Industrial Relations (Fair Work Act Harmonisation No.2)
Submission 019

QUEENSLAND TEACHERS' UNION OF EMPLOYEES
EST 1889

Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013

Submission to the
Legal Affairs and Community Safety Committee

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About the QTU

1. The Queensland Teachers' Union of Employees ("QTU") was founded in 1889 and currently represents nearly 44,000 teachers employed in Queensland state schools (including high schools, special schools and other specialist educational institutions) and TAFE institutes. Currently the wages and conditions of all of these members are regulated in the Queensland jurisdiction through state industrial instruments, legislation, and public service directives and policy. In common with many unions of professionals, the QTU represents the interests of its members in relation to professional, as well as industrial matters. In the context of the QTU, these professional issues include matters such as curriculum and assessment issues, teacher registration, professional standards and rights, and school behaviour management to name but a few areas. The QTU is also a strong advocate for state schools and public education generally, including matters relating to school funding.

Overview

2. It is disappointing, yet unfortunately unsurprising, that there has been no consultation with stakeholders prior to the tabling in Parliament of a number of broad-ranging and significant proposed amendments to the *Industrial Relations Act 1999* (Qld) ("the Act"). Once again, the timelines for submissions are notably very short and do not allow fruitful and open dialogue between the relevant parties. The QTU notes a number of issues pertaining to the proposed amendments which will greatly impact on employers and the working rights of employees. The *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013* ("the Bill") purports to "*promote innovation"* and "*provide a flexible and responsive industrial relations system"*.[1] Yet, the Act is highly prescriptive in nature, rigidly dictating to employers and employees alike in relation to what they can bargain and agree to and what they cannot bargain and agree to.

[1] Explanatory Notes, *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013* (Qld), p2.

3. In addition, the QTU notes that this is the sixth change to the Act. Given the fact that the government has been in power for 18 months, this constitutes on average a change every three months. To those looking in from the outside this continual chopping and changing of legislation presents as nothing more than legislation on the run, with changes introduced with no notice to or consideration of key stakeholders. This can be contrasted with the processes attending the introduction of the state industrial relations legislation introduced in 1999 or the Fair Work Act when introduced in 2009. The significant amendments to both these pieces of legislation followed a tripartite committee process (in which the QTU participated) which enabled the union movement, employers and government the opportunity to develop legislation that truly reflected the views of all parties affected by the legislation. In the absence of such consultation, it can only be suggested that the government is driven to change the legislation from its perspective as an employer without consideration of its impact on employees and whether or not it truly reflects the needs of all parties. The lack of consultation with respect to the amendments to the Industrial Relations Act 1999 is in stark contrast to the consultation undertaken by the government in relation to the Queensland Plan.

4. The constant change to the legislation leads to a lack of confidence among employees in relation to the current practice and procedure around industrial/employment relations. Employers and employees alike ought to have a clear understanding of the current standard regarding the law without being subjected to constant and complete upheavals to the industrial relations system and the sphere of work practice.

5. It is the Union's view that the proposed amendments will:

   a) facilitate unilateral dictation by the Queensland Government of employment conditions and of the contents of awards and agreements, failing to deliver flexibility in the workplace;

b) undermine collective bargaining and the rights of employees to have their conditions protected by awards and agreements
c) effectively remove the capacity of employees to take protected industrial action
d) dilute the independence of the QIRC.

6. The unilateral determination by the Minister of employment conditions and the ministerial direction over the award review process proposed by the Bill manifests as a conflict of interest. It is important that some separation of powers exists in the legislation, and consequently, the independence of the QIRC should be enhanced not eroded. Enabling the Minister to interfere in the QIRC processes affords the government an authority beyond its scope as an employer. While the QTU acknowledges that under the Fair Work Act the Federal Minister has similar authority, the Federal Minister does not exercise this authority in a community where he/she is the predominant employer. This is in contrast to the role that the Minister in Queensland plays with respect to the state jurisdiction, where not only is the Minister the regulator/legislator, he is also the employer.

7. Additionally, the QTU's submission is limited by the information available through the draft legislation. Comment can only be made on those matters provided; however, once again, the legislation is drafted with details to be provided in regulation. In the absence of access to the regulation prescribing the contents of clauses for awards and agreements, such as those pertaining to consultation regarding major organisational change and dispute resolution, fulsome submissions about these elements of the proposed legislation cannot be made.

8. The Bill also lacks detail regarding transitional arrangements. While the legislation enacts certain provisions on its introduction, it does not provide details of transitional arrangements during the period of time leading to the introduction of Modern Awards and the enacting of certified agreements. The

directive nature of the Modern Award process – i.e. it occurs on the application of the Minister – may mean that current certified agreements cannot be renegotiated upon their nominal expiry. Consequently the legislation affords the employer (the state government) with a capacity outside the realms of any other employer, i.e. the capacity to extend an agreement beyond its nominal expiry date, therefore introducing a new bargaining framework and timeframes on employees without consultation or consent.

9. If the principal object of the Act is, as stated, *"to provide a framework for industrial relations that supports economic prosperity and social justice"*, [2] these amendments fail to provide a vehicle by which this object can be upheld. While the proposed legislation purports to be an exercise in "harmonisation" with the federal Fair Work Act, in fact it selectively picks out certain aspects of that legislation while ignoring other important features. Significantly, most examples of the latter relate to the protection of employee rights. The proposed Act would fundamentally change the Queensland industrial relations landscape. It would remove from the objects of the Queensland Act the promotion and facilitation of the regulation of employment by awards and agreements, and the promotion of collective bargaining and establishment of the primacy of collective agreements over individual agreements. It is essentially the reinvigoration in Queensland of the former federal Work Choices industrial regime.

[2] *Industrial Relations Act 1999,* S3 *Principal object of this act*

Principal Objects of the Act **(clause 4)**

10. The QTU opposes the removal of sections 3(j) and 3(o) from the Principal Objects of the Act.

11. The QTU notes that the Bill does provide for a system of modern industrial instruments including awards and agreements, which supplement legislated employment conditions. The current awards system provides a basis for independent determination of employment conditions (though the independence of those determinations is seriously compromised by the provisions in relation to permitted content set out further in the Bill) and provides the basis for regular negotiations to establish certified agreements covering the immediate and specific conditions of employment of groups of employees. Given the proposed scheme set out in the Bill, the provision to remove section 3(j) from the Principal Objects of the Act is inexplicable.

12. The proposed removal of section 3(o) in unison is inconsistent with the government's obligations under International Labour Organisation (ILO) Convention number 98, Right to Organise and Collective Bargaining Convention 1949 to which Australia is a signatory, and in particular to Article 4 of the Convention as follows:

    "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements". (emphasis added) [3]

13. The QTU supports the primacy of collective agreements over individual agreements consistent with its opposition to Queensland Workplace Agreements in previous legislation and Australian Workplace Agreements. The

[3] International Labour Organisation (ILO) Convention number 98, Right to Organise and Collective Bargaining Convention 1949

QTU does not support the use of contract employment within the Queensland public service or the extension of contract employment as proposed in the Bill.

14. The QTU further notes that these sections would be inconsistent with the objects of the Fair Work Act 2009 (as amended).

***Queensland Employment Standards* - clause 7 (section 71(c) and following)**

15. Despite the title of the Bill, the QTU notes that while the proposed clauses up to section 71KG preserve existing arrangements in the legislation for the most part, the harmonisation of standards in respect of public holidays (proposed section 71I and following) reduces the conditions of employees and the standards now omit reference to skills based career structures (existing section 8B), outworkers (existing clause 8C) and working time (existing sections 9 and 9A).

16. The QTU notes the increase in the entitlement to sick leave (proposed section 71FA) from eight days to 10 days, while noting that this may have little practical effect given the existing entitlements applying in the Queensland public sector at least.

17. The QTU also notes the inclusion of a standard relating to cashing out of annual leave contained in proposed section 71EG), consistent with provisions for award-free employees contained within the Fair Work Act 2009.

18. In introducing a new Division 6 – Long Service Leave, the government has changed the provision, now requiring a further five years of employment beyond that of the initial 10 years in order to receive further payments of long service leave. Currently long service leave accrues continuously after 10 years and can be paid in years subsequent to this, irrespective of the duration worked beyond the 10 years. This standard was determined by the QIRC in the long service leave case in 2000. The recommendations of the commission underpin the current statute. The proposed change fails to take into consideration these recommendations.

19. The failure to specify maximum ordinary weekly hours of work as a core employment standard at least no worse than the position of existing section 9A

is a fundamental shortcoming in the proposed legislation. The QTU notes that hours of work and associated issues are permitted content within all modern instruments, but also that “workload management” is non-allowable content within modern awards (proposed section 71AK) and provisions that “require an employer to manage workloads in a particular way” is non-allowable content within certified agreements (proposed section 71AL).

20. The QTU recommends that the Bill be amended to include provisions relating to hours of work and other associated issues within the Queensland Employment Standards, taking into account current levels of entitlements of employees covered by the Act and based on tripartite consideration of the appropriate terms of the standard.

21. The proposed amendments to the employment standards for public holidays have two principal effects:
    i. the removal of any basic penalty provisions for work undertaken on public holidays
    ii. a change to the rate of payment for public holidays from the ordinary rate of pay to the "base rate of pay".

22. As with the removal of the working hours provisions, the immediate effect is to remove existing entitlements of award-free employees covered by the Queensland jurisdiction with notice of less than a month from the introduction of the Bill and little more than a month prior to public holidays of Christmas and New Year.

23. To the extent that the Bill removes entitlements not replicated or overridden by provisions in awards or certified agreements, it will have the same effect on employees covered by those awards and agreements .

24. While provisions concerning penalty rates on public holidays have no direct impact on QTU members with the possible exception of some TAFE

employees, the change to payment of the base rate of pay will have an immediate effect. Teachers in special education are paid an allowance in addition to their substantive salaries. It is an "all purpose allowance" - effectively a component of salary. Given existing award provisions (which have not anticipated these changes), the amendment to legislation will remove the entitlement to payment of the allowance for public holidays. This will require an intervention in the payroll processes in each period in which there is a public holiday to reduce the salary of these teachers by a few dollars on each occasion.

25. The timelines proposed and other amendments to the legislation would not allow amendments to awards to address such consequences.

26. The QTU recommends that the government not proceed with the amendment to provisions relating to public holidays.

27. The new clauses 71KE,71KF and 71KG relate to redundancy entitlements. Clause 71KF sets out the payment amounts and reproduces the amounts in the current Schedule 3 of the IR Act. The maximum payment prescribed is 16 weeks. These amounts are less than those currently contained in Directive 11/12, which has a maximum payment of 52 weeks. In order to re-assure public servants, the government should clarify that the more favourable Directive provisions will continue to prevail as the Act provides a minimum safety net and that it does not intend to amend the current Directive 11/12.

Content of Industrial Instruments

28. The proposed clauses 71L -71OL of new Chapter 2 set out the required content, permitted content and non-allowable content for modern industrial instruments generally or for modern awards and certified agreements respectively. These clauses have the effect of significantly restricting the scope of matters that can be negotiated between employer and employee representatives and hark back to the restrictive negotiation regime of the former federal Work Choices legislation. It is the Union's submission that there should not be a list of prohibited/non-allowable matters for awards and agreements in that all matters should be the subject of negotiation, and where an agreement cannot be reached, arbitration.

29. Of particular note is the prohibition in modern industrial instruments of organisational change, workload managements and workforce planning provisions. The prohibition on these matters works to undermine the provisions negotiated in good faith between the parties.
30. For example, currently both the Teachers' Award State and the TAFE Teachers' Award State contain provision regarding access to professional development (*Part 9.1 Professional Development and Training, Teachers' Award State 2012 and Schedule 2 Professional Development/Release to Industry conditions, Schedule 2, TAFE Teachers Award State 2012*). These provisions act to ensure equitable access of teachers and tutors to professional development. In TAFE and vocational education and training (VET) subjects, this enables teachers and tutors to retain industry currency. The removal of these provisions may result in only a select few accessing professional development, thereby impacting on the profession and the currency of teachers skills.

31. Current provisions in the *Department of Education and Training State School Teachers' Certified Agreement 2012* pertaining to the conversion of temporary teachers to permanency may also be affected by this legislation. No other

instrument facilitates this process and should the legislation result in its prohibition from the certified agreement, the QTU would be forced to question the government's position on secure employment for teachers.

32. Additionally it appears foolhardy to prohibit workload management provisions in certified agreements. With the government's drive to "reduce red tape" it is feasible that a workload management clause introduced into a certified agreement that addresses and supports red tape reduction would be considered prohibited content in that agreement.

33. It is the Union's view that in introducing restrictions on the content of awards and agreements, the government is acting to curtail negotiations and is seeking to impose changed working conditions on employees without them being required to be subject to negotiation and agreement.

Proposed changes to Collective Bargaining and Certified Agreements

34. In this sixth amendment of the Industrial Relations Act 1999 it has become apparent that the government has determined to curtail the opportunities for employees to participate in genuine negotiations when determining their working conditions and salaries.

35. The Bill proposes to remove the following clauses from Section 3 Principal object of this Act:

    3 (j) promoting and facilitating the regulation of employment by awards and agreements; and

    3(o) promoting collective bargaining and establishing the primacy of collective agreements over individual agreements

36. If as stated the intent of the government is to provide a framework that *"will create an industrial relations system in Queensland that focuses on the employment relationship; provides a fair safety-net of enforceable employment conditions; and promotes efficiency, innovation and productivity improvement in the workplace,"*[4] the removal of references to regulating employment by awards and agreements and the promotion of collective bargaining fails to recognise that the employment relationship involves two parties, the employer and the employee. Restricting the ability for employees to collectively bargain questions the value that the government places on their contribution to the employment relationship.

37. If the removal of these objects is to achieve an outcome that enables individual agreements, then once again without a need to review and moderate these agreements the government cannot guarantee the safety net of conditions.

[4] Explanatory Notes, *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013* (Qld), p2.

38. Amendments to S143 (3) introduce a more restrictive time limit for parties about notification of the intention to bargain. By changing the notice period from 14 days to 7 days and introducing through S134 (3A) constraints around when the notice of the intention to bargain can be provided (i.e. being not more than 60 days prior to the nominal expiry date) the government demonstrates an inability to recognise the value in negotiations potentially resulting in an agreement. The QTU and DETE have had a negotiation clause in their agreement since the school teachers agreement was arbitrated in 2000. This clause was introduced at the insistence of the commission to enable both parties to provide considered responses to each other's claims. It is of note that since this clause was introduced into the Determination and subsequent certified agreements, the QTU, while needing the assistance of the commission on a number of occasions to facilitate an agreement, has not progressed to arbitration. Constraints on negotiations prior to the nominal expiry date of an agreement will only result in an increase in disputes rather than a considered approach to bargaining. In fact, a time regulation on conciliation and arbitration (as proposed under S149A) limits the QIRC's capacity to genuinely implement the "*Principal object of the Act to provide a framework for industrial relations that supports economic prosperity by (m) providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes*". [5]

Conciliation

39. The new Section 148 (clause 26) curtails the ability of the Commission to assist in negotiations, should the assistance of the Commission be required. By limiting the timeframe of conciliation to 14 days, the government is demonstrating little understanding of the processes of conciliation. It is the QTU's experience that in negotiations before the QIRC, proposals need to be taken away and considered by the Union's Executive and departmental senior officers. Access to these decision makers can, at times, be limited. If the government is genuine in allowing the QIRC to act independently and autonomously, it would not put time restrictions in place, but would rather

[5] *Industrial Relations Act 1999,* S3 Principal object of this act

provide an opportunity for the relevant commissioner to take stock of negotiations and attempt to achieve a resolution within a time determined by them.

40. Additionally, the introduction of further restrictions for protected industrial action shows the conflict of interest of the government as the regulator and an employer. This section determines that any industrial action is not protected if it is organised or engaged in on behalf of a negotiating party once the conciliation and arbitration periods commence. With the replacement of S148, the Commission is now compelled to step into negotiations if invited to do so by just one party and if there is a prospect of "relevant industrial action", which is defined as protracted action which could threaten the economy or part of it, the local community or a single enterprise or service delivery. By requiring the QIRC to intervene, this section removes the discretion currently afforded to the QIRC. The QTU acknowledges that while the right to strike remains on paper, the additions of S148 (3) (iv) and (v) is likely to introduce increasing pressure and compulsion on the Commission to issue stop-strike orders.

41. This conflict is further demonstrated in the insertion of S148B and S149 (1) (c). Both of these sections remove the capacity of the QIRC to award an interim wage increase as a consequence of conciliation or arbitration. The effect of this is compounded by the prohibition in S150(2A) against retrospective wage increases. If the government as legislator was genuine in attempting to ensure *"wages and employment conditions provide fair standards in relation to living standards prevailing in the community"*[6] they would not introduce legislation that might prevent employees from receiving pay increases comparable to those within the community for a period of at least six months. The Union would suggest that the inclusion of these clauses is evidence of the government acting as an employer in this circumstance than genuinely attempting to provide a fair and unbiased industrial relations system that is considerate of the needs of both employers and workers.

[6] *Industrial Relations Act 1999,* S3 Principal object of this act

Arbitration

42. Additional to the insertion of the provision to limit the powers of the QIRC to award interim increases and retrospective wage increases through arbitration, a number of other key issues arise with the amendments to S149 and the insertion of S149A.

43. In particular, the absence of the requirement for the conciliating member to provide a copy of the conciliation report to the parties will impact on the capacity for parties to commence preparations for arbitration of an agreement within a timely manner.

44. Additionally the introduction of the commencement of the arbitration period of 90 days from the day after the conciliation report is provided to the Vice President further limits the capacity for the parties to prepare and present cases.

45. The Union's experience in arbitrations over the past 16 years informs our assertion that a time period of 90 days in which to prepare, present and determine matters is unrealistic. The introduction of such stringent time frames suggests that the government is likely to be disingenuous when entering EB negotiations. If it is not the intention of the government for matters to be arbitrated but instead to promote negotiated outcomes, the government would not limit the duration of negotiations, conciliation or the period in which arbitration is to be commenced and completed.

46. Given the number of factors required to be included in the QIRC's written decision and the requirement for parties to provide submissions and elicit evidence, it is unlikely that the arbitration process will be fulsome within a 90 day timeframe.

47. In order for a complete case to be presented and determined within this time frame, parties would need to commence preparations while bargaining – further calling into question the genuine nature of such negotiations.

48. While the Union notes that the majority of the changes in clause 32 are administrative in nature, it should not be overlooked that in omitting S156 (3) the government has acted to remove the requirement of the Commission to consider that an agreement provides equal remuneration to men and women for work of equal value.

49. The removal of this equal remuneration principle occurs despite the significant case law and decisions awarding equal pay. As a Union that represents a workforce of which 75 per cent are women, it is vital that the government determine to leave this principle in place and ensure that all people are equally remunerated for work of equal value.

Proposed arrangements for high-income senior employees

50. As indicated in the Explanatory Notes for this Bill, there are clear reductions in relation to the rights of employees who are deemed high-income senior employees as per section 2(a) of the *Legislative Standards Act 1992*. Of particular concern is the fact that employees who accept a high-income guarantee contract will be excluded from certain protections and rights under the Act, which notably include employment security and access to the unfair dismissal provision contained in the Act.[7] There is a genuine conflict of interest where the employer is also the legislator, enabling the unilateral implementation of the wages and conditions of a group of employees under the pretense that there is a system of fair and collective bargaining.

51. As previously articulated, the QTU opposes the introduction of contract employment which, from a school perspective, targets principals and deputy principals. Contract employment of deputy principals and principals will lead to the politicisation of school leadership positions. Employment contracts do not enhance the quality, productiveness and professionalism of individuals or organisations, but instead place unrealistic expectations on personnel trying to meet systemic goals in a relatively short timeframe instead of solid educational focused outcomes.

52. Further, a complicating issue is in relation to the staffing of regional, rural and remote schools in Queensland. A significant feature of the transfer system for teachers (including deputy principals and principals) is the ability to accrue points in a non-preferred location in order to return at a later stage to a preferred location. According to the *"Relocation of School Leaders and Heads of Program"* Department of Education, Training and Employment ("DETE") policy, the transfer rating system is based on four considerations:

[7] Explanatory Notes, *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013* (Qld), p6.

- remoteness;
- access to and the level of community services;
- complexity of the school environment; and
- organisational staffing requirements.[8]

53. DETE have clearly taken into account the complexity and difficulty of staffing regional, rural and remote schools. The implementation of arrangements for high-income senior employees will see a shortage in these identified regions with deputy principals and principals forced on contracts without the benefit of the transfer system to support a return to a preferred location.

54. Under the *Fair Work Act 2009*, a Federal Modern Award can, but does not have to, cover a high income employee. This will depend on the relevant award's "coverage" term. The *Fair Work Act 2009* itself only excludes from Federal Modern Award coverage those employees who because of the nature or seniority of their role have traditionally NOT been covered by an Award. This means those high income employees who are covered by the Award can access unfair dismissal but those who are not covered by an Award cannot. However under s 47(2) of the FW Act, a Modern Award "covers" but does not "apply" to a high income employee (ie, the federal Act has very specific and different meanings attached to the terms "cover" and "apply" as far as access to award entitlements goes).

55. Sections 191 and 192 outline the high-income threshold and remuneration of a high-income senior employee, namely $129,300 inclusive of wages, annual superannuation contributions, other amounts paid on an annual basis and other non-cash entitlements. This, in effect, sets the bar much lower than the face value initial figure of $129,300 when taking into account remuneration other than wages. The rhetoric of the government that this harmonises the Act with the *Fair Work Act 2009* is clearly inherently implausible and false. Section 332

[8] http://ppr.det.qld.gov.au/corp/hr/hr/Pages/Relocation-of-School-Leaders-and-Heads-of-Program.aspx

of the *Fair Work Act 2009* clearly defines an employee's earnings to include the following payments:

- the employee's wages ($129,300 p.a. from 1 July 2013 indexed on 1 July each year);
- amounts applied or dealt with in any way on the employee's behalf or as the employee directs; and
- the agreed money value of non-monetary benefits.

56. However, an employee's earnings do NOT include the following:
    - payments the amount of which cannot be determined in advance;
    - reimbursements; and
    - employer contributions to a superannuation fund.

57. Some examples of payments covered by the term "payments the amount of which cannot be determined in advance" are commissions, incentive-based payments and bonuses and overtime (unless the overtime is guaranteed).[9] The discrepancies between the proposed amendments to the Act and the *Fair Work Act 2009* significantly reduce the level of what is considered to be a high-income senior employee.

58. Again, this will have a significant impact on the staffing of regional, rural and remote schools. Teachers, heads of department and heads of curriculum, deputy principals and principals accepting positions in regional, rural and remote schools are currently eligible for transfer points, locality allowance payments, Remote Area Incentive Scheme compensation payments and emergent leave entitlements applicable to the centre in which they are placed. They are also provided with the appropriate transfer expenses to assist them in relocation to and from the centre. A consequence of these amendments will be to capture an entire pool of employees who, by virtue of their employment in a non-preferred location, would now be subject to a high-income senior employment contract. Again, the implementation of arrangements for high-

[9] *Mallows v Touchbase Asia Pacific Ltd t/a Touchbase Asia Pacific* [2011] FWA 1695 (18 March 2011)

income senior employees will see a shortage in these identified regions with a number of head of department and head of curriculum teachers forced on contracts without the benefit of the transfer system to support a return to a preferred location.

Composition and Functions of the Queensland Industrial Court and Queensland Industrial Relations Commission

59. Alterations to the composition and functions of the QIC and QIRC should not be taken lightly and should be considered in the context of their potential impact on employers and employees. Australia recently celebrated the centenary of the industrial relations commission. It is important that we recognise the tradition of the QIRC and QIC and preserve both their independence and autonomy. Some of the proposed changes may create instability in the QIRC that may affect the considered approach that commissioners currently take when determining matters. It is important that a sense of "speed" does not erode the good reputation of the Commission.

60. Clauses 43-50 replace s242 amending the current arrangements relating to the President and Vice-President of the Industrial Court. The key changes are that the President will now be a Supreme Court Judge appointed on a part-time basis and that responsibility for administration of the Court will move from the Vice-President to the President.

61. Clause 52 alters the current definition of "a full bench" in s256. The QTU does not at this stage have a view on these changes but believes that the case for them should be made rather than simply assumed.

62. A key concern is the proposal in Clauses 53, 54 and 55 to change s258A, s259 and s260 to allow the government to appoint deputy presidents and commissioners for limited tenures of as little as one year. The move is rationalised as a means of addressing short-term increases in workload, but has the potential to significantly increase the government's influence on the Commission – an influence it has already enhanced through previous IR amendments such as those which require the Commission to give specific weight to government fiscal and wages policy.

63. The omission of the reference to “fair wages” in section 273(1) (a) of the Act (273 sets out the Commission’s functions) as proposed in Clause 56 may or may not be noteworthy.

64. Clause 57 acts to amend s287 and deletes the capacity for the Commission to make a general ruling arising from a review of general employment conditions under the current Chapter 2 of the Act . It is proposed that Chapter 2 is superseded by the new Queensland Employment Standards, so amending this reference is clearly required, but it is unclear whether this represents a curtailment of the Commission’s powers.

65. Clause 58 deletes s288 thereby removing the capacity for the Commission to make statements of policy, to insert these in awards and give directions in relation to the policy (as per current section 288 of the Act). This is a potentially significant change for which no case has been made.

66. The QTU would suggest that the amendments to Clauses 56, 57 and 58 are a further attempt by the government to increase its influence in the QIRC. By removing the capacity for the independent arbitrator to make decisions and insert them into awards, the government is acting as a prescriptive regulator. As the independent tribunal, it is the Commission’s responsibility under the general objects of the Act to determine matters in accord with these objects. If there is a necessity for the Commission to make a decision or statement of policy regarding general employment conditions, it should have the unfettered capacity to do so.

Amendments to the Superannuation (State Public Sector) Act 1990

67. Superannuation is a matter of substantial importance to members of the QTU and to employees in public employment generally. These amendments affect governance rather than entitlement but are nevertheless significant.

68. The QTU opposes the transfer of governance arrangements for the board to the Regulation. Such a transfer facilitates subsequent amendment without the level of notice or scrutiny associated with an amendment to legislation. The Union believes the transfer is inappropriate given the importance of superannuation entitlements to employees.

69. The Union welcomes the retention of a trustee nominated by the QTU on the superannuation board. The Union does not believe that the size of the existing board is so unwieldy as to justify its reduction and the removal of trustees nominated by the Queensland Council of Unions and the AWU covering other areas of public sector employment.

70. The Union acknowledges contemporary corporate governance principles promoting limited tenure on boards. The tenure proposed by the amendments is not unreasonable but the wholesale re-constitution of the board and the limited notice of the proposed legislative changes creates a potential future situation where there is significant turnover in the board at the one time. The legislation would better provide for staggered appointments to the board (and staggered retirements) to ensure continuity, and should provide some discretion for marginally extending the limits of tenure for the purposes of continuity.

71. The proposed transitional provision contained in clause 134 of the Bill is essential for short-term continuity in the constitution of the board.