

18 May 2015

AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

Ms. Deborah Jeffrey
Research Director
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: fac@parliament.qld.gov.au

Dear Director,

Inquiry into the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015

The Australian Chamber of Commerce & Industry (ACCI) thanks you for consideration you will be giving to the contents of the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 (the Bill)*. ACCI has a number of members located in Queensland with an interest in the Bill. Some of them will be making submissions to the Inquiry and ACCI commends their submissions to the Inquiry for its consideration.

Proposed additional amendments to the *Industrial Relations Act 1999* via the Bill

In addition to the matters in the Bill before Parliament, ACCI would like to make an observation regarding the current operation of the *Industrial Relations Act 1999* (QLD) and the administration of the Industrial Court and Industrial Relations Commission.

In 2012, the previous government introduced amendments to the *Industrial Relations Act 1999* that altered administrative arrangements for the Commission and Court via the *Public Service and Other Legislation Amendment Bill 2012 (the 2012 Amendments)*. In essence, the 2012 amendments deleted references to the President of the Commission and replaced them with the 'Vice President', thereby effecting new administrative arrangements.

At the time, this was noted by the Queensland Law Society which, in a submission to this Committee dated 6 August 2012 addressing the 2012 amendments, stated:

In his second reading speech, the Premier relevantly states at 1291:

The first amendment will assist in streamlining the administrative functions of the Queensland Industrial Relations Commission by allocating responsibility for the administration of the commission from the president to the vice-president, including the allocation of the commission's business. The amendment reflects similar arrangements in the higher courts in Queensland where certain administrative functions are allocated to other officers of the court to assist the head of the court in carrying out his or her work. For example, in the Supreme and District courts, judge administrators are appointed to assist the chief justice in arranging the business of and administering the court.

The proposed amendments in the schedule appear to go further than envisaged by the Premier's comments. The effect of the proposed amendments is to completely remove the President's overall responsibility for the administration of the Commission and registry, and the orderly and expeditious exercise of the Commission's jurisdiction and powers (see s 264(1), Industrial Relations Act 1999). As we understand the Supreme Court arrangements, the Chief Justice still retains

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responsibility for the administration of the Court and its divisions and the orderly and expeditious exercise of the Court's jurisdiction and power (s 13A(1), Supreme Court of Queensland Act 1991). Under s 60 of that Act, the Senior Judge Administrator is responsible to the Chief Justice for the administration of the Court in its Trial Division and ensuring the orderly and expeditious exercise of the court in the Trial Division. Similar provisions are contained in the District Court of Queensland Act 1967, although we note that s 28F(2) of that Act requires the Judge Administrator to also consult with the Chief Judge in carrying out their functions.

Both the Supreme and District Court arrangements reflect the type of arrangements suggested by the Premier's comments in his second reading speech. However, we do not consider that this has been accurately reflected in the actual amendments themselves, which simply transfer all responsibility for the administration of the Commission and the orderly and expeditious exercise of the Commission's powers to the Vice President. In our view, the arrangements should more closely follow the arrangements of the Supreme and District Courts, with the President retaining overall responsibility for the administration of the Commission and the Vice President being responsible to the President for various administrative roles. The Society considers that these proposals should be given further consideration to determine which particular powers and functions should be allocated to the Vice President and restructured to reflect the arrangements in the Supreme and District Courts.

The Queensland Law Society's 6 August 2012 submission was that the 2012 amendments in the schedule went further than what was outlined the Premier's comments because they transferred all responsibility for the administration of the Commission and the orderly and expeditious exercise of the its powers from the President to the Vice President.

In this regard, the impact of the 2012 amendments on the operation of the Commission did not end up reflecting '*similar arrangements in the higher courts in Queensland where certain administrative functions are allocated to other officers of the court to assist the head of the court in carrying out his or her work*' as was suggested by the then Premier.

The contrast is evident as far as the Supreme Court is concerned, where responsibility for the administration of the Court and its divisions and the orderly and expeditious exercise of the Court's jurisdiction and power is vested in the Chief Justice (*Supreme Court of Queensland Act 1991* – see s 15(1)).

Further, even though he or she has the power to do all things necessary or convenient to be done for the administration of the court in the Trial Division and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court in the Trial Division (see s 51(2) *Supreme Court of Queensland Act 1991*), a Senior Judge Administrator remains responsible to the Chief Justice of the Supreme Court for the administration of the Trial Division of the Court. The similar provisions in the *District Court of Queensland Act 1967* suggest both the Supreme and District Court arrangements reflect the type of arrangements canvassed by the then Premier in his second reading speech.

However it is not clear why all responsibility for the administration of the Commission and the orderly and expeditious exercise of the Commission's powers was transferred to the Vice President by the 2012 amendments. ACCI believes that as far as industrial tribunals are concerned, it is important that the responsibility for the exercise of their defined powers is held by its head. That is why we share the view expressed by the Queensland Law Society that the Queensland Industrial Relations Commission arrangements should be more consistent with those of the Queensland Supreme and District Courts, with the President retaining overall responsibility for the administration of the Commission and other Commission members responsible to the President for delegated administrative roles, as required.

Clearly the Bill contemplates a broader review of powers held by the Queensland Industrial Relations Commission but it is in this context that ACCI suggests consideration be given to further accompanying amendments that would place ultimate responsibility for the administrative functions and powers of the Queensland Industrial Relations Commission in the hands of its President. This would restore a situation of orthodoxy that was altered by the 2012 amendments.

Yours faithfully



RICHARD CLANCY
Director Workplace Relations