Speech By

Hon. Grace Grace

MEMBER FOR MCCONNEL

Record of Proceedings, 23 June 2022

INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL

Message from Deputy Governor

Hon. G GRACE (McConnel—ALP) (Minister for Education, Minister for Industrial Relations and Minister for Racing) (2.00 pm): I present a message from the Deputy Governor.

Mr DEPUTY SPEAKER (Mr Kelly): The message from the Deputy Governor recommends the Industrial Relations and Other Legislation Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 2022

Constitution of Queensland 2001, section 68

I, HELEN PATRICIA BOWSKILL, Deputy Governor, recommend to the Legislative Assembly a Bill intituled—

A Bill for an Act to amend the Anti-Discrimination Act 1991, the Associations Incorporation Act 1981, the Associations Incorporation Regulation 1999, the Industrial Relations Act 2016 and the Public Trustee Act 1978 for particular purposes

DEPUTY GOVERNOR

Date: 21 June 2022

Tabled paper: Message, dated 21 June 2022, from the Deputy Governor recommending the Industrial Relations and Other Legislation Amendment Bill 2022 913.

Introduction

Hon. G GRACE (McConnel—ALP) (Minister for Education, Minister for Industrial Relations and Minister for Racing) (2.00 pm): I present a bill for an act to amend the Anti-Discrimination Act 1991, the Associations Incorporation Act 1981, the Associations Incorporation Regulation 1999, the Industrial Relations Act 2016 and the Public Trustee Act 1978 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Education, Employment and Training Committee to consider the bill.

Tabled paper: Industrial Relations and Other Legislation Amendment Bill 2022 914.

Tabled paper: Industrial Relations and Other Legislation Amendment Bill 2022, explanatory notes 915.

Tabled paper: Industrial Relations and Other Legislation Amendment Bill 2022, statement of compatibility with human rights 916.

I am pleased to introduce the Industrial Relations and Other Legislation Amendment Bill 2022. The bill implements the recommendations of the *Five-year review of the Queensland Industrial Relations Act 2016: final report* which will ensure workers in Queensland's industrial relations system have access to prevailing employment standards and that the IR Act continues to reflect evolving community expectations, including in the areas of workplace sexual harassment, equal remuneration

and the effective representation of employers and employees by industrial organisations. The bill also makes minor supporting and complementary amendments to the Public Trustee Act 1978, the Associations Incorporations Act 1981 and the Anti-Discrimination Act 1991.

On 3 May 2021, Premier Annastacia Palaszczuk and I announced the five-yearly review of the Industrial Relations Act 2016. The review looked at the operation and performance of the act. I considered it timely that it also investigate the protection of workers subject to sexual harassment. The last time Queensland's industrial relations legislation was reviewed was in 2015 by a reference group of key stakeholders, chaired by former director-general Mr Jim McGowan AM, which led to the introduction of the current IR Act.

Since the act's commencement on 1 March 2017, we have seen a greater awareness of gender inequality and sexual harassment through the publication of the *Respect@Work* report and the national discussion that ensued after the spotlight was shone on the all-too-frequent experiences of women who have been subjected to sexual harassment in the workplace. It is important our industrial laws remain relevant for both employers and employees and provide industrial protections that are contemporary, fair and balanced. To respond to these issues, last year I appointed former attorney-general Ms Linda Lavarch and retired industrial commissioner Mr John Thompson to inquire into and report on the operation of the IR Act.

On 25 October 2021 the reviewers provided their final review report to me, noting that the IR Act is operating as intended since the McGowan review in 2015. They also identified areas where the act may be amended to better reflect evolving community standards for the workplace. The reviewers recommended the government: strengthen protections against workplace sexual harassment; support effective primary representation of employers and employees by registered industrial organisations; ensure that employees covered by the IR Act have access to prevailing employment standards; introduce a jurisdiction to provide for minimum entitlements and conditions for independent courier drivers; and address redundant and superfluous provisions identified by the review report, including historical Queensland Health overpayment provisions. The review report made 40 recommendations, 36 of which were accepted in full and four in principle by the Queensland government. Of the accepted in full recommendations, 31 called for legislative amendments which are provided for in this bill before the House.

Before moving to the substance of the bill, I wish to acknowledge and express my thanks to the two independent reviewers, Linda Lavarch and John Thompson, for their careful and thorough consideration and sterling work on the five-year review of the IR Act and its operation. I would also like to recognise and thank Professor David Peetz of Griffith University and Professor Gillian Whitehouse of the University of Queensland for their contributions, keen insights and assistance to the independent reviewers and the review process.

I also express my thanks to the stakeholders involved—unions, employer groups, state and local government, the courts and tribunals, community legal groups, the legal sector and academia. Your expertise and applied knowledge and experience enriched the consultation process and was invaluable to the independent reviewers and their formulation of the review report. I note the remarks in the review report that the report was well received. I note stakeholder appreciation for the government's initiative to establish the review. I am also pleased to note the general satisfaction with the operation of the act.

Finally, I offer my sincere appreciation to the women who courageously shared their personal stories of sexual harassment in recent years. Their bravery in exposing the prevalence of sexual harassment in the workplace means we also need to find the courage of our conviction to address this insidious blight on our workplace. As the adage goes, 'Bad things happen when good people do nothing.' Therefore, it is heartening to know that the review report noted that stakeholders to this review overwhelmingly supported action to protect employees against sexual harassment, along with sex based and gender based harassment.

In March 2020 a national inquiry into sexual harassment in Australian workplaces was led by Ms Kate Jenkins, Sex Discrimination Commissioner of the Australian Human Rights Commission. This inquiry delivered the *Respect@Work: sexual harassment national inquiry report*. *Respect@Work* made it clear that addressing sexual harassment in Australia is complex and confusing for victims and employers to understand and navigate. Governments at the state and national level were urged to move away from reactionary approaches to dealing with sexual harassment which place the onus on the victim to do the heavy lifting. A nationally consistent approach was called for and the Palaszczuk government listened. I am proud to advise the House that this bill is just one of many actions being undertaken by the Palaszczuk government to support the *Respect@Work* recommendations.

This important work spans a number of areas within government, including the realm of anti-discrimination legislation. The Anti-Discrimination Act 1991 plays a central role in preventing and eliminating discrimination on a range of attributes, including on the basis of sex, gender identity and

sexuality. I note the Queensland Human Rights Commission is due to soon report on the outcome of its review of the Anti-Discrimination Act 1991. I, along with my ministerial colleagues, look forward to considering this important review in the near future.

The current legislative framework offers various industrial avenues for redress concerning sexual harassment in the workplace spanning from dispute resolution provisions in modern awards and agreements to general protections against adverse action to work health and safety protections. We can and must do more to prevent and address the insidious and sadly widespread scourge of sexual harassment in the workplace. That is why a key focus of the IR Act review was on exploring industrial protections for workers subject to sexual harassment.

The independent reviewers considered the *Respect@Work* report recommendations and made six recommendations to further prevent and eliminate sexual harassment in the workplace, which this government supports. The former Australian government provided limited response to the *Respect@Work* report by amending the Fair Work Act 2009 in 2021 to clarify that sexual harassment can be a valid reason for dismissal and expanding the existing stop bullying audit provisions to include stop sexual harassment orders.

In contrast, and demonstrating the seriousness of the Palaszczuk government's commitment to addressing these issues, this bill introduces broader protections for persons subject to sexual harassment and for sex or gender based harassment in employment. The bill amends the objects of the act to expressly include the prevention of sexual harassment and sex or gender based harassment in employment to crystallise the intentions of the act.

The bill defines 'sexual harassment' as being the same as provided for in the Anti-Discrimination Act 1991 or the federal Sex Discrimination Act 1984. This provides for the broadest application of related IR Act provisions and ensures contemporary definitions are applied.

The bill also amends the definition of an 'industrial matter' to include the sexual harassment or sex or gender based harassment of an employee in the workplace, enabling the Queensland Industrial Relations Commission to exercise their powers to conciliate, arbitrate and make interlocutory orders or interim injunctions in such matters.

The bill amends the definition of misconduct for the purposes of dismissal to include sexual harassment or sex or gender based harassment. Occasions for summary dismissal—that is, dismissal without notice—are limited to theft, assault and fraud. This bill makes it clear that, if an employee sexually harasses another person, then that would make it unreasonable to require the employer to continue the employment during the period of notice set out within the IR Act.

This is further supported by amendments relating to unfair dismissals. The bill enables the QIRC to consider whether a dismissal related to the sexual, sex or gender based harassment of another person in determining whether a dismissal was harsh, unjust or unreasonable in an application for an unfair dismissal remedy.

These reforms provide far more comprehensive relief and further avenues for the resolution of a complaint than the stop sexual harassment orders available under the Fair Work Act 2009 and will maintain Queensland as a nation-leading jurisdiction in implementing the *Respect@Work* recommendations and protecting workers from sexual harassment and sex and gender based harassment. These reforms will ensure Queensland's IR system provides comprehensive and contemporary industrial protections to guard against and address the scourge of sexual harassment, sex and gender based harassment.

Gender pay equality was an issue I advocated and fought for as a unionist and leader within the union movement. Whilst we have seen improvements, unfortunately there remains much more to be done. Australia ratified the International Labour Organization convention No. 100 in 1974 to provide for equal remuneration for men and women for work of equal value, but the gap continues to exist.

The reviewers recognise the IR Act deals with equal remuneration principles up-front in the objects of the act and requires the Queensland Industrial Relations Commission to consider equal remuneration when certifying modern awards and enterprise agreements. These are important foundations. I am proud that Queensland's IR system is a nation leader when it comes to equal remuneration principles.

The bill amends the IR Act to require parties at the commencement of collective bargaining negotiations to obtain, and disclose in a timely way, information about employees who would be covered by the proposed bargaining instrument, including the distribution of employees by gender, the gender pay gap and any major factors identified as contributing to the gender pay gap and, if appropriate, the projected effect of the proposed instrument on the gender pay gap.

This is a subtle but important change. By putting these issues to the forefront of the bargaining process supported by data, the equal remuneration principles considerations is likely to feature more strongly throughout the bargaining process and be reflected in final outcome.

I now move to the review report's recommendations to support effective representation of employees and employers by registered industrial organisations. Queensland's industrial relations system is predicated on the notion of cooperative industrial relations—that is, a system committed to building fair, safe and productive workplaces and communities where workers' and employers' rights are protected and advanced and where workers are provided with financial security through fair and reasonable wages and conditions.

The primacy of registered organisations representing both employers and employees has been a central feature of IR systems throughout Australia for generations, and Queensland's industrial relations system is no different. Registered organisations play a central role in the IR system and represent both employees and employers. The IR Act sets out the roles and responsibilities of registered organisations which include, but are not limited to: representing and organising under the right to freedom of association convention; being a party to bargaining; and the ability to bring actions and represent members before the QIRC in a wide breadth of matters including industrial disputes, interpretation of agreements and general protections.

Sitting alongside these rights comes responsibility and accountability. The IR Act imposes on registered organisations rigorous reporting requirements to ensure registered organisations are transparent in their dealings, accountable to their members and demonstrate good governance practices. By contrast, an entity that is not defined under the IR Act as a registered organisation is not subject to the same rigorous level of scrutiny, reporting or prudential standards.

The review report heard from stakeholders that there is growing confusion and concerns by employees and employers in identifying which organisation can fully represent their industrial interests under the IR Act. This follows the emergence of self-proclaimed entities promoting industrial representation capabilities without adhering to the strict regulatory requirements to be recognised by a registered organisation under the IR Act and not being subject to the same level of reporting, accountability or democratic processes.

The bill clarifies the rights and protections conferred upon registered industrial organisations and provides that such rights are limited to organisations which are registered or otherwise eligible for taking steps towards registration under the IR Act. It provides clear distinctions between registered employer and employee organisations and other bodies not registered under the act who seek to represent employers and employees.

The bill confirms the status of incorporated associations not being eligible for registration as an employee organisation. It also makes supporting complementary amendments to the Associations Incorporations Act 1981 to address confusion on the part of employers and employees regarding the ability of an entity to represent their industrial interests where the entity is not a registered organisation under the IR Act but is incorporated under the Associations Incorporations Act.

The bill also introduces civil penalties for misrepresenting an entity's registration status or its ability to exercise rights under the IR Act. It empowers the QIRC to declare that an entity is ineligible for registration under the IR Act. The QIRC is also empowered to issue injunctive relief.

The bill also streamlines definitions used throughout the IR Act, making it simpler for the reader to understand the roles and responsibilities to representing entities for the purpose of industrial matters under the IR Act. These changes align with the recommendations of the review.

Honourable members interjected.

Mr DEPUTY SPEAKER (Mr Kelly): Order, members! There will be time to debate the bill.

Ms GRACE: They uphold the freedom of association principles by allowing individuals to become or not become a member of a registered organisation and provide a pathway for entities to be established and become a registered organisation under the IR Act. Importantly, these amendments ensure the primacy of registered organisations under the Queensland Industrial Relations Act.

Ensuring that employees covered by the IR Act have access to prevailing employment standards is another element the bill addresses through a range of amendments concerning the use of annual leave, personal and parental leave. The bill clarifies that an employee taking a period of approved annual or personal leave is not required to use approved leave if the leave falls on a public holiday. The bill also includes a transitional provision to clarify that the entitlement to personal leave has always been exclusive of a public holiday. For industrial instruments that address employee compensation of public holidays during the period of annual leave the bill does not interfere with those existing arrangements.

The bill also aligns the evidence requirements for absences exceeding two days for personal leave under the IR Act with the equivalent in the Fair Work Act 2009. The amendments broaden the evidence requirements so that an employee must provide an employer with sufficient evidence of the illness to satisfy a reasonable person should the employer require it. An employer may still require the

evidence to be a certificate; however, rather than limiting this certificate to only a doctor, the bill provides that the certificate can be from a relevant health practitioner. Examples of health practitioners include midwives, doctors and Aboriginal and Torres Strait Islander health practitioners.

The bill also makes amendments to bring entitlements into line with the prevailing conditions in the Fair Work Act. These include providing employees with greater flexibility when taking unpaid parental leave by being able to take up to 30 days unpaid flexible parental leave within the first two years of the child's birth. The flexible portion of the leave may be taken in separate blocks and will come out of the existing entitlement of up to 52 weeks unpaid parental leave. This entitlement will be extended to employees who become parents through adoption, surrogacy arrangements or cultural recognition orders. They also include allowing an employee returning to work on a full-time basis following parental leave to apply to the employer to change to work on a part-time basis; providing for parents who experience a stillbirth access to unpaid parental leave, giving these parents time and space to recover from such a devastating loss; increasing the age limit in the definition of a child from five to 16 years for the purpose of adoption related leave and cultural parent related leave; providing that the evidence which an employer may require of an employee who is intending to take birth related leave for the employee's own pregnancy or that of the employee's spouse is to be evidence that would satisfy a reasonable person that the employee or the employee's spouse is pregnant and the expected date of birth. This amendment retains the employer's discretion to require that the evidence be a health practitioner's certificate. As I have previously stated, health practitioners include midwives, doctors and Aboriginal and Torres Strait Islander health practitioners.

The bill also makes a number of amendments throughout the act to update the language to avoid gendered divisions of parental care; for example, 'maternity leave' is replaced by the term 'birth related leave'.

The bill also seeks to expedite time frames in collective bargaining by providing for a single commission of the QIRC to arbitrate a disputed matter during bargaining negotiations at the request of the bargaining parties. The bill also provides that the QIRC may consider whether it should apply a State Wage Case increase to an award if the increase would result in the wages payable to the employees under the award equalling or exceeding the wages payable to employees in relation to the same employment under a certified agreement. This provision provides explicit discretion for the QIRC to consider the unique features of Queensland's industrial relations jurisdiction when making its determination as to the application of a state wage outcome on awards.

The bill repeals the health-employee-specific wage recovery provisions for historical overpayments made by Queensland Health prior to 14 August 2012 and creates a bar on legal recourse for the recovery of those overpayments. Queensland Health will retain the same rights available to all other employers in relation to the recovery of overpayments to employees. Existing agreements for the recovery of an overpayment or repayment of a transitional loan made between Queensland Health and an employee or former employee will continue to be recognised.

The Palaszczuk government is committed to ensuring that workers in precarious and insecure work are provided with minimum standards and entitlements. That is why we are committed to lifting the standards for independent couriers following the abolition of the federal Road Safety Remuneration Tribunal in 2016. We want to ensure there is a fair contest between the commercial operators in this space. We do not want a race to the bottom, as this usually results in compromises in other areas such as worker and community safety and lower industry standards and quality.

The bill empowers the QIRC to make orders setting minimum conditions for independent courier drivers in the transport industry. The amendments are modelled on the longstanding provisions of chapter 6 of the New South Wales Industrial Relations Act 1996 and permit the making of contract determinations and negotiated agreements covering independent courier drivers, principal contractors and relevant registered organisations. Contract determinations similar to awards and may set minimum remuneration and working conditions for a cohort of courier drivers. Independent courier drivers may also collectively bargain with principal contractors and seek QIRC certification of negotiated agreements, which are similar to enterprise agreements. These provisions seek to provide appropriate regulation for workers engaged in arrangements outside of traditional employment and provide an avenue for the resolution of disputes between independent courier drivers and principal contractors.

The need for minimum standards in the transport industry has been made clear by the improvement and safety outcomes in states where such standards have been introduced. These amendments may be introduced and passed in the Queensland parliament but will not become operative until the Australian government amends the Independent Contractors Regulation 2016 to specify the provisions as exempt and able to operate. I look forward to working with the Minister for Employment and Workplace Relations, Tony Burke, on this important issue.

The amendments in this bill will ensure the Industrial Relations Act 2016 responds to the changes of the last five years and remains responsive and nation leading, particularly in the areas of: sexual harassment and sex or gender based harassment; working to reduce gender pay inequality; making sure employers and employees have certainty about who can represent them industrially and that they are able to turn to appropriately regulated registered organisations when in need; making improvements to Queensland Employment Standards; and ensuring we look after independent courier drivers and make their jobs and our roads safer.

These reforms continue and build upon the Palaszczuk government's proud nation-leading IR track record. I commend the bill to the House.

First Reading

Hon. G GRACE (McConnel—ALP) (Minister for Education, Minister for Industrial Relations and Minister for Racing) (2.27 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Education, Employment and Training Committee

Mr DEPUTY SPEAKER (Mr Kelly): In accordance with standing order 131, the bill is now referred to the Education, Employment and Training Committee.