




Speech By
Hon. Grace Grace

MEMBER FOR BRISBANE CENTRAL

Record of Proceedings, 29 November 2016

INDUSTRIAL RELATIONS BILL

Second Reading

 **Hon. G GRACE** (Brisbane Central—ALP) (Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs) (10.04 pm): I move—

That the bill be now read a second time.

It is with great pleasure that I rise to speak on the Industrial Relations Bill 2016. The bill delivers on the Palaszczuk government's commitment to restore fairness to Queensland's industrial relations system and industrial laws. It follows a comprehensive review of the state's IR laws—the first major review in nearly 20 years. Since that time, there have been significant changes to Queensland's industrial relations landscape. Private sector workplaces in Queensland are now covered by the federal industrial relations system as a result of the hostile takeover by the Howard government in 2005 and the further referral of powers by the state government in 2010. The remaining state industrial jurisdiction now covers essentially the state public sector and local government. This new Industrial Relations Bill reflects these changing realities while delivering on one of our key election commitments—to create fairer workplaces in Queensland.

The review I mentioned into the Queensland industrial relations system by the tripartite industrial relations reference group made 68 recommendations for reform and legislative change. Consistent with those recommendations, the bill establishes the key defining features of the state industrial relations system. These are a set of minimum employment conditions and standards; collective bargaining as the cornerstone for setting wages and conditions; a set of individual rights to fair treatment; effective, transparent and accountable governance and reporting obligations for all registered industrial organisations and employer associations; and a strong and effective independent umpire.

The bill moves away from, and improves on, the current legislation in three important respects. First, the bill introduces significant new protections for workers in the state jurisdiction. I am particularly proud that the bill delivers on the government's commitment to provide an entitlement of 10 days paid leave for victims of domestic and family violence as recommended in the *Not now, not ever* report into the scourge of domestic and family violence by Dame Quentin Bryce. Queensland is leading the way by being the first state to put this entitlement into law. In doing so we recognise that domestic and family violence is a workplace issue and, just as our workplace laws support workers with leave entitlements in circumstances when they are sick or when their family is sick or when they lose a loved one, those workers experiencing domestic and family violence need and deserve the same type of support to help them in those most desperate of times. While we can do all we can in this House to provide an entitlement for domestic and family violence leave for workers in the state system, I echo the Premier's call on the federal government to make domestic and family violence leave available as a universal entitlement for all workers in Queensland and across the country through its inclusion in the National Employment Standards in the Fair Work Act. In addition, the bill will establish a general protections

jurisdiction to protect workers against adverse action taken during employment or leading to dismissal from employment and a system to address workplace bullying the same as what is available to private sector workers under the Fair Work Act.

Under the bill as it stands, the new state antibullying jurisdiction will cover both public sector workers as well as private sector workers in those unincorporated workplaces in Queensland that are currently exempt from the Fair Work Commission antibullying jurisdiction. However, I can report that I am continuing discussions with the federal minister, Senator Cash, with a view to a further referral of powers to enable employees in unincorporated bodies and other entities which are not constitutional corporations to be covered by the antibullying jurisdiction of the Fair Work Commission. This is consistent with the recommendation of the reference group. The bill also aligns Queensland's minimum employment standards with the National Employment Standards for parental, carers and compassionate leave and the requirement to give an information statement to an employee when they start work. For the first time in Queensland law, the bill introduces a right for all workers to request flexible work arrangements, with workers who have their requests turned down by their employer able to seek a review from the QIRC. That will give workers the ability to better find that balance between their work and the rest of their daily lives.

Additionally, this bill includes an amendment to the Holidays Act 1983 to make Easter Sunday a public holiday from 2017. Declaring Easter Sunday a public holiday will bring Queensland into line with New South Wales, Victoria and the Australian Capital Territory where Easter Sunday is already a public holiday. The change recognises the religious and cultural significance of Easter Sunday and will ensure that work on Easter Sunday is treated and remunerated in the same way as the Good Friday, Easter Saturday and Easter Monday public holidays that surround it. Alongside our decision to declare Easter Sunday a public holiday, the government has established a separate review of the state's retail trading hours arrangements under the Trading (Allowable Hours) Act. The review is chaired by QUT School of Justice Associate Professor and former speaker John Mickel.

Secondly, this bill will wipe away the last vestiges of the former Newman government's unfair and unbalanced industrial relations laws in Queensland. The LNP's laws stripped away the hard-fought and won employment conditions of state and local government workers. The Newman government's laws failed to respect the rights of workers to collectively bargain with their employer for their wages and conditions. They tied up registered industrial organisations in expensive and ineffective red tape. The Newman government's laws made it harder for workers to be represented in their workplaces. This bill will remove these provisions and reframe the objects of the act around a fair and balanced system that restores the primacy of collective bargaining. The bill gives effect to the bargaining model developed in the report of the reference group, placing the emphasis on the parties to reach agreement through good faith bargaining and for the commission to assist the parties to reach agreement through conciliation. Arbitration will be available as a last resort only when an agreement cannot be reached.

The bill recognises the rights of parties to take protected industrial action in pursuit of their bargaining claims and ensures that the members of an industrial organisation have their say when it comes to taking that action. Provisions in the current act that enable an employer to exclude a union from enterprise bargaining will be removed, as will the restrictive protected action ballot order arrangements.

The bill revises the regulation of registered industrial organisations consistent with the recommendations of the industrial relations reference group. All members of the reference group recognised the importance of strong, effective and transparent governance, accountability and reporting obligations for all registered organisations. In line with their recommendations, the provisions in this bill promote democratic control of organisations and good governance by ensuring that reporting, training and other obligations are directed at ensuring accountability to members rather than unnecessary and unproductive red tape.

Importantly, the bill ensures that strong accountability and transparency requirements are applied equally to employer and union organisations without the one-sided measures introduced by the LNP because it wanted to single out registered unions of employees. The provisions in the bill include stringent requirements on all registered organisations to ensure that officers' duties are conducted honestly and in good faith with reasonable care and diligence; to have financial policies over a range of matters, including credit cards, contracting activities and spending on hospitality and gifts; to continue to disclose the material personal interest of officers and relatives where a conflict in decision-making occurs; to maintain a register for gifts, hospitality and other benefits given and received; to continue financial management training for positions with financial management responsibilities, with exemptions for those who already have appropriate financial qualifications; and to comply with the requirements of the Electoral Act with regard to political spending and reporting.

I note that last week, on 21 November, the federal parliament passed the government's Fair Work (Registered Organisations) Amendment Bill 2014. The focus of these laws was to establish a new Registered Organisations Commission with enhanced powers to monitor and investigate compliance by federally registered obligations. We do not need to go down this path of creating a brand-new bureaucracy in Queensland to ensure proper accountability and good governance. Our bill provides the Industrial Registrar, a well-respected independent statutory officer, with the authority to perform these functions and investigate suspected breaches of industrial organisations' obligations.

In terms of the obligations on industrial organisations on matters such as financial reporting, the requirements under the federal bill passed last week are broadly compatible with the requirements that I have outlined under the Industrial Relations Bill that I present this evening. This means that, if and when both bills come into operation, there will be no substantial issues for registered organisations in complying with both state and federal legislation. Under clause 808 of the Industrial Relations Bill, an organisation that has a counterpart federal body can seek an exemption from an obligation under the state law if it complies with a similar obligation under the federal law, which is now the Fair Work (Registered Organisations) Act. This provision will assist those organisations with counterpart federally registered bodies to manage their administrative burden while ensuring that registered organisations in this state are accountable to their members.

Thirdly, the bill strengthens and expands the role of Queensland's industrial tribunals in line again with the recommendations from the report of the industrial relations reference group. Under the bill, the QIRC will have exclusive jurisdiction to deal with all workplace related antidiscrimination matters, including those taken under the Anti-Discrimination Act 1991. These matters will go to the Anti-Discrimination Commission in the first instance but, if they cannot be resolved through conciliation and they are work related, the matter will be referred to the Queensland Industrial Relations Commission. The QIRC will also expand its jurisdiction with the introduction of the antibullying and general protections provisions.

The bill that I introduced on 1 September was developed on the back of an extensive public consultation process overseen by an independent tripartite industrial relations reference group which, as I said, made 68 recommendations for reform that are reflected in the bill before the House. On top of that, the bill was then referred to the Finance and Administration Committee for inquiry and report back. This process has provided further welcome scrutiny of the bill and opportunity for feedback and consultation with all interested stakeholders.

The committee received 44 submissions and a number of stakeholders also appeared before the committee at its public hearings. I would like to place on record my thanks to all members of the committee and the committee secretariat and staff for their deliberations and consideration of those submissions. The committee report was handed down on 28 October 2016 and it provides a comprehensive overview of the matters that were raised during the inquiry. Unfortunately, the committee as a whole did not reach a position of consensus support for the bill, but I note the government members' support for the bill and note that the majority of submissions to the committee were supportive of the bill.

I note also the statements of reservation from both government and non-government members of the committee. Government members have made two recommendations relating to the treatment of temporary employment in the Queensland public sector and appeals. I thank the government members for those suggestions. The government considers that there is merit in them and I will outline in a moment the amendments that we propose to make to the bill in response.

Unfortunately, the statement by the non-government members added little to the debate. Instead of engaging in a constructive discussion about the bill and its specific provisions, the statement launched into an all too predictable rant against the union movement—just more of the same from those opposite. I hope that we get better debate in what follows after my speech.

I note the committee also raised a number of potential issues with the bill relating to the application of fundamental legislative principles. At the request of the committee, my department provided a response to each of the identified FLP issues raised during the examination of the bill. On the basis of those responses, the committee was satisfied, as is the government, that any potential breach of the FLPs is justified to ensure the IR Bill provides fair and balanced protection to all participants in the state's IR jurisdiction.

I turn now to amendments I propose to move during the consideration in detail stage. These amendments follow consideration of further issues raised through the committee process and issues identified by stakeholders. The majority of these amendments are confined to minor, technical and consequential amendments to correct omissions and errors, such as incorrect cross-referencing. Others provide further clarification of clauses in the original bill. This includes clarification on eligibility

to take protected industrial action, the appointment of associates in the commission and appeal processes from the QIRC to the Industrial Court. These amendments do not alter or affect the policy positions in the bill. Unfortunately, as members are probably well aware, sometimes a simple word that is in the wrong place in an industrial relations bill has significant implications for workers entitlements. These have been picked up by the stakeholders—there are quite a few of them—and they are all there to be amended so that we get it perfectly right.

Further important amendments are proposed in relation to the use of temporary employment in the Public Service and in relation to fair treatment and appeal processes. These amendments will address the matters identified by the government members of the committee in their statement of reservation and issues raised by stakeholders. As the report of the reference group noted, Westminster aspirations in public sector employment include the maximisation of permanent employment. Temporary and casual employment are legitimate forms of employment and can serve a critical role in managing a large public sector workforce, but at the same time there is a legitimate concern that temporary employment has increased markedly over the last decade and in ways that go beyond its original intended purpose. In some circumstances employees are left in limbo for a number of years as their temporary contracts continue to get rolled over without any apparent prospect for them of converting across to a permanent position.

To address these issues, proposed amendments to this bill will amend the Public Service Act to strengthen the conversion arrangements for long-term temporary employees in the Queensland public sector. Under the amendments, the onus is on agency CEOs to make a decision within 28 days when they conduct a review of the ongoing employment status of temporary employees under the Public Service Act. Any decision will be made in accordance with criteria to be set out in a relevant industrial instrument and directive. A temporary employee who is aggrieved by a decision of an agency CEO not to convert their employment will have the right to appeal that decision. The appeal will be heard by the QIRC as an appeals officer under the Public Service Act. The amendments will allow the appeals officer to set aside the decision of the CEO and substitute another decision in its place. In relation to fair treatment matters, the amendments will create an express right to make an appeal against a fair treatment decision in relation to a Public Service employee's employment and also that a complaints directive be issued.

Clarifying amendments will also be moved in relation to legal representation arrangements in the QIRC. These amendments are being moved to ensure these provisions in the bill better reflect the relevant recommendation of the industrial relations reference group and strike the right balance between continuing the traditional layperson nature of the tribunal and recognising the need for legal representation to be an option in more complex legal matters. The amendments clarify that, as a general rule, legal representation is available only where the parties consent, as is currently the case. Beyond that, legal representation will also be available on leave of the commission in matters before a full bench, other than a full bench arbitration of bargaining matters where legal representation is not permitted, and in other specified matters such as general protections matters and unfair dismissal cases, which can have more of a legal element to them. In considering whether to grant leave in such matters, the commission must be satisfied that certain factors exist to justify the use of legal representation. This includes consideration of how complex a matter is and whether it would be more efficient to allow legal representation and whether it would be unfair not to allow a party to be legally represented.

Finally, I note that further amendments will be moved to provide clarity on the transitional arrangements for parties who have an existing collective bargaining process underway at the commencement of the new act. Generally, the transitional arrangements will apply to cases where bargaining has commenced under the current act but has not yet got to the stage where an application has been made to certify an agreement or the matter has gone to arbitration. This includes where parties have taken steps towards negotiating an agreement, where they are taking protected industrial action under the current legislation, where they have applied for a protected action ballot order or commenced conducting a ballot, or where they are in conciliation in relation to the proposed agreement. In such cases, the amendments are designed essentially to ensure that steps already undertaken to negotiate an agreement under the current act are effective for continuing negotiations under the new act and the whole process does not need to start again. Where an application has already been made to certify an agreement, or where arbitration has commenced, these matters will be determined under the existing IR Act provisions. The new laws, if passed, will not apply in those cases.

To conclude, the Industrial Relations Bill 2016, with the amendments I propose to move during consideration in detail, will provide a regulatory framework for the state's industrial relations jurisdiction that is fair and balanced and which will support the delivery of high-quality services, economic prosperity and social justice for Queenslanders. Just as the Industrial Relations Act 1999 did when it was

introduced almost 20 years ago, this bill will ensure that Queensland has a set of industrial laws that is right for the times and that reflects changes in the labour market and the changing size and scope of the state industrial relations jurisdiction.

The bill has been developed following open and robust consultation and consideration, first through a broad and independent review of Queensland's IR laws and tribunals that was established as part of the government's election commitments and then being subject to the scrutiny of the Finance and Administration Committee, including public hearings and submissions. This is in stark contrast to the approach of the former LNP government which rushed through its legislative changes without even the semblance of genuine consultation.

The Palaszczuk Labor government made a commitment to Queenslanders that we would restore fairness to the state's industrial relations jurisdiction. Queenslanders want fairness and balance in their industrial relations laws and that is what this bill delivers. I commend the bill to the House.