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**Submission to the Legal Affairs and Community Safety Committee:
*Penalties and Sentences and Other Legislation Amendment Bill 2012***

Together Queensland Industrial Union of Employees provides the following submission to the Committee for its consideration in relation to the *Penalties and Sentences and Other Legislation Amendment Bill 2012* (the Bill), specifically that part of the Bill which amends the *Industrial Relations Act 1999* (IR Act) and *Industrial Relations Regulation 2011* (IR Regulation).

Recovery of health employment overpayments: background

In order to fully present the ramifications of the proposed amendments to the IR Act to allow for recovery of health employment overpayments, it is necessary to establish how the problem of regular overpayments (and for that matter, underpayments) to health employees¹ arises: it is as a consequence of longstanding payroll business processes exacerbated by introduction of SAP payroll system in May 2010.

Queensland Health and the Hospital and Health Services (referred to collectively herein as 'QH') operate a fourteen-day payroll on a 'paid to date' basis, meaning that the pay received by employees on pay day represents the sum total of their owed wages up to and including the last day of the roster and pay cycle. For all pays to be wholly accurate is a practical impossibility.

Table 1 illustrates the steps that occur in the processing of pays. Pays are ostensibly up-to-date to day 14, the last day of the pay and roster cycle. Line managers therefore attempt to submit all attendance and roster variations to payroll for processing by the last Friday, day 12, of the pay cycle. Payroll staff work overtime on Saturday, day 13, to enter as many of these variations as possible. The sheer size of the payroll being operated from a single system – over 85000 employees – means the actual processing of pays by the system takes days. The pay run therefore starts Saturday evening, day 13, and is usually completed by Monday, day 1, although it can run into Tuesday. During this time the system is inaccessible.

The final days of the roster cycle are paid according to the projected roster – any unplanned variations on days 13 and 14, and in some cases day 12 simply cannot be processed in time to be accounted for in the pay run. This is where the vast majority of over- and under-payments occur.

¹ As defined clause 19 of the Bill, in amended section 396A (7)

For example, any shift-working employee who is rostered to work day 14 but is sick for the shift will still be paid the shift allowance because their pay has already been processed on the basis that they would work the shift. Because they are no longer entitled to the shift allowance they have thereby incurred an overpayment. Once the system comes back online, whether that be Monday or Tuesday prior to pay day, payroll staff are able to process some of the adjustments and variations to arise over the weekend in time for pay day by entering manual transactions. Monies are released to banks at midnight of Tuesday, day 2, and depending on various bank processing times appear in employee bank accounts between Wednesday, day 3, and Friday, day 5.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
Day 8	Day 9	Day 10	Day 11	Day 12 <i>Final adjustments</i>	Day 13 SEND TO BANK (PM)	Day 14 ROSTER ENDS
<i>Day 1</i> SYSTEM OFFLINE	<i>Day 2</i> SYSTEM OFFLINE	<i>Day 3</i> PAY DAY	<i>Day 4</i>	<i>Day 5</i>	<i>Day 6</i>	<i>Day 7</i>

Existing overpayment recovery arrangements

The existing provision for recovery of absence-related overpayments is made in section 396 of the IR Act:

- (1) This division does not prevent an employer recovering an amount paid to an employee that the employee is not entitled to because of absence from work.
- (2) Without limiting the employer's right to recover, the employer may recover an amount to which the employee is not entitled by deducting amounts from the employee's wages for a subsequent pay period or periods.
- (3) Deductions under subsection (2)—
 - (a) must be commenced within 1 year after the payment; and
 - (b) may extend over a period of 6 years after the payment.
- (4) A deduction cannot be made in an amount that would reduce the wages payable to the employee for a pay period to less than an amount prescribed under a regulation.

The amount prescribed for the purpose of subsection (4) is three-quarters of the amount payable for the pay period; that is, the amount that can be deducted is not more than 25% of wages payable in any one pay period. This existing arrangement under the IR Act applies to all state-system employees.

Additionally QH has in place a policy and procedure to govern the recovery of overpayments: QH HR Policy C48 'Overpayments'. Under this HR Policy, for absence-related overpayments repayments are to be made from the employee's next available pay up to a maximum of 25% of their gross wages in accordance with the provisions above. In case of other overpayments, such as those arising from a genuine processing error or mistakenly applied entitlement, employees are to be notified by Payroll

Services of an overpayment and acceptable repayment terms are then negotiated between Payroll Services and the employee subject to certain guidelines.

As outlined above, in QH, the overwhelming majority of overpayments that occur each fortnight are not related to payroll system problems but are rather 'business as usual' overpayments that occur because of roster and attendance-related adjustments that occur in the final days of the roster and cannot be accounted for in the pay. Under the previous payroll system these adjustments were automatically accounted for in the next pay as per the HR Policy. However, SAP cannot distinguish between absence related overpayments, which can be automatically recovered, and non-absence related overpayments which cannot. This is what makes automatic reconciliation of over- and under-payments impossible under the present payroll system.

There is nothing that prevents the application of the HR Policy to absence and non-absence related overpayments alike. The main obstacle to recovery of overpayments since the inception of the new system has been the difficulty in validating alleged overpayments due to the high number of errors generated by the system, unreliable data and the complicating factor of unrectified underpayments made to employees over the same period of time.

Proposed overpayment recovery arrangements

Together's primary concern with the new recovery arrangements proposed in the Bill is that it creates a lesser set of rights for a particular class of employees, namely health employees, compared to other state-system employees. It is observed in the Explanatory Notes²,

"The amendments conflict with fundamental legislative principles by making health employees uniquely liable to deductions from their wages or any other amount payable in relation to employment for a non-absence related overpayment... The introduction of provisions authorising deductions under these arrangement and their limitation to use only in specific circumstances related to Queensland Health payroll issues is considered a proportionate response to a possible recurring debt of \$1.7 million per fortnight".

This rationale for pursuing the legislation despite its conflict with fundamental legislative principles only holds true if no other action is taken to reduce the occurrence or recovery of overpayments (such as changes to the pay cycle and/or recovery action under existing arrangements). It is misleading to suggest that the debt incurred by QH as a consequence of salary overpayments will continue to recur and accrue unabated without legislative intervention. QH has already announced its intention to recover outstanding overpayments and to recover future overpayments as they occur³.

The amendments under the Bill would render health employees liable to unilateral deductions from their wages without creating a countervailing obligation on part of the employer to first satisfactorily establish the existence of the overpayment.

²Page 4.

³This is also referred to in the Explanatory Notes, page 1.

Minister Springborg has outlined a process in various media statements in which health employees would first be notified of the overpayment and the intention to recover, and be provided with two pay cycles within which to dispute or investigate the overpayment before the deduction is made from their pay.

In a similar vein the Explanatory Notes states on page 5 that "Queensland Health will be obligated to negotiate repayment strategies with affected employees in the first instance and will only be able to recover monies without the employee's consent as a last resort". **None of these safeguards however appear in the Bill, leaving the power open to abuse.**

This is particular concerning in light of the ongoing concerns held by union members about the validity of the overpayment claims being generated by the payroll system. Even if the safeguards suggested by the Minister are implemented, past experience suggests the timeframe of two pay cycles (or four weeks) would be insufficient to resolve many queries and disputes. The complexity of payroll related issues and poor state of data in the payroll system mean the proper interrogation of a disputed overpayment is a time-consuming exercise requiring specialised expertise.

It is unclear whether under the process outlined by the Minister, recovery without the employee's consent will proceed even where the employee has challenged the overpayment claim and is engaged in a process with QH to resolve it.

The Explanatory Notes claims that legislative amendment is the only way to achieve the stated objectives of the Bill⁴. This is only true for the health overpayment recovery arrangements if the objective is to recover overpayments without employee consent. If the objective is simply to create and implement arrangements to recover overpayments, it is Together's submission this can be satisfactorily achieved without legislation. Firstly, as noted above, the existing policy framework can be applied with or without modification to the recovery of absence related overpayments as well as non-absence related overpayments. The difference between this arrangement and that pursued through the Bill is the need to notify and obtain the consent of the employee.

Automatic recovery can also be pursued through introduction of a head of power in the relevant industrial instruments. Detailed discussion and negotiation between unions and QH seeking to achieve this took place in the second half of 2011. Key principles of the proposal subject those negotiations were that:

- a. no overpayment recovery would take place until the relevant staff member had been given constructive notice of the intention to commence recovering an overpayment;
- b. each staff member would be given opportunity (at least two weeks after the notice is issued) to query or halt the recovery of a prior overpayment before the recovery commenced;
- c. no automatic recovery would commence or continue after an employee had exercised the opportunity in (b) above, until such time as the employee consented or the dispute was resolved.

⁴ Page 3

The negotiations were unsuccessful primarily because of the inability of QH to satisfy union members at the time of the validity of the payroll data to be relied upon by QH when recovering alleged overpayments. As referred to above, it remains the case that providing satisfactory evidence that an employee has received a payment to which the employee is not entitled remains a challenge – QH employees generally do not have faith in the data supplied by QH to support its claims regarding past overpayments and it is likely this distrust will extend to claims of future overpayments also. However, these concerns will arguably reduce as the payroll system continues to stabilise and improve.

Transitional loan arrangements

In addition to the overpayment recovery arrangements, the amendments in the Bill provide for unilateral deduction by a health employer from a health employee's final payment equal to the amount of the 'transition loan' which has not been repaid. It is proposed that the health employers will make once-off 'transition loans' to health employees to facilitate transition to a new pay date of ten days, rather than three days, after the end of the pay period.

There has been wholly inadequate consultation with the workforce around this proposal. While the Bill is concerned only with that aspect of the proposal that relates to recovery of any unrepaid amount at the end of a health employee's period of employment, it is difficult to properly consider the detail of the amendments without full details of the proposed transition loan arrangements being available. The Explanatory Note states that other arrangements will be provided for a directive under *the Public Service Act 2008*⁵. However, the majority of affected employees are not employed under the *Public Service Act 2008* but rather the *Health and Hospital Boards Act 2011*. It is assumed that the intention is to apply the ruling to these employees by regulation, but although this is possible it is clearly outside the intent of the *Public Service Act 2008* to issue a ruling specifically for health employees.

Consultation

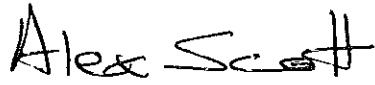
Together contends that the measures being pursued through legislative amendment in this Bill have been subject to a singular lack of consultation with affected workforce. The actions of the Government in rushing through legislation in particular that deleteriously affects a particular class of people, without adequate justification and without adequate consultation, is grievously concerning.

We also wish to note that the inadequate timeframes provided for feedback means we are unable to fully canvass members about the implications of the Bill. It is therefore possible that there are other as yet undetected challenges associated with the proposed recovery arrangements and transition loan proposal of which we are unable to make the Committee aware at this time.

⁵Page 2-3.

Please direct any responses to this submission to deborah.ralston@together.org.au and danielle.cohen@together.org.au.

Yours

A handwritten signature in black ink that reads "Alex Scott". The letters are cursive and somewhat stylized, with the "A" being particularly large and the "t" having a long, thin tail.

Alex Scott
Secretary