Speech by

Hon. P. BRADDY

MEMBER FOR KEDRON

Hansard 25 May 1999

INDUSTRIAL RELATIONS BILL

Hon. P. J. BRADDY (Kedron—ALP) (Minister for Employment, Training and Industrial Relations) (2.30 p.m.): I move—

"That the Bill be now read a second time."

The Industrial Relations Bill is one of the most important pieces of legislation to be introduced this century for the Queensland community. This Bill stands in stark contrast to the confrontationist approach adopted in the Howard/Reith legislation which was epitomised in the Patrick's dispute where the community was shocked by the entry of balaclava-clad goons and security dogs into the Australian workplace in the middle of the night.

The Queensland Labor Government's view on industrial relations is to bring about jobs growth and enhanced economic performance. To do this, it is necessary to work constructively with both workers and employers in delivering these outcomes. This constructive approach to industrial relations varies markedly to the existing Federal and State workplace relations laws, but is an approach the Queensland Government is determined to pursue. At the centrepiece of these industrial relations reforms is the establishment of a strong and independent umpire—the Queensland Industrial Relations Commission. The appointment, for the first time in 80 years, of a full-time president of the Industrial Relations Commission highlights this Government's commitment to raising the status and standing of the commission within the Queensland community.

The Industrial Relations Bill places increased functions and powers with the commission. These new powers will allow the commission to intervene in disputes which are damaging not only to the Queensland economy but also to those disputes that threaten to harm or disrupt local communities. They will also allow the independent umpire to put a check on violent confrontations and avert continual and costly recourse to the court systems. More conciliation and arbitration, not further emasculation of the independent umpire, is the way to bring real benefits to the Queensland community.

The Queensland Government does not regard workplace standards, safety nets and livable pay rates as merely another set of commodity or production costs, nor does it accept the view that labour is just another cog in the wheel of production. The Beattie Labor Government believes that workers have a right to receive an equitable distribution of income and that, in striking the right balance between these factors, greater productivity is generated and, in turn, so is jobs growth. This philosophy, coupled with the view that the industrial relations system should take account of social and economic objectives, has underpinned the review of Queensland industrial relations legislation.

The Queensland Government's concern about the impact of rampant deregulation and the extent to which it should or should not be continued led to the establishment of the independent tripartite Industrial Relations Task Force in July 1998. The task force's terms of reference reflected the Government's view that the industrial relations system must contribute to a strong and competitive economy, job creation, fairness and equity, and consultation and cooperation. The establishment of the Industrial Relations Task Force allowed for the most extensive and comprehensive review of Queensland's industrial laws ever undertaken. This provided an opportunity for the task force and all those who participated in the process to focus on the key issues concerning the changing nature of employment and work today, and to reflect fully on the experience of the 1990s under an increasingly deregulated system based on enterprise bargaining.

Following extensive public consultation and analysis of the Queensland labour market, the task force found that the move to a more deregulated system has resulted in a number of undesirable effects, namely—

- A growing gap in wages inequities between males and females and those covered by bargains versus those reliant on awards;
- Labour market segmentation is increasing and is accompanied by economic and social deprivation;
- The Workplace Relations Act 1997 has narrowed award coverage and has failed to provide adequate basic protection for casual and award-free employees, dependent contractors and other workers engaged in non-standard employment;
- The award system is becoming irrelevant and outdated as a consequence of the commission being limited to awarding minimum safety net adjustments targeted at the low paid. This is unacceptable as a significant proportion of Queensland workers remain solely reliant on the award system to set their wages and conditions;
- The range of collective bargaining arrangements available to employers and employees is inadequate in meeting their specific circumstances;
- The bargaining process is unnecessarily adversarial and parties are unable to receive assistance from the commission when negotiations break down; and
- The commission's powers have been severely limited, such that it has been paralysed in resolving significant disputes, and it is fettered in its ability to set fair and reasonable wages and conditions.

The Workplace Relations Act 1997, which largely mirrors the Federal coalition Government's Workplace Relations Act 1996, has destabilised the industrial relations system by fostering conflict, contributing to an increase in inequitable wage outcomes and promoting the reduction in workers' rights.

In response, the task force made many recommendations for legislative change in order to address contemporary issues in the labour market and to provide a framework for economic prosperity, fairness and equity. The task force recommendations have formed the basis for the new legislation and, accordingly, this Bill repeals the Workplace Relations Act 1997 and the Industrial Organisations Act 1997. The task force report included 166 recommendations for change, and the Government has adopted 150 of those proposed changes in the Bill. The Government is confident that the new legislation, which takes account of both economic and social goals, is the right approach and will deliver positive outcomes for all Queenslanders, industry and the economy.

I turn now to the key features of the Bill. The principal object of the Bill provides a coherent framework that focuses on the achievement of both economic prosperity and social justice for all Queenslanders. The new industrial relations legislation will be structured around the following key objects—

- The importance of an effective and efficient economy, characterised by strong economic growth, high employment, employment security and improved living standards;
- Providing enhanced powers for the resolution of industrial disputes and an increased role for the commission where negotiations for agreements break down;
- Promoting and facilitating jobs growth;
- Promoting and facilitating the regulation of employment by awards and agreements;
- Meeting the needs of emerging labour markets and work patterns and balancing work and family life; and
- Ensuring wages and employment conditions provide fair standards reflected in the community.

Since the early 1900s, industrial relations legislation has typically regulated standard types of working arrangements. Over the last 10 to 15 years, these working arrangements have substantially altered. In 1999, it has been reported that only 37% of the work force is employed in a typical 9 to 5, Monday to Friday job. These changes are also reflected through—

- the increase in female employment within the labour market;
- the development of new and emerging industries;
- higher levels of casualisation and the growth in other forms of non-standard work;
- increased levels of work intensification; and
- the need for workers to balance work and family life.

In particular, the growth in casual and part-time work, contract work, seasonal and out work has meant it is timely to examine the assumptions on which we base the regulation of employment. The

Government has sought to respond to these changes on a range of fronts through extending general conditions of employment to all Queensland workers; providing non-standard workers with access to general conditions under the legislation; as well as providing the commission with an expanded role in reviewing unfair contracts through broadening the circumstances under which a contract may be reviewed. The objects of the Bill have been amended to reflect these changes, in particular by requiring the legislation to recognise and meet the needs of emerging labour markets and work patterns.

The Bill then prescribes at Chapter 1 general employment conditions which have been extended to cover all Queensland workers responding to this growth in non-standard employment. Specifically, the Bill includes—

- A set of minimum employment entitlements to annual leave, sick leave, public holidays, family leave, carer's leave, bereavement leave and long service leave for all employees, including those not covered by awards and agreements;
- Four weeks' annual leave, or five weeks for continuous shift workers;
- At least eight days' sick leave per year;
- 13 weeks' long service leave after 15 years' service, with employees able to access further leave on a pro rata basis after another five years' service;
- Equal pay orders for male and female employees performing work of equal or comparable value;
- The protection of employee entitlements such as annual leave, sick leave, long service leave, family leave and protection of the employee's continuity of service for dismissal and notice requirements when a business changes hands;
- All employees who would ordinarily work on a public holiday are entitled to payment for that day; and
- The commission has been given the capacity to make rulings for a minimum wage to apply to award and non-award employees.

To ensure that these general employment conditions remain relevant to community standards, the Queensland Industrial Relations Commission may review a condition on application by the Minister, an organisation or a State peak council to provide a more favourable condition if considered appropriate. A specific provision has been included in the Bill to provide that the Industrial Commission must review the long service leave standard before 30 June 2000, reflecting the task force recommendation that improvements to the long service leave standard should be the subject of a review by the commission.

A further consequence of the growth in non-standard types of employment has been the unparalleled growth in dependent contractors and workers engaged under contract for services in traditional award regulated areas, evidenced in industries such as cleaning, security and building and construction, and in particular regional areas of Queensland. The Bill provides important protections for these types of workers. People who work as outworkers, for example, in the clothing industry are also to be covered under the legislation.

In addition, new protections have been introduced in the Bill which give the Industrial Relations Commission the capacity to conduct an inquiry and the power to declare contract workers to be employees for the purposes of the Act. This will enable contract workers access to general conditions of employment in the legislation, as well as giving them the ability to be covered by awards or agreements. In considering these matters, specific criteria which the commission will be required to take into account include—

- the relative bargaining power of the class of persons; or
- the economic dependency of the class of persons on the contract; or
- the particular circumstances and needs of low paid employees; or
- whether the contract is designed to, or does, avoid the provisions of an industrial instrument; or
- the particular circumstances and needs of employees including women, persons from a non-English speaking background, young persons and outworkers.

In addition, the Bill enhances the powers of the Industrial Relations Commission to review a contract where the employment conditions contained in the contract are considered to be unfair.

Another principal object of the Bill assists workers to balance work and family life. The increasing proportion of women in employment has raised issues for employees generally about the balance between work and family life. In 1996, 94% of fathers and 63% of mothers in two-parent families with dependent children were in the labour force. Around half of the single parents with dependent children were in the labour force. The increased participation of women in the labour market and the increasing numbers of working parents in the work force over the last 10 to 15 years has led to conditions such as parental and carer's leave becoming accepted as community standards.

All Queensland workers will be guaranteed for the first time access to carer's leave. An employee will be able to access up to five days of paid sick leave and, where an employer and employee agree, to take unpaid carer's leave to provide care and support for members of the employee's immediate family or members of the employee's household when they are ill. In addition, the Bill extends unpaid maternity leave to long-term casual employees, affording casuals who are engaged by a particular employer on a regular and systematic basis over two years the right to access unpaid leave.

Long-term casual employees' access to unpaid maternity leave places Queensland at the forefront of industrial reform. This reform represents an important and progressive response to the changing nature of the work force and the labour market, in particular through addressing the growth in the numbers of working women who are employed on a casual basis.

Working time arrangements is the other major area of general employment conditions which was the subject of review by the Industrial Relations Task Force. The task force recommended that the hours of work of both award and non-award employees be regulated.

On consideration of the task force recommendation, the Government has decided not to introduce regulation of working time into the non-award area of employment. The existing provisions which apply in the current legislation will be continued for employees covered by an award or agreement. However, in light of the changes which have occurred in the labour market, the Government believes that working time arrangements need to be reviewed. This is consistent with the task force recommendation that the Government commences, as soon as possible, research into the changes in working time arrangements and standards in the work force and examines the impact on work, employment, health and safety and the balance between work and life.

Dismissal Legislation

There has been substantial debate about the extent to which dismissal laws should apply when an employee is first employed by a business. The Government accepts that, when an employee first commences employment with an employer, there is a right to trial the employment relationship, and that an employer should be given time to assess whether an employee is suitable for the particular job. However, the Government does not accept that an arbitrary cut off for access to dismissal legislation, based on the size of a business, is fair or equitable to either employers or employees.

In addition, the Government considers the current small business exemption from dismissal legislation to be harsh. It imposes an unreasonably long period to trial an employment relationship on the vast majority of employees. To this end, Government has developed a package of reforms to the dismissal legislation which seeks to introduce fairness and balance for both employers and employees, regardless of the size of the business.

The Bill introduces a mandatory three month probationary period for all employees where an employee cannot access a remedy for a harsh, unjust or unreasonable dismissal. This three-month period automatically applies at the commencement of employment but an employer and employee may agree in writing to a lesser period than three months. As well, a longer probationary period can be determined before the commencement of employment, but it must be a reasonable period of time which takes account of the nature and circumstances of the work. However, an employee can not be dismissed for an invalid reason such as discrimination. For example, it is unlawful for an employer to dismiss an employee from the first day of their employment in a business because they are pregnant or a union member.

Under the new laws the commission will be required to deal with applications seeking a remedy for an unfair dismissal as quickly as possible. The Bill will also provide greater checks and balances in order to ensure that only legitimate applications are dealt with by the commission, and that there is a new emphasis placed on ensuring that where a dismissal is found to be harsh, unjust or unreasonable or invalid, that the employee is reinstated in their former position rather than being paid compensation in lieu. On enactment of the Bill, the Government is committed to providing resources by way of information and awareness for employers, in particular to small businesses, on their rights and obligations under the new dismissal laws.

Awards

Under the coalition's Workplace Relations Act, the award system has become outdated and irrelevant. This is an unacceptable and untenable situation where over 400,000 workers in Queensland remain solely reliant on State awards to regulate their wages and conditions of employment. The Industrial Relations Task Force report found that in rural and regional Queensland more than 50% of employees are reliant on the award system and that many low wage workplaces continue to rely on awards, while only 1.6% of small businesses have made agreements.

The report also found that a growing inequality in wages has developed between employees who are reliant solely on wages and those who are involved in enterprise bargaining. For instance,

workers who rely on award adjustments for wage increases have received wage increases of 10% since January 1992, while workers covered by collective agreements have had wage increases of up to 15 to 20% above the award rates of pay during the same period. In Queensland this has meant that workers who are employed by small business and in rural and regional areas who depend on awards have not fared well when compared with other workers employed in urban areas and, particularly, in the public sector who have been covered by enterprise agreements.

These developments provide the context within which legislative support for a relevant and up-to-date award system and general standards of employment must occur. Such a move will provide enhanced social cohesion, a decent standard of living for all workers and community commitment to change where all can benefit. Without intervention in this system as proposed in the Bill, the wage gap will continue to widen. This has the potential to segment the labour market and lead to the development of a new working poor, which may undermine social cohesion in the Queensland community.

The Bill also removes the current legislative restrictions which establish agreements as the primary vehicle for wage movements and creates a real choice between awards and a range of agreements to suit particular industries and workplaces, employers and employees.

The task force recommended that the important role of awards be restored and strengthened, and this is reflected in the Bill which provides that—

- the role of the commission is strengthened and enhanced in the making and varying of awards to provide for secure, relevant and consistent wages and employment conditions, and to provide for fair standards for employees in the context of living standards generally prevailing in the community;
- awards will no longer be a mere safety net of wages and conditions;
- the commission must also ensure wages and conditions are suited to the efficient performance of work according to the needs of particular industries, enterprises or workplaces;
- the commission is required to review awards regularly, at least every three years. In order to encourage this, the parties are able to make application during the review process for the varying of wages and employment conditions; and
- that as soon as practicable, a review of Queensland awards is undertaken to remove discriminatory provisions.

In terms of the interaction between awards and agreements, the Bill makes it clear that the commission is empowered to include the terms of a certified agreement in an award where the commission determines this is consistent with full bench wage principles and it is in the public interest to do so. The current provisions, which allow for junior wage rates in awards based on age and experience, are retained. In accordance with the task force recommendation, the Government has determined that the issue of junior rates will be reviewed once the outcome of the inquiry by the Australian Industrial Relations Commission into this matter has been determined.

Apprentices, Trainees and Labour Market Programs

Apprenticeships, traineeships and labour market programs are key components in the Government's strategy to promote jobs growth, skills acquisition and vocational training. Supportive industrial relations arrangements form a vital and complementary part of this strategy, which is reflected through the principal object of the Bill.

The Bill reflects the task force recommendation that the determination of wages and conditions for apprentices and trainees come under the aegis of the industrial relations legislation. As such, the key provisions, which regulated the industrial conditions for apprentices and trainees as contained in the Vocational Education Training and Employment Act 1991, have been transferred to the Industrial Relations Bill. The Bill provides that a trainee or an apprentice is entitled to the same employment conditions as those fixed by the award or agreement which applies to employees in the workplace where the trainee or apprentice is employed. In addition, the commission may also make orders setting minimum wages and conditions for apprentices and trainees whether or not they are employed under an award or agreement. Such an order will prevail over the terms of an award or agreement. Similarly, the commission may make an order fixing wages and employment conditions for employees who participate in a labour market program on application by the Minister or the State Training Council.

Agreements

The task force noted that the current arrangements under the Workplace Relations Act for agreement making were restrictive and difficult to obtain, particularly for agreements involving more than one employer, including those for major projects. This is due to the underlying philosophy in the current legislation that the workplace should be the core or centre of all bargaining. The task force agreed that there should be greater choices in agreement making for the parties and, therefore, recommended to the Government that agreements be able to be made for single businesses or

enterprises, for projects, for multiple employers and for greenfield sites. Employer groups were also critical of the current legislation for restricting the type and method of making agreements.

Accordingly, the Bill provides for a range of agreements—

- single employer agreements;
- multi-employer agreements;
- projects or proposed projects agreements; and
- new business agreements.

Single employer agreements may be made with either unions or employees directly.

The Bill removes the current restrictions on the making of multiple business agreements, namely, the existing requirement that such agreements must be certified by a full bench and must be in the public interest. In accordance with the task force recommendation, the Bill allows for multi-employer agreements to be made. A multi-employer means two or more associated employers, whether or not they are related corporations, are engaged in a joint venture or common enterprise, or undertake similar work. In the case of a proposed multi-employer agreement, all those parties who intend to bargain together must sign a document indicating their intention to be part of such a negotiation. This allows all parties who wish to be involved to be genuinely involved in the negotiations from the outset. It also clarifies the negotiation process by indicating the scope of the multi-employer agreement being proposed. The Bill also prescribes that a multi-employer agreement cannot be made for a new business.

Project agreements have proved successful in other jurisdictions in ensuring that major construction work is undertaken within project time lines and with minimal industrial disputation or disruption. An example of this included the arrangements entered into under the New South Wales industrial relations legislation for the Olympic site.

Under the Bill, a project agreement may be entered into before the commencement of the project between an employer or employer organisation and all relevant employee organisations who wish to be a party to the agreement. The project agreement will be able to operate for the life of the project and will operate to the exclusion of all other agreements during its period of operation. Where a project agreement is proposed to be made, all relevant employee organisations must be given the opportunity to participate in negotiations for the agreement and become a party if they elect to do so. Negotiations with the employer will take place through a single bargaining unit of all those organisations who indicated they wished to participate in bargaining.

These changes represent a significant improvement to the current arrangements for agreements, particularly as to how they operate on major projects in Queensland. First, they avoid the need to renegotiate agreements mid term during a project by extending the time in which the agreement may operate. Second, they can be entered into with an employer organisation prior to the commencement of the project, which will then subsequently bind all employers or contractors who would operate on the project. Third, the agreement will operate to the exclusion of any other agreement, which may otherwise bind a contractor, removing the conflict and confusion as to which employment conditions will apply on the project. Finally, it should remove the potential for industrial disputation by ensuring that all employee organisations who would otherwise have the right to represent employees on the project will be able to be a party to the agreement and participate within its framework.

The Bill makes provision for a new business agreement. A new business agreement may be made to cover the ongoing operation of a single business once it is established, that an employer is either proposing to establish at a new workplace, is establishing at a new workplace, or is relocating to a new workplace. However, a new business agreement cannot be made to cover the construction of the new workplace. In the Bill, "construction" is defined as building and construction, civil and engineering construction or demolition work. This definition is to have the meaning assigned to the term in the Building and Construction Industry (Portable Long Service Leave) Act 1991. A new business agreement must be made before the employment of any persons in the new business at the new workplace whose employment is to be subject to the agreement and be made with one or more employee organisations entitled to represent the industrial interests of the persons.

Agreement Making

A new and significant feature of the Bill is the introduction of a 21-day peace obligation period. During this period, unions, employees and employers will be required to participate in genuine bargaining to achieve a workplace agreement. Importantly, the parties will not be able to participate in protected industrial action until the expiry of this peaceful period. Under the current legislation, the bargaining period formally begins one week after one of the parties gives notice of their intention to bargain for an agreement. During this bargaining period, industrial action which is taken by employers

and employees is protected. In considering these issues, the task force took the view that this system has placed undue emphasis on the confrontational aspects of the bargaining process.

This system has been primarily based on the United States system where bargaining at the enterprise level has often led to long and protracted disputation. Recent long and protracted disputes in the coalmining industry and manufacturing establishments suggest that such a system of industrial relations might be beginning to take hold in part of Australian industry. The task force expressed concern at these developments and advocated the need to make changes to the enterprise bargaining system. These changes are aimed at placing a greater emphasis on the processes of negotiation, mediation and conciliation rather than the taking of protected industrial action.

In addition to the 21-day peace obligation period, the Bill reflects a number of these recommendations which include—

- following the expiry of the peace obligation period and evidence of attempts to negotiate an agreement, one or more of the parties may declare to the commission a breakdown in negotiations;
- parties are required to negotiate in good faith and the commission may issue bargaining in good faith orders during the conciliation period;
- following such a declaration, based on the evidence of attempts to negotiate an agreement, the commission will provide assistance to the parties through mediation and conciliation;
- the commission can only arbitrate once it has declared conciliation unsuccessful and in the circumstances of—
    - I where industrial action has been protracted; or
    - II where industrial action is threatening or has caused significant damage to the economy or to a local community, to a single enterprise or to employees, for instance where employees are locked out by an employer; or
    - III where the commission considers it is not likely that further conciliation will result in the matter being settled within a reasonable time considering, among other things, the history of industrial relations in the enterprise or industry to which the proposed agreement is to relate; or
    - IV where there is no likelihood of resolution and agreement; or where all the parties so request; and
- immunity from civil liability from industrial action—protected action—applies to bargaining negotiations once the peace obligation period has expired.

The Bill enshrines the importance of the Industrial Commission by requiring the development of principles for the arbitration of agreements. Once these principles are established, the commission will be required to take account of them in exercising their powers under these provisions.

The process of agreement making I have just outlined provides for a sensible, staged approach to bargaining that will provide welcome relief to both employers and employees from the confusion and confrontation fostered by the previous legislation. It encourages negotiation between parties, at the same time as ensuring that parties may seek the assistance of the Industrial Commission through conciliation and, where necessary, arbitration. It protects the interests of the Queensland community by ensuring that the commission is able to intervene in industrial disputes before they become protracted or have the potential to damage local communities, workplaces or employees.

Certifying Agreements

The Bill provides that relevant employee organisations have a right to be heard in commission proceedings to certify an agreement. This accords with the task force recommendation that unions with coverage of relevant callings should be able to intervene. Agreements must pass the no-disadvantage test as a requirement of certification. The Bill prescribes a new no-disadvantage test where employment conditions contained in an agreement are assessed against an award or an entitlement under the Act.

Role of the Queensland Industrial Relations Commission

The Industrial Relations Bill ensures that the Queensland Industrial Relations Commission operates as a strong and independent umpire. Submissions received during the review of the legislation identified that many parties wish to avoid drawn out and protracted disputes and have recourse to a strong, independent umpire—the commission—when negotiations break down. Submissions also recommended that the commission have a stronger role in award making to ensure fair and reasonable wages and conditions. Consequently, under the proposed changes, the commission will be restructured and its role broadened. There will be a faster, more responsive approach to industrial disputation and greater access to conciliation and arbitration.

Importantly, the proposed changes put negotiation, not confrontation, at the forefront of relations between employers and employees and arbitration will only occur where negotiations break

down and conciliation has been unsuccessful. In addition, the introduction of the "peace obligation period" with respect to agreement making also places a greater emphasis on negotiating, rather than the current legislative focus on conflict and protected industrial action.

As part of the Government's commitment to a strong commission, it is proposed to appoint, for the first time, a full-time president of the Industrial Court and the commission. The appointment of a full-time president will improve the operation and administration of the court and commission. The appointee will sit on full benches and all appeals, and must possess both legal qualifications and industrial relations experience. This addresses concerns expressed in submissions regarding the existing part-time appointment and its impact on the efficacy of the appeals system.

The Bill also provides for a vice-president, at least six other commissioners and a commissioner administrator. The commissioner administrator may be either the vice-president or one of the other commissioners. The vice-president, the commissioner administrator and the other commissioners must possess high-level experience in business, industry, employer associations, a State peak council, unions or Government agencies. In addition, the vice-president must have legal qualifications and be able to act as president in the absence of the president.

The Bill introduces a new position termed the commissioner administrator. The commissioner administrator is responsible to the president for the administration of the commission and the orderly and expeditious exercise of the commission's jurisdiction and powers. The commissioner administrator has the power to do all things necessary or convenient to be done to perform these responsibilities under the Act. It is intended that this new position of commissioner administrator will operate in a similar manner to the Senior Judge Administrator of the Supreme Court of Queensland.

Further proposed enhancements to the role of the commission include—

- Resolving industrial disputes

The commission can take appropriate measures to prevent or promptly settle a dispute. This includes taking action following official notification of a dispute or in the public interest.

In the first instance, the commission will always attempt to resolve disputes through conciliation. Where this fails and the parties are unlikely to resolve the dispute, the commission will arbitrate the matter.

If the industrial action relates to the negotiation of an agreement, the commission may order that the parties negotiate in good faith and can arbitrate where it is aware that the dispute has caused or is threatening to cause damage to the economy or local community, or single enterprise, or threatens to endanger the personal health of employees, safety or community welfare.

In arbitrating agreements or disputes, the commission can give directions about the industrial action, or order that industrial action is not protected, grant injunctions, or make other orders it considers appropriate to resolve the matter.

- Conciliation, arbitration and approval of agreements

During the negotiation phase, but following the conclusion of the peace obligation period, the commission may use conciliation to reach agreement by assisting the parties to develop and consider options. The commission may order the parties to negotiate in good faith. Where the conciliation process is unsuccessful, or if requested by the parties, the commission can resort to arbitration.

The commission must not certify an agreement unless certain conditions are met, including—

- a valid majority of employees approved the agreement; and
- the agreement passes the no-disadvantage test.

The commission must approve a Queensland workplace agreement if satisfied that it passes the no-disadvantage test and is not contrary to the public interest. Consideration of the public interest may include—

- the relative bargaining power of the parties;
- the particular circumstances and needs of low-paid workers;
- any likely increases in award wages during the life of a Queensland workplace agreements; and
- anything else the commission considers relevant to the Queensland workplace agreements.

For both certified agreements and Queensland workplace agreements the commission must be satisfied that the terms of the agreement are explained in appropriate ways to groups

with particular circumstances and needs (e.g. women, people from non-English speaking backgrounds, young people and people with limited literacy and numeracy skills).

- Making and reviewing awards

The commission must review awards at least every three years and must ensure they—

- are non-discriminatory;
- are in plain English and are easy to understand;
- do not contain obsolete provisions;
- provide secure, relevant and consistent wages and conditions;
- provide fair living standards;
- contain provisions that facilitate agreement making at the workplace or enterprise level;
- are suited to the particular industry or workplace;
- take account of economic issues, including productivity, inflation and employment levels; and
- contain dispute resolution procedures.

- Appeal Mechanisms

The appeal process is simplified and involves—

- appeals against a decision of a single commissioner, industrial magistrate or registrar on the ground of error of law, excess or want of jurisdiction are heard by the president;
- appeals on law and merit, or merit only, from the decision of a single commissioner are heard by the full bench comprised of the president and two other commissioners, one of whom may be the vice-president;
- an appeal from a full bench on which the president sits (which is not a full bench hearing an appeal), may be made to the Court of Appeal on grounds of error of law;
- appeals from a full bench constituted without the president may be made to the Industrial Court on error of law or excess of jurisdiction; and
- the full Industrial Court has been abolished with its powers assumed by the full bench comprised of the president and two commissioners, one of whom may be the vice-president.

- Dealing with claims for wages and occupational superannuation

The commission is given the power to deal with applications for recovery of wages and occupational superannuation for amounts not exceeding $20,000. In proceedings for the recovery of wages, the commission is not bound by technicalities, legal forms or rules of evidence. In addition, before the start of a hearing or in certain circumstances, the president may remit a matter to a magistrate where the president considers that the matter would be better dealt with by a Magistrates Court having regard to the difficulty or expense of producing witnesses by parties or to the cost of the proceedings having regard to, for example, the distance of the matter, the amount in question and whether the applicant is better able to deal with the matter before the commission in a less legalistic manner.

- General rulings

To avoid duplication, a full bench of the commission may make a general ruling relating to—

- industrial matters; or
- general conditions of employment prescribed under the Act; or
- minimum wages for employees whether or not they are covered by an industrial instrument.

- Representation Rights

Under the current legislation, lawyers are only able to appear before the commission by consent of all parties, or by leave of the commission in matters relating to unfair contracts or rules of organisations. This present restriction on legal representation in the commission has resulted in some legal practitioners developing artificial arrangements designed to circumvent the legislation so as to allow their clients to be adequately represented. These arrangements include—

- legally trained and in some cases very experienced law clerks purposefully not being admitted as solicitors;

- lawyers being appointed to the board of companies so they can appear as a director of the company in the commission proceedings; and
- parties entering into contracts with a corporation offering industrial advocacy services who in turn appoint a practising lawyer as a director of the corporation so as to allow the lawyer to appear as a director, rather than a lawyer.

In addition, legally qualified people or people who are undertaking law courses are currently employed by a number of unions and employer associations.

The restriction on legal representation is often the source of delay and frustration. Valuable commission time is taken up with interpreting the legislation and applying it to these artificial arrangements.

The present prohibition is as a consequence considered by the commission to be an impediment to the orderly conduct and expeditious nature of the conduct of proceedings.

As a consequence, the Bill provides for lawyers to appear by consent or by leave of the commission. After discussions with parties, the Bill now clarifies the circumstances under which the commission can grant leave—

- on application by a party, the commission is satisfied having regard to the matter the proceedings relate to, there are special circumstances that make it desirable for the party to be represented; or
- on application by a party, the commission is satisfied the party can be adequately represented by a lawyer.

In considering whether to grant leave, the commission may consider the following—

- the amount claimed, if any;
- the nature and complexity of the matter;
- the cross-examination likely to be required;
- the capacity of the parties to represent themselves;
- the questions of law likely to arise; and
- whether the duration or cost of the proceedings will be decreased or increased if the parties are represented.

These matters have been considered in a New South Wales Supreme Court decision Commissioner of Main Roads v Leighton Contractors Pty Ltd (1986) NSW Judgements Bulletin 148 per Smart J].

The legal representation provisions of the Bill makes relevant for today's commission the role of lawyers, but does not give unfettered access by lawyers to the commission.

- Union Representation Rights

Consistent with the task force recommendation, the commission continues to have a role in resolving union demarcation disputes in legitimate circumstances through the making of orders.

Before making an order, there is a requirement that there is a real demarcation dispute found to be in existence. In such circumstances, the commission is required to conciliate in the first instance to attempt to resolve the matter. Only then and if satisfied that the matter is preventing, obstructing or restricting the performance of work is the commission able to consider whether to make an order or not.

In making such an order, the commission is required to take into account a number of factors including, importantly, the wishes of employees who would be affected by the order, the effect of the order on the operations of the employer, and also the ability of the organisation to adequately represent the employee's interests.

Union and Employee Rights

The Bill provides for the removal of current restrictions on the right of a union to enter a workplace. A union will be required to give notice to an employer on entering the workplace. The Bill clarifies the purposes for which a union may enter a workplace. In particular, an authorised officer of a union may discuss matters under the legislation with the employer, a member or an employee who is eligible to be a member. The officer may also discuss any other matter during non-working time.

The Bill removes the current prohibition on strike pay. Instead, the Bill adopts the task force recommendation that an employer may or may not pay an employee for a period when the employee engages in a strike.

The Bill maintains a provision for an employee to refuse to perform work if that refusal is based upon a reasonable concern by employees about an imminent risk to their health or safety.

Freedom of association provisions, permitting persons to join or not join industrial organisations of their own choice, will continue in the legislation in a simplified form. The jurisdiction to hear freedom of association matters has been transferred from the Industrial Court to the Industrial Relations Commission in order to reduce the previous litigious approach to these issues.

The Bill permits the inclusion of clauses in awards or agreements that encourage, but do not coerce, membership of industrial organisations.

Public Service Issues

The Bill includes provisions which amend the Public Service Act 1996. These provisions reflect the task force view that public sector employment conditions be determined in the industrial relations jurisdiction wherever possible. Consequently, the Bill provides that the statutory precedence that Public Service directives have over awards be largely reversed.

Conclusion

In conclusion, the Industrial Relations Bill is new legislation which will take Queensland into the next century. The Bill is based strongly on the results of a comprehensive process of consultation and review, headed by an independent task force. This process has provided an invaluable picture of contemporary circumstances in the labour market and offered some critical insights into the problems that have emerged under a deregulated industrial relations framework in recent years.

Particular areas of concern include the conflict and protracted disputation that has occurred in the absence of a strong role for the independent umpire—the Industrial Relations Commission. What Queenslanders need is a new way forward that addresses significant economic and social issues in the labour market—a fair and balanced system that recognises the need for the industrial relations framework to respond to both social and economic imperatives. The Industrial Relations Bill before the Parliament today provides for such a system. Taken as a whole, it provides a clear, coherent and principled way forward that will deliver fair outcomes for employers and employees and support the continued economic and social development of the Queensland community. I commend the Bill to the House.