

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms C Heffernan (Executive Assistant)

PUBLIC BRIEFING—INQUIRY INTO THE INDUSTRIAL RELATIONS (RESTORING FAIRNESS) AND OTHER LEGISLATION AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 20 MAY 2015

Brisbane

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Committee met at 9.47 am

BLACKWOOD, Dr Simon, Deputy Director-General, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General

JACOBS, Ms Candice, Director, Industrial Relations, Department of Justice and Attorney-General

JAMES, Mr Tony, Executive Director, Private Sector Industrial Relations, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General

CHAIR: Good morning, ladies and gentlemen. I declare open this public departmental briefing of the Finance and Administration Committee's inquiry into the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015. I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are Mr Michael Crandon, the deputy chair and member for Coomera; Miss Verity Barton, the member for Broadwater; Mr Duncan Pegg, the member for Stretton; Mr Pat Weir, the member for Condamine; and Mr Craig Crawford, the member for Barron River. The purpose of this hearing is to receive information from the department about the bill, which was referred to the committee on 7 May 2015. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. The committee appreciates your assistance.

You have previously been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. This hearing will also be broadcast. I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee.

I remind committee members that officers are here to provide factual or technical information. They are not here to give opinions about the merits or otherwise of the policy behind the bill or alternative approaches. Any questions about the government or opposition policy that the bill seeks to implement should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. I also request that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room. Dr Blackwood, I invite you to make a brief opening statement if you would like and to introduce those with you.

Dr Blackwood: Yes, I am happy to introduce those with me. Tony James is the executive director of Private Sector Industrial Relations in the Office of Fair and Safe Work Queensland and Ms Candice Jacobs is the director of industrial relations in public sector policy. We have been involved in the drafting of the bill and explanatory notes. From my perspective, I think the explanatory notes set out fairly clearly the government's intentions in this area. Obviously they are in line with the policy objectives enunciated by the government through its election commitments and priorities, so they are primarily drawn from the Restoring Fairness for Government Workers election commitment that this bill is based upon and three key elements of that which are set out in the explanatory notes at page 1: reinstating employment conditions that were lost as a result of changes to the act in 2012 and 2013; re-establishing the independence of the QIRC when determining wage cases; and returning the commission to its position as a layperson's tribunal where employees and union advocates operate on a level playing field. So they are the key issues there, and the other policy objective is restoring the ability of industrial organisations and their representatives to freely organise and access members so as to enhance and protect their industrial interests. The explanatory notes set out how that will be achieved, in particular in relation to those three issues.

The other issue that we would draw people's attention to is that it provides transitional arrangements to seek to achieve the government's objectives in relation to those awards that have been modernised under the previous industrial relations framework and those agreements that have been made in light of those modernised awards. So there is quite a bit within the explanatory notes which explains how the government intends to restore those conditions where they were restricted as a result of the previous provisions, so that is 10 modern awards and seven modern certified agreements which have been made to date. The transitional arrangements provide a process for the commission to allow it to undertake that work over the next several months, and they are set out quite clearly in the explanatory notes. I think that, in essence, is what is contained within the bill itself and we are more than happy to take any questions and elaborate on any technical elements within the explanatory notes and bill before you.

CHAIR: Thank you very much. We do have a few questions. In your opening statement you referred a little bit to timing. Could you please elaborate on the reasons for the urgency of the bill?

Dr Blackwood: The primary urgency is around the award modernisation and certified agreement process. The previous Industrial Relations Act provided for awards to be modernised over a two-year period and as a result of that new certified agreements could be entered into as a result of the modernisation of awards. The current government wants to, within its commitments, have those awards that have been modernised remade, but we also need to ensure that for other awards that have not been modernised to date that process is undertaken.

I suppose the critical point from the government's point of view and from stakeholders is that you can only then enter into and begin to bargain once you have a modernised award. That means that as a consequence for quite a lot of organisations and workers the agreement-making process has had to slow down and by regulation and determination employees have been granted a wage increase in the meantime whilst this process is completed. But obviously collective bargaining forms a key part of the act and it is important that this process is expedited so that bargaining parties can bargain again.

CHAIR: Thank you very much.

Miss BARTON: The explanatory notes explain that one of the objectives of the bill is to return the QIRC to its status as a layperson's tribunal. For the benefit of the committee, could you perhaps elaborate on what this means for both the tribunal and those who will be appearing before it?

Dr Blackwood: The amendments that are proposed there are in relation to section 319 of the act. In particular, if you go to page 12 with regard to the representation of parties, there are a number of matters where the changes made previously allowed any party to be legally represented in commission proceedings relating to arbitration of agreements, action on industrial disputes, declarations on industrial matters, injunctions and interpretations of industrial instruments. So those are the key areas where under the previous act legal representation was allowed without the consent of the parties and certain requirements there. That is being changed back to the position that it was previously. The effect is that it is no longer an automatic right, and that is to be limited in that industrial relations area where lay advocates appear. So it would be clear that that does not impact on other areas of the tribunal's work—for instance, workers comp and regulated matters where lawyers are allowed to appear in individual matters et cetera. So it is in relation to a defined set of proceedings where lay advocates can appear and where legal representation can continue, but it is via the consent of the parties which was the situation prior to 2012.

Mr CRANDON: The committee notes that the Queensland government referred its private sector industrial relations power to the federal government in 2010, leaving the IR Act primarily covering state public sector and local government employees. What impact will the proposed amendments have on the Public Service Commission?

Dr Blackwood: There is no specific impact that these amendments have on the Public Service Commission as such. The Public Service Commission continues to have its roles and responsibilities. The Industrial Relations Act as a result of the 2010 changes, as you quite correctly point out, has been reduced to the Queensland public sector and local government. But there was not as such any change in terms of what the Queensland Public Service Commission does—not in terms of any fundamental changes—and then what the industrial tribunals and industrial relations system do which are focused on setting employment conditions et cetera.

Mr PEGG: I have a question about the transitional arrangements for the modern awards and the modern certified agreements made. Could you please elaborate on the reasons these transitional arrangements are needed and provide details about how many modern awards and certified agreements are affected by the proposed amendments?

Dr Blackwood: We have set out at page 3 of the explanatory notes how many modern awards and agreements have been made—that is, 10 modern awards, as I said in the introduction, and seven agreements. The transitional arrangements are setting up a process whereby the commission can look at those modernised awards made under the 2013 act changes and then look at how they can be changed to align with the new industrial relations framework which is proposed under these amendments, which focus on removing the restrictions around non-allowable and permitted matters. So the aim is to say, 'All right, those were the awards that have been made over the last year and a half now. There's a new regulatory framework here which removes some of those restrictions,' so the commission is given a power through those transitional provisions to have a look at those awards. There are certain matters that can be reinserted into the awards which are set out in the transitional provisions. Then there are a number of matters that the commission is to have regard to in determining whether or not matters should be put into the awards and the parties can make submissions in relation to that. That is set out very much at pages 14 and 15 of the explanatory notes, which explain with regard to variations those matters that must be inserted and then highlight a number of other matters that the commission can consider as to whether they should be inserted into an award.

Once those modernised awards under the previous system are looked at, and then under this proposed set of amendments relooked at by the commission, then the parties who have had new agreements made under the current act can recommence bargaining. They are given 90 days from the remodernised award—another 90 days—in which to start bargaining and make a new agreement. Those transitional provisions, as I said, only refer to those 10 modernised awards and the seven agreements that have been made under the existing modernised provisions.

Mr CRAWFORD: Can you explain to us what the Queensland Employment Standards are and how they get developed and who is responsible for them?

Dr Blackwood: The Queensland Employment Standards are set in the act. They are very much based on a combination of two things. The Queensland Industrial Relations Act traditionally, over a very long time, set minimum employment standards around things like annual leave, sick leave, long service leave and so forth, and that expanded over time. In developing those Queensland Employment Standards, consideration was paid to the National Employment Standards that were set through the Fair Work Act in the last several years. Essentially, they are consistent with what is in the National Employment Standards. In terms of the industrial relations framework, they set the base. Again, there are redundancy entitlements there which have been set through tribunals over years. Those Queensland Employment Standards are all put into the act now, and that was done in 2013, and they set a base level for employees in terms of the conditions they can access. Then obviously above that you have awards and agreements that will set out other conditions and entitlements.

CHAIR: Did you want to add anything?

Mr James: Only that the QES are found at chapter 2A of the Industrial Relations Act and the previous provisions are found at chapter 2.

Mr WEIR: The committee notes that the explanatory notes state that, while there are no direct cost implications to government with the legislative reforms set out in the bill, the reintroduction of job security, protections against contracting out and other measures arising from the bill will have cost implications to government. Could you please advise the committee whether any work has been done regarding these cost implications?

Dr Blackwood: What we have said there is that other measures arising from the bill will have cost implications to government. We have not undertaken any costings and it really depends, from our point of view, in terms of issues like job security and protections against contracting out, on the negotiation of those matters and agreements in the future. In our view, that is a matter for employers, unions and workers to negotiate around, and they may have some costs but that depends upon the negotiated agreements and what they look like et cetera. It is hard for us to make any assessment of those and people will certainly have debate about the consequences of costs associated with taking other action such as contracting out et cetera. We have just flagged that as an issue but we are really not able to give an answer to that. I think that is a matter for agencies and organisations to work out when they sort out how they want to deliver services and the best way and the most efficient way in which they can do it.

CHAIR: The committee notes that consultation was undertaken with a range of stakeholders but no community consultation. Could you tell us the results of the consultation and also comment on why there was no further community consultation undertaken?

Dr Blackwood: At the consultation we made clear that the policy objectives in this particular bill were set out quite clearly in the Restoring Fairness for Government Workers policy commitments and, as such, they obviously were the subject of a process of election et cetera and debate within the community. The further consultation that we have undertaken has focused really on having the policy objectives there, how we might implement them, and therefore focused on the impact that they will have with the major stakeholders obviously of unions, public sector organisations and local government. So our focus has been very much on consultation with those bodies to sort of say, 'Right, we have these policy objectives here. This is where the government wants to go,' and much of our consultation focused on, in particular, the fact that there was an award modernisation process that was underway, government was setting the new rules in these amendments and how those might be put into place and what the affected parties' views were, particularly in relation to those awards that had been modernised.

Mr CRANDON: Further to that, if I may take you back to the second part of the question, which was why no further community consultation was undertaken, you have not actually answered that aspect of the question. The explanatory notes state—

Further consultation has been undertaken with Queensland industrial relations system stakeholders namely the Queensland Council of Unions; United Voice, Industrial Union of Employees, Queensland; the Australian Workers' Union of Employees, Queensland; Together Queensland, Industrial Union of Employees; Queensland Services, Industrial Union of Employees; Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland; Queensland Nurses' Union of Employees; Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland; Plumbers & Gasfitters Employees' Union Queensland, Union of Employees; the Electrical Trades Union of Employees Queensland; Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch; United Firefighters' Union of Australia, Union of Employees, Queensland; Queensland Teachers Union of Employees; and the Local Government Association of Queensland; and with the Department of Premier and Cabinet, Queensland Treasury, Queensland Health, other Government departments and the Public Service Commission.

At the outset of that information from the explanatory notes it reads 'Queensland Council of Unions'. Is it correct that they are an overriding council of unions incorporating all of those other unions?

Dr Blackwood: They are, yes.

Mr CRANDON: Thank you.

Dr Blackwood: I think it is fair to say that the Australian Workers' Union they are not.

Mr CRANDON: But for the majority?

Dr Blackwood: Yes.

Mr CRANDON: But you still consulted with all of those other unions and yet you only consulted with the Local Government Association of Queensland. My question to you is: why did you not consult with all of the stakeholders, all of those councils right throughout Queensland, that will be affected by this?

Dr Blackwood: We spoke to the Local Government Association industrial officers. In listing all those unions I think it is fair to say that, whilst the QCU sees itself as an umbrella organisation, a lot of those unions were involved in negotiations with the Local Government Association and also with departments around the award modernisation and agreement-making process. That is why we took the consultation in that way. As I said at the outset, our focus was very much on the technical elements of the bill. We had clear guidance in relation to the objects and policy commitments so it was really just trying to get some views about how this bill would work in practice. So we undertook that. I think there had been further consultation that the Local Government Association had undertaken, we know in talking to them, with their members.

From an industrial point of view I suppose, to answer your question, that is the way we would undertake the consultation. If it was in the private sector then we would primarily consult with, from an employer point of view, the industrial organisations that represent those employers. That is why we did that this way with the Local Government Association, then, as we say, all the departments as major employers and through the preparation of the cabinet submission and bill et cetera.

Miss BARTON: While we are in the vein of consultation, particularly the provisions that provide for the details of new employees and access to that information, obviously there has been a fair amount of consultation with industrial organisations. Have you spoken to the Privacy Commissioner about the provision of private information about new employees to the industrial organisations? I wondered perhaps whether there had been any consultation with the Privacy Commissioner at all.

Dr Blackwood: The way in which those provisions are drafted is consistent with the information privacy principles and in particular I think, as we have done previously, they are in line with information privacy principles 2, collection of personal information, and 11, disclosure within the Information

Privacy Act 2009. We are guided by that. I do not know that we had a need to do any further consultation, but we work within government and make sure that we are taking action, and that policy was in line with the previous policy and had taken into account the information privacy principles. So we had had a look at the information privacy principles. We did not actually talk this time to the information privacy people but we have previously when we were undertaking this work several years ago.

Miss BARTON: Because you have not consulted with them on these particular provisions, are the provisions that are contained here the same as those that were in place between 2000 and 2013? Are they exactly the same in their wording, effect and operation or is there a difference?

Dr Blackwood: The section that has been changed is 691. It is actually removing something that was placed in the act, 691E, which was a prohibition. These amendments remove that prohibition so they just put them back to what they were previously at 2012, when those prohibitions were introduced in a bill at that time. So, yes, it is quite correct to say that what we have done is moved it back to a position which occurred from the 1999 Industrial Relations Act right up to 2012 which did not put any prohibitions around this issue.

Mr PEGG: I have a question about the early termination of certain certified agreements. Are you able to advise the number that are affected?

Dr Blackwood: The number affected is in the explanatory notes: seven modern certified agreements. As I said, we have set out a process whereby that will occur which then allows those parties to recommence bargaining under the new framework that is set out in these amendments which will remove the restrictions on certain content that you can include in agreements.

Mr CRAWFORD: My question is in relation to the three months. The explanatory notes identify that the new nominal expiry date is not by reference to the commencement of the bill but will occur three months from the date the commission varies the relevant modern award. First, can you explain this process to us? Secondly, why three months? Why that figure? Thirdly, if the parties want to do it earlier than three months can that be done? If not, why not?

Dr Blackwood: In terms of the process, obviously, firstly—and we will take local government as probably the best example, because they have a modernised award and there are a number of agreements that have been made—under the structure you need to first go back to have a look at that award in line with the requirements in these amendments. From that point, we have said that, once a modern award is done and the commission issues a new one—so that will be up to a process of the commissioner undertaking that work—you will be able to recommence bargaining. The nominal expiry date is given three months after because we considered that, once you have got in your award, that would be a reasonable time for the parties to start to bargain. I do not think there is any limitation on them, whilst the agreement normally expires three months after, if they got it done within two months—

Ms Jacobs: As long as the agreement had expired, yes, they can certify a new one.

Mr James: As long as the agreement had expired.

Mr CRAWFORD: As long as it had expired. Okay.

Mr James: So it is a new nominal expiry date three months hence from the variation unless that agreement normally expired inside that period, which is normal practice when you are negotiating a new agreement.

Dr Blackwood: If you made a new agreement within that period.

Mr WEIR: With regard to the retrospectivity, what will be the practical impact that the proposed amendments will have on the parties currently negotiating agreements?

Dr Blackwood: For those parties that are currently negotiating agreements, this bill has put that process on hold. It is open to the parties to consider what they should do in the meantime. In the Queensland public sector, what has been done as a result of this process of getting award modernisation and the impact on certified agreements is for the government to make regulations where they continue to ensure the employees have a wage increase. That issue has been raised with us by the Local Government Association and, obviously, that is open to councils as well. So if the bargaining process is delayed, there is nothing to stop an employer, through administrative procedures, from undertaking to provide their employees with some sort of wage increase whilst the matters of these amendments and then the award modernisation are relooked at, and during the wash-in process of those awards that had been modernised, like the local government, and then people can start to bargain again. So that would be a live issue in the local government area—what they wish to do in the meantime. But as I say, it is always open for the parties to settle some arrangements whilst this process is being undertaken.

CHAIR: Simon, I just want to go on to consistency of the legislation against other jurisdictions. Could you please explain to the committee whether there are any impacts if the right-of-entry requirements are different from other jurisdictions?

Dr Blackwood: I think we have just set out there its consistency with legislation of other jurisdictions and the right-of-entry amendments being similar to New South Wales, which does not require notice for the purposes of holding discussions. Obviously the removal of the notice is not consistent with the Fair Work Act, which requires 24 hours notice. I think it is fair to say that, in terms of consistency, the Queensland Act is similar to New South Wales and a number of others in that, post the corporations power and the extension of the federal jurisdiction, which covers pretty much the whole of the private sector whether in New South Wales or Queensland, our act is restricted to public sector agencies. Probably some people might argue that it is a bit different, but that is an issue for debate, I think, within the community. But what we would say is that they are similar to the New South Wales. We put that there, different from the Fair Work Act.

CHAIR: And the implications of it being different from the Fair Work Act?

Dr Blackwood: From our experience, we would not think there would be any impacts as a result of that difference from the Fair Work Act. In other words, what we would say is that with the right-of-entry provisions under the Industrial Relations Act, whilst changed in 2013, there are unlikely to be any impacts that we are aware of from our point of view industrially. From our point of view, as the industrial relations inspectorate, it is returning to where it was. We are not aware of major issues there, but that might be something else that other submitters have comment on, yes.

CHAIR: Thank you very much.

Mr CRANDON: We also note that the changes that were made were ostensibly to harmonise some aspects of the state legislation with the Commonwealth industrial relations regime. What impact will the proposed amendments have on that harmonisation process?

Dr Blackwood: We have already talked about the right of entry. The other area that we draw the committee's attention to is at page 8 of the explanatory notes, in particular around the non-allowable provisions. What we highlight there is that the concept of non-allowable provisions that was introduced in 2013 was not consistent with the Fair Work Act in that it restricted the commission's capacity to consider a number of matters. It introduced the concept that certain matters in awards and agreements were non-allowable or not permitted and there are no similar prohibitions made in the Fair Work Act. So when you look at these amendments, probably the most significant in terms of making them more consistent with the Fair Work Act are those section 71LB amendments, where the removal of the prohibitions from the existing Queensland act bring it more in line with the Fair Work Act.

Miss BARTON: I have a further question about consistency and inconsistency with the Fair Work Act. My understanding is that there is also an inconsistency between this legislation and the union encouragement provisions that are in place in the Fair Work Act. Given that you are aware that there is an inconsistency, have you sought written legal advice about the inconsistency between the provisions, particularly around the union encouragement in the Fair Work Act as opposed to the provisions contained in this amendment bill?

Dr Blackwood: The issue of consistency between the federal industrial relations system and the state industrial relations system is really up to government and policy commitments and the legislature. Whilst there are a lot of similarities between the two systems, there are some differences. For us it is just a policy issue about what is decided upon and those were commitments made—that those prohibitions, in particular in 691 of the Industrial Relations Act, that were introduced in 2012 went to a number of matters listed there, including union encouragement. There was a commitment made to remove those prohibitions and that has occurred. In terms of consistency, as I say, that is a matter for governments and industrial relations parties and organisations through consultation to say whether they are happy to live with some inconsistencies or not.

Miss BARTON: Just to follow on from that, irrespective of whether it has been a commitment, when the department is providing advice during the drafting stage, or during the consultation stage, the department itself does not consider whether or not there are legal implications of the inconsistency? You have not sought written advice as to the impacts or the effects of that inconsistency?

Dr Blackwood: There are no legal implications. They are two quite different industrial relations systems with quite different jurisdictions. If we were concerned that there was some sort of legal implication, certainly we would have a look at that, yes. We would advise in the explanatory notes if there were any legal implications.

Miss BARTON: Thank you.

Mr PEGG: I would like to ask you about the amendments proposed in clause 3 and, in particular, what would be the practical effect of the amendments proposed in clause 3 on the decisions of the commission.

Dr Blackwood: The main changes that we have put in there in clause 3 are primarily those that were set out in terms of certain requirements or restrictions about how the commission were to consider matters about wage setting et cetera. Therefore, they are to take into account certain matters about the state's financial position et cetera. The financial position of the state and the state's fiscal strategy were some of the things that were included in the changes in 2012 and then a number of matters were omitted, and these are being reinserted. Again, those aspects that are being reinserted promote and facilitate the regulation of employment by awards and agreements and promote collective bargaining and establish the primacy of collective agreements over individual agreements. So essentially, these amendments remove one objective and put two in that were there previous to 2012.

Mr CRANDON: My question is on clauses 5 and 6 in relation to the non-allowable content. Could you provide some examples of what is considered to be non-allowable content and what benefits that proposed amendment could have?

Dr Blackwood: Non-allowable content: we set out a lot of what that is at page 10 of the explanatory notes. So that is 71O to 71OL, non-allowable content. We have all the provisions there that you can read that start with contracting provisions, employment security, encouragement, organisational change, policy incorporation, private practice and so forth. Then there is a requirement not to have discriminatory provisions et cetera. The explanatory notes state—

Section 71OK prohibited a modern award from containing provisions about training arrangements, workload management, delivery of services or workforce planning.

Those matters will be permitted in modern awards, subject to the parties and the commission considering whether or not they should be. Also, the repeal of section 71OL will remove restrictions on the content of certified agreements—so provisions inconsistent with provisions for industrial action, types of engagement or classifications and provisions that require a contravention of the freedom of association chapter. On page 11 there are a few provisions about workloads, training arrangements, restricting delivery of services and provisions about unfair dismissal. So those are the provisions where they were either non-allowable or not permitted under the current act and they will be reinserted.

Mr WEIR: Can you please provide to the committee some examples of required content under the existing legislation? What are the advantages or disadvantages of removing these provisions for employees, employers and the commission? Will the removal of these provisions make the process more or less complicated?

Dr Blackwood: We have those required content—the omission of those. They will no longer be considered mandatory for industrial instruments and we have set that out at page 8. Really, they relate to dispute resolution procedures. So there will be a dispute resolution procedure but there has been a change there, and the one that will be brought in comes from what was in the act previously. So we have just set out the thinking at clause 9 about what occurs there. Then the other ones are about individual flexibility agreements and consultation and major organisational changes, because we are going back to the situation that existed prior in relation to consultation, which set out what was in awards and agreements and set out a process for consultation in relation to major organisational change. The prohibitions introduced in 691 meant that there were limitations around that process, which we have just briefly mentioned on page 1 of the explanatory notes. So those are the three areas where there will be change in terms of required matters.

CHAIR: I want to talk about dispute resolution again. Can you elaborate for the committee on the benefits of the requirement that a dispute resolution procedure be included in an award over a dispute resolution clause being prescribed by regulation as proposed in the amendment?

Mr James: Clause 9 deals with the proposal for the dispute resolution requirements. Rather than the mandatory standardised format, which would be included under the previous provisions, which were set out in regulation, the new provisions give more scope to what the dispute resolution procedure would provide for. The bill states—

A modern award must contain a dispute resolution procedure that provides for—

(a) consultation at the workplace; and
(b) the involvement of relevant organisations; and
(c) any other matter prescribed by regulation.

So it actually allows the parties more flexibility in determining what would be the dispute resolution procedure and the commission more flexibility as to what would be in the dispute resolution procedure in both the award and the agreement.

Mr CRANDON: Just coming back to clause 8, I note you did read from the explanatory notes. The actual question asked for some specific examples, some real-life examples. The question was: can you please provide the committee some examples of 'required content'? We were after some examples, rather than just reading from this. Can you give us a real-life example, something in the real world that has occurred or would potentially occur? Does something come to mind?

Dr Blackwood: Which one are you thinking about in particular that you are interested in?

Mr CRANDON: We are referring to clause 8.

Dr Blackwood: Yes, and that goes back to consultation for major organisational change and dispute resolution. I think Tony has probably answered that—

Mr CRANDON: What about a real-life example?

Dr Blackwood: Well, if you go to dispute resolution for a start, it has been in the act for a long time. It was considered useful to have there so that disputes could be resolved at the workplace before they get further, before the Industrial Relations Commission. So that was the whole thinking about the dispute resolution procedure. What has really happened here is a debate about how that dispute resolution procedure can be set out in a certified agreement. The current act provides that it has to be done by regulation so it sets out the provisions of dispute resolution. As Tony indicated, the dispute resolution process here just sets out the three things: if you are setting your own dispute resolution procedure in your own workplace, what are the things that you should have covering it? So that is really just a debate about everybody agrees you should have a dispute resolution procedure, so how is it achieved? Do we just give some guidance in the act or detail in the regulations? That is that issue.

As to real-life examples in terms of major organisational change and consultation, as I explained, it was provided for in quite a bit of detail in the Industrial Relations Commission's policy and procedures setting out the whole termination, change and redundancy policy, and it is also set out in awards and agreements. The changes introduced in 2012—that is, section 691—put some limitations around what could be utilised in terms of termination, change and redundancy. As we say, these amendments rendered termination, change and redundancy to be of partial effect—so you could only consult about implementation of decisions; you could not consult in the prior period. That was the major change in 2012. So now what you have is that 'major organisational change' was incorporated as a required matter, recognising that if you are going to undertake major organisational change you needed some sort of provisions.

Mr James: There was a standardised clause required. It was a one-size-fits-all clause and it set out what are the requirements for consultation in terms of the limitations that were placed on termination, change and redundancy provisions as a consequence of the 2013 amendments. What the bill intends to do is basically take away the one-size-fits-all standardised clause from the legislation and allow the parties to work it out, incorporating the TCR provisions which have been reinstated because the prohibitions on them have been removed.

Dr Blackwood: So those provisions, awards and agreements will then be re-enlivened.

Mr James: That is right. As for a real-life example of required content, that is really a matter for the parties as to what are the matters inside a certified agreement.

Mr CRANDON: Thank you.

Miss BARTON: I have another question about consistency. Forgive me, because I was on the legal affairs committee when we considered the fair work harmonisation legislation so I am very conscious that there have been reasons for the harmonisation and consistency in the first place. On page 6 of the explanatory notes, where you detail the consistency with legislation of other jurisdictions or lack of consistency thereof, the last line states—

While the removal of notice requirements for right of entry is not consistent with the FW Act it should be noted that the FW Act responds to particular needs of the private sector.

I guess my question is twofold. Firstly, I was hoping that you might be able to give us some detail about the different needs of the public sector as opposed to the private sector. The reason I ask that is that my understanding is that the Fair Work Act actually covers the Victorian public sector, for example, so there are other jurisdictions where the overarching Commonwealth legislation is the

guiding legislation for the public sector. So I want to make sure that there is no issue moving forward. I am not suggesting that you have not been diligent; I am just perhaps being a little onerous in wanting to make sure that there are no issues.

Dr Blackwood: There was a review and issues of entry were raised in the Fair Work Act review a few years ago. Obviously, I think it is fair to say that it is regulating a lot of workplaces. They were considering how entry was occurring in manufacturing, construction and all sorts of workplaces. So that is why they had certain notice requirements there. Really, the Fair Work Act allows for dispensation of any prior notice for entry if an exemption certificate is obtained from the Fair Work Commission on the grounds of notice causing a risk of destruction, concealment or alteration of relevant evidence. They provide permanent holders broader rights on the site than the IR Act does. So we only have access here to time and wages records; a Fair Work Act permit holder has broad access to investigate any suspected contravention of the Fair Work Act or industrial instrument.

I suppose it is fair to say that the acts are not consistent in this area. They have developed over time in different ways. All we can say is that the Fair Work Act responds to a much broader jurisdiction. I understand your point that it covers the Victorian public sector, but I do not think the Victorian public sector will be driving the nature of the notice, the right-of-entry provisions under the Fair Work Act. It is very much more focused on the private sector and issues that have arisen. It has been the subject of reviews over the last few years and it has developed its own focuses. As we said, whilst the issue of consistency comes up, we are still dealing with quite different workforces here, and the Fair Work Act has to cover a real range of workplaces.

Mr PEGG: Just on that topic, would it be fair to say that, historically, there has always been a range of differences between the federal industrial relations regime and the state industrial relations regime in relation to not only right of entry but also a whole raft of different provisions? Would that be correct?

Dr Blackwood: Yes, that is right. Obviously, in the last 20 to 25 years it is fair to say that there has been a lot of focus on trying to have greater alignment. That was a really big focus in the 1990s and the 2000s, although I think the use of the corporations power and the fact that the federal system really covers a broad field of the private sector and that a lot of the state systems are public sector based means that you might see some differences as well because they are quite different jurisdictions. But I think, yes, your point is right.

Mr CRAWFORD: My question is in relation to clause 13. Are the provisions in proposed new section 71NCA to be inserted consistent with previous sections 71OH and 71OI, which it replaces, and can you explain any variations?

Dr Blackwood: I might ask Candice to explain that.

Ms Jacobs: Yes, to answer your question, they are consistent with the previous requirements. We are just rehousing the discrimination requirement and the safety net that is the QES in a different place. So, effectively, they were previously non-allowable content, and given the beneficial nature of them for employees we have housed them here. It also reflects the position in the act historically prior to the concept of non-allowable content being introduced in fair work harmonisation 2. The only change is some of the wording at 71NCA. We have slightly reworded subsection (3). It still does the same work as it did historically but on OQPC's advice we thought we would make it a bit clearer.

Mr WEIR: I have a question on clause 14. The wording of the provisions to provide for 'fair and just employment conditions' seems quite open-ended. Could you please provide the committee with the explanation of what this might entail?

Dr Blackwood: The 'fair and just employment conditions' was previously in the act. It is just setting the framework for the commission when it considers decisions in award making and agreement making. It is almost like an object, so just a certain guidance for the commission about what it might do when making awards and agreements.

CHAIR: Referring to clause 17, can you please explain why it is appropriate to allow for the time for completion to be extended more than once and by more than two years? Is two years not a sufficient time frame?

Mr James: That relates to the variation of the award modernisation request. The award modernisation request was issued at the beginning of 2013, so we were looking at an end date as at the end of 2015. Given that the award modernisation process has been suspended and the commission will now have obligations to reconsider the 10 awards that have been made, it was seen as appropriate to release that restriction to finish by December this year to allow the commission adequate time to consider the issues without being forced into an expedient decision.

Mr CRANDON: In my cursory look at some of the submissions that have come through to us, particularly from the councils, I note that there is some concern around the commission not being required to have regard to the financial position and fiscal strategy considerations. Can you please explain why that proposal has come forward? Why wouldn't we give consideration to the financial position of a council?

Dr Blackwood: The insertion of that provision in 2012 was decided by the previous government, and I think it is fair to say that the current government's view is that it wants to re-establish the independence of a QIRC. Having said that, the QIRC is guided by the need to balance economic and social needs and that would take into account a range of matters. There has been nothing ever to stop employers, and they have traditionally obviously put arguments about the economic impact and financial impact of any decisions in relation to awards and agreements and wage cases.

It has always been the case that the commission considers those matters. It was just that it was considered that the insertion of that requirement around the financial position was a bit too constraining in terms of the independence of the commission. That is why—

Mr CRANDON: You see the puzzled look on my face—

Dr Blackwood: I do and I suppose—

Mr CRANDON:—and I was just saying give consideration to these things.

Dr Blackwood: I suppose what it is saying is that the industrial tribunals in Australia have always had objectives which require them to look at a range of economic and social matters—employment, economic efficiency et cetera. Parties bring those submissions about the impact of any wages decision—obviously employers and unions and workers—and then the commission is asked to make a decision around that matter.

Mr CRANDON: But we are removing the requirement for them to give consideration.

Mr James: We are specifically removing the requirement to give consideration to the financial position of an employer as part of the public interest test. But the commissions and all tribunals have always had the capacity to, and do, under the objects of the act at clause 3(a), which states, 'providing for rights and responsibilities that ensure economic advancement and social justice for all employees ...'. So the capacity for the commission is, as it always has been, to consider it.

Mr CRANDON: Can you read that again? That was to deal with the employees, not the employer.

Mr James: No, it says, 'providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers'.

Mr CRANDON: 'And employers'. Sorry, you did not say that the first time.

Mr James: The legislation clearly contemplates—and there would not have been a wages case submission made that did not in some way go to the financial capacity of the employer. That is a matter that would be subject to dispute in the normal course of prosecuting an argument. What the legislation did was take what could have been construed in some quarters as tilting the balance squarely towards an employer's economic position in terms of the public interest test.

Mr CRANDON: Public interest test—

Mr James: 'Public interest'. That is how it is worded currently.

Mr CRANDON: You are talking about the public interest test. But in relation to that we have a situation where these councils are collecting rates from ratepayers who are part of the public, and their viability could be constrained, and services provided to the public by them could be constrained if serious consideration is not given, and we are overtly removing that. Could it not be argued, then, that someone could come to the commission and argue that, 'No, you don't need to give consideration to that now; it's been removed. In fact, it was overtly removed from the act. So, therefore, you should not be giving consideration to that.'?

Dr Blackwood: These amendments are saying that that specific reference about their fiscal strategy and decision about wages, which was inserted in 2012, has been removed. It really goes to how specific the requirements should be in terms of guiding the commission in making a decision. What we are saying is that previously the act has always required the commission, but recognising it is independent, to hear the parties making submissions, and we would not expect there would be any change. Councils in Queensland have been making submissions to the QIRC for a hundred years and they will have been making them and highlighting, as does the state government through state

wage cases, all the fiscal economic information, the impacts the decision might have, employment consequences et cetera. Nothing stops them. It is just a debate about whether it was needed to specify to that level of detail within the act what the commission should be guided by. That has been a policy debate. The previous government made a decision. This government is making another decision about whether that needs to be specified in that way.

Mr James: If I may just add, section 149D(2) states—

In considering the public interest under subsection ... the full bench must consider—

(a) the objects of this Act—

and we have quoted off subsection (3)(a)—

(b) the likely effect of the proposed arbitration determination on the economy and the community or a part of the economy or community; and

(c) the employer's efforts to improve productivity in the enterprise or industry concerned; and

(d) the flexibility of work practices to meet the operational requirements of the enterprise or industry concerned.

Those matters are well and truly set as what the commission must consider.

Dr Blackwood: There is quite a set of objects within the act which set out a balance of considerations.

CHAIR: We have exceeded the time set aside, but we will ask one further question. Then we will have a number of others that we will put to you in writing.

Miss BARTON: My question is not about consistency this time. The explanatory notes state that clause 36 provides a schedule 1 that amends certain legislation listed in it, and it goes on to talk about the Industrial Relations Act, regulations and specific sections. Could you explain why some of the amendments to the act and the regulations have been included in the schedule as opposed to appearing as general clauses in the bill?

Ms Jacobs: That was a choice made by the Office of Parliamentary Counsel in relation to drafting. They were changes that were made later in the day prior to the tabling, so they house them in this schedule. In relation to the regulation changes, given that we are removing the requirement on certain required content—so the mandatory provisions for dispute resolution, consultation and individual flexibility arrangements—OQPC has also agreed to do the amending of the regulation in this bill. Effectively, stakeholders have one place that they can understand the changes that are being made.

CHAIR: As I said, the time for the briefing has expired, but we do have further questions that we will send to you in writing. Thank you very much for your attendance today. We really appreciate your assistance. I declare this briefing closed.

Committee adjourned at 10.52 am