Speech by

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Wednesday, 6 June 2012

INDUSTRIAL RELATIONS (FAIR WORK ACT HARMONISATION) AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.31 pm): I move—

That the bill be now read a second time.

Before debate on the Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012 commences, it is worthwhile to again explain what the Queensland government is delivering with this bill. I note that the Finance and Administration Committee of the parliament has held inquiries with respect to this bill. It produced a report and tabled that report in parliament. I now table a copy of the Queensland government response to report No. 14 relating to the Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012.

Tabled paper: Finance and Administration Committee: Report No. 14—Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012, government response [252].

As outlined in my explanatory speech, there are six key objectives of the bill. Firstly, the act has been amended to require the Queensland Industrial Relations Commission to give consideration to the financial position of the state when making a binding arbitrary decision relating to public sector wages. Secondly, a new process has been introduced whereby the Queensland government can brief the Queensland Industrial Relations Commission on the state's financial position, fiscal strategy and related matters. Thirdly, the amendments improve the requirements for the taking of protected industrial action in connection with a proposed certified agreement. These new arrangements mirror the provisions of the Fair Work Act and harmonise the state system with the federal system in those respects. Fourthly, the changes introduce a process for employers to request employees to approve a proposed certified agreement by voting for it. Once again, these provisions reflect the current arrangements in the fair work federal legislation. Fifthly, these changes deliver further consistency with the federal legislation by introducing a power for the Attorney-General to make a declaration terminating industrial action if the action is threatening the safety and welfare of the community or is threatening to damage the Queensland economy. Finally, the changes allow members of the Queensland Industrial Relations Commission to be appointed to conduct appeals of certain decisions that affect Public Service employees.

The bill is important for the modernising of the Industrial Relations Act 1999. The bill harmonises with certain key aspects of the Commonwealth Fair Work Act. These amendments are also aimed at addressing the changing need of Queenslanders in light of both the referral of the private sector industrial relations to the Commonwealth and also the changing and prevailing economic circumstances as they affect the Public Service that remains subject to the IR Act. The bill reflects this government's desire to have a balanced and responsible approach to public sector wages.

Members of this House should be aware of my intention to move a number of amendments to the bill during the consideration in detail stage. Those amendments will strengthen the bill. The amendments that I will move have arisen in part as a result of the Queensland government's consideration of the submissions to the Finance and Administration Committee and other consultation. The bill has also been scrutinised by the committee and I note that 14 submissions on the bill were made by both unions and employer groups. A number of those stakeholders also appeared at the committee public hearing. I want to thank all those involved for their contributions and I want to thank the finance committee for its deliberations in that inquiry.

The Finance and Administration Committee has recommended that the bill be passed. I am pleased to say to the chairman and members of the Finance and Administration Committee that this Attorney-General certainly agrees with that recommendation and the government's intention is to have this bill passed. In addition, the committee has made three other recommendations on amendments to the bill. The first of the committee's recommendations on amending the bill is that it be amended to include transitional arrangements, ensuring that all processes which have already commenced be concluded under the previous arrangements. The bill proposes to insert several new transitional provisions into the IR Act. Proposed section 781 provides that the proposed amendments to section 149(5), which prescribes those new issues that are to be considered by the QIRC as part of the public interest in arbitrating the making of an agreement—for example, the state's financial position and fiscal strategy—apply only to arbitration of matters which start on or after the commencement of the section—that is, in this case, on the date the bill receives assent. This means that any arbitration already commenced will not be subject to these changes.

Proposed section 782 addresses the transitional arrangements in connection with the new protected action balloting regime. It ensures that where notice of industrial action has been given prior to the commencement of the bill the previous arrangements in the IR Act continue to apply. This means that such action will not need to comply with the new protected action balloting regime. Similarly, proposed section 783 provides that the Attorney-General's new declaration power to terminate industrial action under section 181B will not apply to protected industrial action if notice of the intended action was given prior to the commencement of the provision—that is, in this case, on the date the bill receives assent.

Finally, proposed section 784 provides for a transitional regulation power for a period of up to two years. This allows the Queensland government to make transitional provisions necessary to allow or to facilitate the transition of processes from the pre-amended act to the amended act. This will assist in ensuring that there are no unanticipated consequences with regard to the transition, including unintended application of the provisions retrospectively. The government considers that these transitional arrangements are sufficient enough to address the committee's concern to ensure that processes which have already commenced be concluded under the previous arrangements.

The second of the committee's recommendations on amending the bill is that it be amended to include provision omitting the requirement of a signed agreement in the event of an employer/employee agreement provided the employer can provide satisfactory evidence to the commission that a valid majority of relevant employees subject to the agreement approved the proposed agreement. The government agrees with the committee's recommendation that the bill be amended with respect to these agreements made directly between an employer and employees. I will be moving an amendment to the bill in the consideration in detail stage to make an additional amendment to provide that, should an employer make an agreement with employees under proposed section 147A of the IR Act for which a proper ballot is conducted, the majority of employees agree and sufficient evidence of agreement is provided to the QIRC, there is no requirement for a signatory on behalf of the employees to the agreement.

The last of the committee's recommendations on amending the bill is that it be amended to allow for additional ballot methods if the ECQ considers these other methods to be more appropriate. The Electoral Commission of Queensland, the ECQ, is considered the most appropriate body to conduct protected action ballots considering its longstanding expertise in the conduct of this type of proceeding. The requirement that voting on a protected action ballot be conducted by the ECQ and only by post will provide a consistent, fair and transparent approach to all protected action ballot proceedings. The government considers that the introduction of a variety of alternative approaches other than by post for the conduct of a protected action ballot—for example, giving the employee notice personally, email notifications with embedded electronic links to ballot notices, facsimile notifications or displaying in a conspicuous location—notwithstanding that the decision on the mode would be made by the ECQ, does have the potential to confuse those participating in the process and may lead to challenges as to the veracity of the ballot outcome.

On this basis, the government will not adopt the recommendation of the committee. The government notes the committee's suggestion for the inclusion of electronic voting should the ECQ move in that direction in the future. This option will be examined should the ECQ establish an effective electronic

system—a voting regime—at some time in the future. The other proposed amendments to the bill are changes to clarify and improve the operation of the bill arising from consultation with key stakeholders.

I will now outline the purpose of the amendments to the bill that I intend to move during consideration in detail. It will be recalled that the bill proposes amendments to the Public Service Act 2008. The bill provides for members of the Queensland Industrial Relations Commission—the QIRC—to be appointed as appeals officers dealing with the review of certain decisions that affect Public Service employees. The proposed amendments to the bill provide that the appointment of members of the QIRC as appeals officers are to be made by the Governor in Council so as to reflect the arrangements by which their original appointments as commissioners were made. The proposed amendments to the bill also clarify that the new section 214A of the Public Service Act 2008 does not apply to appeals officers and, therefore, the protection and immunities afforded to members of the QIRC under the Industrial Relations Act 1999 continue to apply to them as appeals officers.

In other proposed amendments to the bill relating to the Public Service Act 2008, reference to 'chief executive' in section 686(1)(a) of the Industrial Relations Act 1999 is removed and section 208 of the Public Service Act 2008 is further amended so an appeal decision is provided by the appeals officers directly to the parties to the appeal rather than by the Public Service Commissioner's chief executive as originally proposed.

Further proposed amendments to the bill relate to section 45 of the Public Service Act 2008, which prescribes membership of the Public Service Commission and consequential amendments flowing from that. Currently, the Public Service Act 2008 provides for the Public Service Commission to consist of a chairperson; the Public Service Commission chief executive; the chief executive responsible for the Industrial Relations Act 1999, the Parliament of Queensland Act 2001 and the Statutory Bodies Financial Arrangements Act 1982; and at least three other persons appointed by the Governor in Council as commissioners. The membership of the other persons appointed by the Governor in Council as Public Service commissioners expire on 30 June 2012. The chair of the commission has indicated that the membership of these other persons appointed as commissioners is no longer required to conduct the business of the commission. Appointment as a commissioner of the chief executive responsible for the Industrial Relations Act 1999 is no longer required as the effect of the machinery-of-government changes transferring the Public Sector Industrial Relations Employee Relations Unit to the Public Service Commission makes the commission chief executive the chief executive responsible for public sector industrial relations issues. As a result of the proposed amendment to the bill, the bill removes the references to the requirement for such persons to be members of the Public Service Commission.

I will also be moving some further proposed amendments to the bill relating to the Industrial Relations Act 1999. Included in the bill is a minor amendment to proposed section 147A arising out of consideration of the submissions made by the Local Government Association of Queensland to the parliamentary Finance and Administration Committee, which has subsequently also recommended that an amendment be made to the bill. Proposed section 147A provides that, where an employer and one or more unions are parties to a proposed agreement, an employer may directly ask employees to approve it. The proposed amendment has the effect of negating the need for such a certified agreement to be signed by all or for all the parties if the QIRC is satisfied a valid majority of the employees approved it. I again commend the bill to the House and the proposed amendments that I intend to move in consideration in detail.