



## **THE AUSTRALIAN WORKERS' UNION OF EMPLOYEES, QUEENSLAND**

Submission to the Legal Affairs and Community Safety Parliamentary Committee

**RE: *The Penalties and Sentences & Other Legislation Amendment Bill 2012***

**Recovery of Overpayments to Employees of Queensland Health**

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## 1. Background

The Australian Workers' Union of Employees' Queensland (AWUEQ) is Queensland's oldest and largest blue collar union, representing over 62,000 employees throughout the length and breadth of the State, including many public sector agencies which operate subject to the provisions of the *Industrial Relations Act 1999 (Qld)* (IRA).

Many of those public sector agency members are employed in Queensland Health facilities right throughout the length and breadth of the State, and most of those members typically work in blue collar jobs within the Operational Stream.

The AWU appreciates the opportunity to peruse the proposed amendments to the IRA contained within *The Penalties and Sentences and Other Legislation Amendment Bill 2012* (the Bill).

Having had the opportunity to peruse the contents of the Bill, we wish to make the following observations and suggestions.

## 2. The Catalyst for the Introduction the Bill – The “Payroll Debacle”

The circumstances leading to the presentation of this Bill to the parliament are well-documented and well understood.

In the view of the AWUEQ, there is little to be made toward the consideration of this Bill by traversing the quite lengthy history to the payroll debacle.

Having said that, it would be remiss of the AWUEQ to not take the opportunity to publicly portray the circumstances affecting many thousands of union members as a result of the debacle.

When it became evident that the new payroll system had encountered significant problems in payroll computation and administration, the AWUEQ was literally inundated with calls from union members, most of whom are not high income earners and who literally live fortnight to fortnight.

In one particular instance, a member of the union rang in absolute desperation after she had taken her three children grocery shopping, presented to the checkout counter with a trolley full of food, swiped her card to pay for it, and was informed that it was declined due to insufficient funds.

Not only did this bring with it the utter indignity of not being able to pay for groceries in a public place, but it also meant that family faced the prospect of not being able to feed themselves until the next pay day.

Stories like this were not isolated instances. Many union members were placed under extreme financial stress when rent, mortgage, utility and loan repayments could not be made due to payroll errors.

The stress felt by many thousands of Queensland Health workers was only compounded by –

- an inability, in many cases, for alleged overpayments to be clearly demonstrated to individual employees due to payroll system issues;
- instances of repayments actually made by workers going missing or not being accurately recorded because of ongoing payroll system issues;
- workers being hounded by employees, contractors or agents of Queensland Health assuming debt collection functions;
- workers being accused of “theft” and threatened with outstanding alleged overpayment matters being referred to Queensland Police.

Whilst it is beyond contention that genuinely overpaid amounts must, as a matter of law, be repaid by Queensland Health employees, the structure of the proposed changes to the IRA with respect to the recovery of alleged overpaid amounts pose significant issues, which are addressed below.

### **3. Issues with the proposed changes to the IRA**

Broadly speaking, the scope and effect of the proposals contained within the Bill as they relate to amendments of the IRA are without known precedent in Queensland.

The novelty of this type of legislative change, coupled with the adverse effects that this may have on employees (especially lower income earners) is quite profound.

Aside from our complete opposition to the proposed Bill on grounds of principle, the AWUEQ makes the following observations and/or suggestions -

#### **a) No sunset provision**

For a legislative change such as this, particularly one that has the potential to greatly affect many tens of thousands of employees within a single government agency, caution dictates that a sunset provision on the operation of the proposed amendments be included within the legislation.

This will ensure that if the need arises for the operation of the proposed legislation to be extended, proper parliamentary scrutiny and authority can be undertaken.

This also sends a very clear message to other employers within the State of Queensland (whether government agencies or in the private sector) that these measures are specifically designed to meet the particular exigencies concerning Queensland Health payroll systems, and are not designed to provide a template for the extension of such drastic measures beyond the resolution of those specific circumstances.

**Suggested amendment:** Given the significance of the task in recovering alleged overpayments, a sunset provision of one year from the date of assent should be provided for within the proposed Bill.

**b) No intermediate parliamentary oversight**

As an adjunct to point (a) above, a parliamentary committee should be clearly designated the task of conducting periodic public reviews of the implementation and effectiveness of the alleged overpayment recovery process during the period leading up to the sunset date.

Amongst other things, this oversight should be directed at mandating Queensland Health to report on the following matters -

- an analysis of the proportions of episodic and aggregate monetary amounts deducted from the wages of employees;
- an analysis of any errors or omissions that are found to have led to unsubstantiated or overstated recovery claims by Queensland Health;
- an analysis of the level of employee complaints about financial hardship and distress as a result of recovery actions undertaken by Queensland Health; and
- an analysis of the number and nature of legal claims brought against Queensland Health by employees who challenge the allegedly overpaid amounts that are recovered.

**Suggested amendment:** Specific provision to be made within the proposed Bill to establish and maintain an appropriate level of parliamentary oversight during the operation of the proposed legislation.

**c) No provisions concerning the adequacy of proof required for the recovery of alleged overpayments**

One of the substantial difficulties encountered by AWUEQ members, and indeed many other employees of Queensland Health, during the course of the last few years concerns the adequacy of documentary proof used to support claims of overpayment.

In the absence of any specific reference within the legislation, and in the absence of any substantial shift in the capacity of Queensland Health to clearly identify where, when and how alleged overpayments have been made, employees will be placed in the impossible position of challenging the correctness of any computation behind a claim of alleged overpayment.

If documentary evidence cannot be provided in sufficient detail to explain to an employee how an alleged overpayment figure has been arrived at, that employee is fundamentally deprived of the reasonable opportunity to make consensual arrangements with the employer for reasonable periodic repayments, or is deprived of the right to meaningfully challenge an action of recovery by the employer in a court or tribunal of competent jurisdiction.

The onus of demonstrating the accuracy of the alleged overpayment should be clearly outlined as falling on the employer. Employees should not be placed in the position of having to try and disprove an allegation made as to overpayments, more so in circumstances where the accuracy of Queensland Health records has repeatedly been called into question over payroll issues.

**Suggested amendment:** Specific provision should be included in the proposed Bill to set a minimum standard of documentary information to be provided to an employee prior to any action undertaken by the employer to recover the alleged overpayments. To facilitate this, a minimum period of at least two weeks' notice should be provided to each individual employee with the accompanying documentary information prior to any action being taken for the recovery of the alleged overpayment.

#### **d) No provision made with respect to financial hardship or distress**

There is absolutely no reference or provision made for circumstances where an individual employee would be placed in circumstances of financial hardship or distress where the actions for the recovery of alleged overpayments are unilaterally embarked upon by the employer.

In addition to the points made at (d) above, the provision of at least two weeks' notice to an employee prior to any action to recover amounts alleged to have been overpaid will enable the employee a minimum period of time within which to raise the prospect of financial hardship or distress directly with the employer and/or to make suitable arrangements in advance to accommodate the forthcoming recovery actions of the employer.

"Cold decking" employees with a unilateral deduction from their wages would not only be immoral, but it could have the very real effect of placing employees in financial peril.

**Suggested amendment:** Specific provision should be made within the proposed Bill to reflect the fact that the recovery mechanisms are not intended to induce financial hardship or distress upon an individual, and that all reasonable notice and reasonable actions should be taken by the employer with the employee to accommodate suitable options for the periodic repayments of alleged overpaid amounts, taking into account the circumstances of each particular case.

#### **4. Final Observation**

Notwithstanding the difficulties of the current payroll system, greater emphasis should be placed on employing and authorising more local payroll officers to administratively manage changes to rostering arrangements, shift changes and absences within the pay cycle at each particular Queensland Health facility.

This is not an endorsement of empowering local hospital boards to assume greater operational management, but rather is a lesson to be learnt from past practice where local knowledge can be more effectively and efficiently drawn upon in day-to-day payroll management.