Industrial Relations and Other Legislation Amendment Bill 2026

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State Development, Infrastructure
and Works Committee
Parliament House
George Street
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By email: SDIWC@parliament.qld.gov.au

Dear Committee Secretary

Industrial Relations and Other Legislation Amendment Bill 2026

Thank you for the opportunity to provide feedback on the Industrial Relations and Other Legislation Amendment Bill 2026 (**Bill**). The Queensland Law Society (**QLS**) appreciates the opportunity to comment on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Executive Summary/Key Points:

- QLS notes the proposed provisions regarding suspension, termination and ministerial intervention regarding industrial action are broader than the *Fair Work Act* equivalents.
- The changes regarding legal representation are welcomed, however the remaining restrictions should also be removed so that the ordinary leave discretion applies to all proceedings. QLS holds concerns regarding the changes for representation by unregistered organisations.
- QLS supports balanced reforms that protect the sustainability of Queensland's enviable workers' compensation scheme while maintaining access to compensation and damages for injured workers.
- The abolition of the requirement that all psychological/psychiatric injury claims be assessed for degree of permanent impairment by a medical assessment tribunal is supported by QLS.
- QLS further supports the legislative changes proposed around governance of medical examiners and assessors.
- QLS has does not support unnecessary legislative change that will likely lead to increased disputes and increased administrative burden on parties and the regulator.
- QLS is not of the view that substantial legislative change is required regarding fraud.

Our responses in relation to the amendments to the *Industrial Relations Act 2016* have been compiled by the QLS Industrial Law Committee, whose members have substantial expertise in industrial law. Our responses in respect of amendments to the *Workers' Compensation and Rehabilitation Act 2003* have been compiled by the QLS Accident Compensation and Tort Law Committee, whose members have substantial expertise acting for both injured workers and insurers, with input from members of the QLS Criminal Law Committee in respect of the amendments relating to fraud.

Amendments to the *Industrial Relations Act 2016*

Suspension, Termination and Ministerial Intervention

We refer to proposed new ss 241A to 241E of the *Industrial Relations Act 2016* (**IR Act**), inserted by clauses 53 and 54 of the Bill.

The IR Act already allows the Queensland Industrial Relations Commission (**Commission**) to suspend or terminate protected industrial action that is causing significant economic harm (s 240), or that endangers life, personal safety, health or welfare, or threatens significant damage to the State's economy (s 241). Those provisions mirror ss 423 and 424 of the *Fair Work Act 2009* (Cth) (**FW Act**). The Bill adds two further powers over what the FW Act contains.

1. *Serious Disruption to Public Services*

Proposed s 241A requires the Commission to suspend or terminate protected action that is causing serious disruption to a public service, harming persons not covered by the proposed instrument, and contrary to the public interest. It is broader than its federal counterpart, s 426 of the FW Act, in two respects:

a) Section 426 of the FW Act permits suspension only. Proposed new s 241A permits termination.
b) Section 426 of the FW Act may only be invoked by a person directly affected by the action, other than a bargaining representative or an employee, or by a Minister or prescribed person. Proposed new s 241A may be invoked by any negotiating party, including the employer.

The FW Act also provides for a suspension for a cooling off period where it would assist the parties to resolve the matters at issue (s 425). Neither the IR Act nor the Bill provides an equivalent.

2. *Ministerial Termination*

Proposed s 241B of the IR Act allows the Minister, on the Minister's own initiative, to terminate protected action by declaration if satisfied the action threatens:

i. *to endanger the life, personal safety or health, or welfare of the State's population or part of it; or*
ii. *to cause significant damage to the State's economy or an important part of it; or*
iii. *to significantly disrupt the delivery of a public service and the disruption is contrary to the public interest; or to otherwise have a significant effect that is contrary to the public interest.*

The equivalent power in s 431 of the FW Act is confined to the first two grounds. The third and fourth grounds have no federal equivalent. The fourth ground is not confined by any objective criteria.

In public sector bargaining the State is the employer and s 241B allows a Minister of the employer (the government of the day) to terminate industrial action taken against it, on a public interest ground that the Minister alone assesses. The Bill does not require the Minister to consult the parties, give reasons or seek the Commission's view. The declaration is a statutory instrument but not subordinate legislation, so it is not subject to disallowance by the Parliament. There are also, consequently, questions about the compatibility of these changes with section 22 of the *Human Rights Act 2019* (Qld) that protects freedom of association, including the right to form and join trade unions, and, that Australia is a party to the International Labour Organization's *Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87).

Legal Representation

QLS supports the amendment of s 530 of the IR Act, by clause 85 of the Bill, to allow a lawyer to appear before any industrial tribunal with the consent of the parties or with leave.

The existing restriction has been the subject of long-standing concern from both the bench and the profession. In *Together Queensland Industrial Union of Employees -v- State of Queensland (Queensland Health)* [2021] ICQ 016, Davis J, President, observed at [39] that it was "*mysterious why the QIRC does not have a broader discretion to grant leave to the parties to be legally represented*".

However, the Bill leaves two restrictions in place:

a) Section 530(2), as renumbered, continues to prohibit legal representation in proceedings under ss 403 and 475 , and in matters remitted under ss 404(2) and 475(2). In *Mason -v- Paroo Shire Council* [2021] QIRC 316 at [24], the Commission confirmed this is "*an absolute barrier to legal representation*". Unpaid wages claims can involve significant sums and complex questions of entitlement, and we see no reason why the leave discretion should not apply.

b) Section 530(1A) of the IR Act continues to exclude public service appeals. In our members' experience, the employing department is typically represented by officers with substantial experience of the appeal process, while the appellant, who may be facing suspension without remuneration or the loss of their position, cannot be legally represented. This creates a real imbalance between the parties.

Accordingly, we submit that existing s 530(2) and s 530(1A) should be omitted, so that the ordinary leave discretion applies to all proceedings.

Representation By Unregistered Organisations

We refer to s 529 of the IR Act and the proposed amendments to it found at clause 84 of the Bil.

Section 529(2) of the IR Act currently prevents a person from acting as an agent under s 529(1)(e) if:

a) the person directly or indirectly demands or receives a fee for representing the party (s 529(2)(a)); or
b) the person is an employee or officer of, or acting for, an entity other than a registered organisation that purports to represent the industrial interests of employees or employers (section 529(2)(c)).

The proposed amendments leave only the fee exclusion.

The Society submits that removing s 529(2)(c) opens a pathway for unregulated non-lawyers, acting for unregulated and unregistered entities that purport to provide industrial assistance, to appear in the Commission. In our view this is likely to create issues similar to those that arose with paid agents that have been raised by the Fair Work Commission and led to regulation of paid agents in that jurisdiction.

Those issues are well documented. In June 2022, the President of the Industrial Court of Queensland wrote to the then Minister about the conduct of non-lawyer paid agents in the Commission, and that correspondence provided a range of concerns, including that agents withdrew from a party's matter, or did not appear to have the requisite skills or knowledge of the law or process to assist.[1]

While paid agents are not likely to be able to act with these amendments, the same risks arise where the representative is an officer or agent of an unregistered entity. In particular:

a) the representative is not a lawyer and is not bound by any of the legal and ethical obligations that apply to the legal profession, including obligations relating to costs disclosure, professional indemnity insurance and qualifications;
b) the entity is not registered under the IR Act and is not subject to the obligations that apply to registered organisations, including financial reporting, regulation of its rules and coverage, oversight of its elections and, under the Bill, the fit and proper person requirements for its officers; and
c) members may pay subscriptions on the understanding that they will be represented, with no oversight of how that representation is provided and no effective recourse if it is deficient or withdrawn.

The fee exclusion in s 529(2)(a) does not adequately address these risks. It is unclear whether membership subscriptions that fund representation are a fee "*directly or indirectly*" received for representing a party for an unregistered organisation. That question has not previously arisen, because s 529(2)(c) excluded unregistered entities first. If subscriptions are not caught, an entity could charge for representation through membership arrangements and fall outside the fee exclusion altogether, purporting to act as a regulated entity while having no regulation at all.

In 2022, QLS submitted that it is "*incongruous that unregistered organisations can operate and attempt to exercise representational and other rights without the correlative obligations that registered organisations are required to comply with*".[2] Removing s 529(2)(c) reverses that principle. At the same time, the Bill substantially increases the obligations on registered

[1] https://documents.parliament.qld.gov.au/com/EETC-797A/IROLAB2022-36EA/submissions/00000031.pdf
[2] https://documents.parliament.qld.gov.au/com/EETC-797A/IROLAB2022-36EA/submissions/00000005.pdf

organisations, including through the fit and proper person test for authorised officers, the revocation provisions, the whistleblower provisions and new s 293B. The incongruity identified in 2022 is therefore widened.

Amendments to the *Workers' Compensation and Rehabilitation Act 2003*

QLS acknowledges the significant work undertaken during the 2026 review of the *Industrial Relations Act 2016* and *Workers' Compensation and Rehabilitation Act 2003*, by reviewers Glenn Ferguson AM and Gary Black. QLS appreciates the consultation undertaken as part of that review.

QLS supports balanced reforms that protect the sustainability of Queensland's enviable workers' compensation scheme while maintaining access to compensation and damages for injured workers. QLS is very supportive of recommendations made by the reviewers in respect of removing the requirement that all psychiatric or psychological injuries be assessed by a medical assessment tribunal (recommendation 5/clause 141 of the Bill, amending s 179 of the WCR Act), increasing WorkCover Queensland's access to medical expertise (recommendation 6), uplifting insurer capacity (recommendation 7) and strengthening governance of independent medical examiners and assessors (recommendation 31 and relevant clauses in the Bill).

QLS appreciates the intention of many of the other recommendations that have been adopted in the Bill but holds concerns regarding the consequences of some of the amendments.

Psychological injuries

Definition of injury

The Bill, in clause 121, adopts recommendation 1 of the review report to change the definition of 'injury' in s 32 of the WCR Act such that for psychiatric or psychological disorders, the employment is the major significant contributing factor.

QLS submits that no such changes are needed to the definition of *injury*.

QLS understands that psychiatric and psychological injuries are having an impact on the scheme. The volume of these claims (for both primary psychological/psychiatric injuries and injuries secondary to physical injuries) continues to increase due to a number of factors and these types of claims cost more and take longer to resolve. However, QLS is of the view that other efficiencies can be found within the scheme to minimise the impact of psychiatric/psychological injuries on the scheme without altering the definition of injury. Some of these efficiencies are proposed within the Bill, including the amendment to s 179 referenced above, while others will result from non-legislative changes.

QLS is concerned that the proposed amendment to the definition is not only unnecessary but will likely result in little real savings for the scheme while making it more difficult to assess claims and leading to increased disputes.

Among a number of factors that may impact a worker, it is very difficult to determine if employment is *the major significant contributing factor*, as opposed to *a significant contributing factor*, as required currently and as will still be required for physical injuries if the Bill is passed.

There is no definition of 'the major significant contributing' factor proposed in the Bill. Must employment be considered greater than 50% of the cause of the disorder to be *the* major significant factor? How is a psychiatrist to quantify each factor? QLS submits that these issues will cause unnecessary complexity when a claim is being assessed and increase disputes between workers and insurers.

QLS submits that any change to the definition of injury is likely to increase complexity and disputes for relatively little benefit to the scheme and that the current definition, that applies equally to physical and psychological/psychiatric injuries, is preferred. Nonetheless, should a change to the definition be considered necessary, QLS submits that the formulation 'a major significant contributing factor' would be preferable as it would be less likely to give rise to disputes about quantifying the contribution of each factor.

In addition to our concerns about the changes to the definition of 'injury' in s 32, QLS is concerned that the insertion of 'the major' into s 36ED(4)(b) will increase disputes and erode the benefits of the presumptive injury provisions for first responders.

Reasonable management action

QLS submits that the proposed amendments to s 32(5) and 32(6) are unnecessary. There is settled law regarding the interpretation of the reasonable management action provisions confirming that action taken to investigate alleged misconduct by the worker is reasonable management action if the underlying reasons for the investigation are substantively reasonable and the manner of investigation is procedurally reasonable and that management action need not be perfect to be reasonable. Parties routinely make submissions about these issues and there is no legislative gap that needs to be filled.

While the proposed amendments purport to merely provide explicit statutory confirmation of the existing law, QLS cautions that introducing unnecessary amendments is likely to give rise to disputes as to whether the amendments overtake the sophisticated jurisprudence that has arisen around this issue.

Independent review of amendments

QLS notes the reviewers' recommendation for review of whether the above amendments are achieving their outcomes and the Government's support of that recommendation. QLS recommends that the requirement for review of the amendments be included in the Bill, such that review is required at defined time periods (a single review after 12 months would not be meaningful) and take into account defined metrics, including:

- The respective number and rate of primary and secondary psychiatric/psychological injury claims
- The acceptance rate of those claims
- The rate of acceptance/rejection decisions reviewed and appealed and the outcome of those reviews
- Changes to the overall length and cost of psychiatric/psychological injury claims withing the scheme
- Overall financial impact on the scheme.

Fraud

QLS notes the current non-legislative initiatives in relation to fraud and is supportive of increased education regarding engaging in a calling fraud and increased resources for the investigation of allegations of fraud. QLS submitted to the review that legislative amendment is not required in relation to fraud.

Nonetheless, QLS appreciates that there is need for a mechanism for accepted claims to end where clear fraud comes to light, given that at present there is no basis to close an accepted claim before the injury is stable and stationary. We therefore consider that proposed s 168A will have some utility.

QLS is concerned that the proposed amendments in clause 154 of the Bill may not strike the right balance and will lead to unintended consequences. We consider that the threshold 'reasonable belief' for allowing an authorised person to issue a direction to stop compensation or issue a direction that payment of a lump sum compensation or claim for damages be stayed is fraught and may not be a sufficiently high standard to trigger actions that will have severe impacts on injured workers making legitimate claims. QLS submits that a well-established threshold such as 'on the balance of probabilities' is preferable.

QLS also queries the practicality of the three month stay in proposed ss 536(1) and (2). Presumably this has been included on the basis that proceedings will be commenced within three months such that s 536B will then stay the application for compensation or claim for damages under s 536B(1)(b). It is not clear whether three months is a sufficient period for fraud proceedings to be started -given the records to be reviewed may be substantial - or whether situations might arise in which claims will restart and then subsequently be stayed when fraud proceedings commence. Should the higher threshold of 'on the balance of probabilities' be applied before a stay can be instituted, rather than 'reasonable belief', it will be more likely that premature stays will be avoided and investigations will have progressed sufficiently by the time the threshold is reached, such that proceedings can then realistically be instituted within the three month stay period.

QLS notes the increased penalties for fraud proposed in the Bill and that these penalties are said to be consistent with other penalties, including with general fraud under the Queensland and Commonwealth Criminal Codes. As noted by the reviewers, the maximum penalty for fraud under the Queensland Criminal Code is 20 years. However, this maximum is only applicable in the circumstances set out in s 408C(2) of the Code (quantum over $100,000 or carrying on at the business of committing the offence). Fourteen years imprisonment is the maximum for other aggravated fraud offences. The simpliciter offence under s 408C(1) attracts a maximum penalty of 5 years imprisonment. QLS submits that the committee should carefully consider whether the doubling if the offence in s 533(1) of the WCR Act is proportionate and justified.

QLS also has concerns as to whether the proposed changes impacting damages claims have been appropriately vetted for interaction with other personal injury schemes in the event of hybrid claims (ie claims where the *Motor Accident Insurance Act 1994* and *Personal Injuries Proceedings Act 2002* are also engaged).

Regarding recommendation 11.1 of the review report and clause 138 of the Bill, QLS acknowledges that the requirement for monthly work notices would objectively be expected to

focus the injured worker's attention on the need to report any return to work and therefore curtail the extent of incorrect payments. However, we are concerned that this requirement will impose a large administrative burden on workers, insurers and, when called upon to take action in relation to non-compliance, the regulator. The form and lodgement processes must therefore be carefully designed. QLS would be pleased to participate in any consultation taking place in relation to the design of the work notice form and in relation to how insurers intend to implement form lodgement processes.

It is imperative that the work notice process is designed to ensure that workers who have more than one job are properly aware of their obligations to the insurer where they are still able to work in their second or subsequent job but incapacitated for the job in which they sustained their injury. In our members' experience, there are occasions in which a worker injured in one job claims benefits for wages lost from that role without appreciating the need to declare that they are still capable of and are continuing to work in their other job. While no deception is intended, the discovery that the worker is 'engaging in a calling' naturally leads to a full fraud investigation. We consider that a substantial number of these investigations could be avoided with appropriate mechanisms to inform and remind workers of their obligations and specific questions asked of the worker to address the second job scenario.

Review and appeal of insurer decisions

Timeframe to lodge application for review

QLS is concerned that the reduced timeframe to lodge an application for review, from three months to 20 business days (clause 160 of the Bill) is unreasonable and will have unintended consequences.

The substantial reduction in time for lodging an application for review will disproportionately impact unrepresented workers, particularly those impacted by psychiatric/psychological injuries who may have difficulty complying with the relevant procedures.

Twenty business days is also unreasonable given that it can often take 20 business days for a worker or their legal representative to receive the file from WorkCover. Should a 20 business day time limit apply, worker's/legal representatives who receive an adverse decision will be compelled to lodge a review application as a matter of course to protect the worker's interests while awaiting the insurer's file, only to withdraw the application later. This will have a significant adverse impact on the regulator.

Apart from reviewing the file, investigating a matter and obtaining evidence to support a review application can take significant time, particularly in relation to psychiatric/psychological injury claims where various statements may need to be obtained.

Other

QLS notes recommendation 39 regarding allowing prospective employers to request a prospective worker's claims history summary and that this is addressed in clauses 177 and 178 of the Bill.

QLS is concerned that this change will have an unintended financial impact on the scheme due to an increase in damages paid for future economic loss in common law claims. This is because workers will have a genuine argument when settling a claim that they will be placed at increased

disadvantage in the open labour market due to future employers being able to request a summary of their claims history. We do not consider the consent requirement mitigates this issue.

There is already provision in the WCR Act for prospective employers to request disclosure of pre-existing injuries or medical conditions.[3] QLS is of the view that no further provisions are required.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted]

Yours faithfully

[redacted]

Peter Jolly
President

[3] Chapter 14, Part 1, Division 1 WCR Act