Speech By

Hon. Grace Grace

MEMBER FOR MCCONNEL

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INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. G GRACE (McConnel—ALP) (Minister for Education, Minister for Industrial Relations and Minister for Racing) (6.18 pm): I move—

That the bill be read a second time.

This bill will complete the Palaszczuk government's commitment to review the Industrial Relations Act 2016 five years after its commencement. It responds to the final report of the five-year review of Queensland's Industrial Relations Act 2016 which made 40 recommendations for the enhancement of the IR Act. I acknowledge and express thanks to the two independent reviewers, Linda Lavarch and John Thompson, for their careful and thorough consideration of the five-year review of the IR Act and its operation.

The Queensland government accepted all of the 40 recommendations in full or in principle, and this bill gives full effect to the 31 recommendations for amending the IR Act, including the introduction of industrial protections for workers subject to sexual harassment, furthering pay equity, strengthening the registered organisations framework, updating minimum employment standards and introducing a jurisdiction to set minimum working conditions for independent courier drivers. The bill makes supporting amendments to the Public Trustee Act 1978, the Associations Incorporation Act 1981 and the Anti-Discrimination Act 1991.

Before turning to the details of the bill, I would first like to thank the Education, Employment and Training Committee for its report on the bill, tabled on 12 August. I also thank those who made submissions to the committee and those who appeared as witnesses as part of the committee's inquiry. I thank the chair, the member for Redlands. The committee made two recommendations: that the bill be passed and that I investigate options for addressing an important issue raised during the committee's inquiry by the Hon. Justice Davis, President of the Industrial Court. I agree with the committee's recommendations and I table the government's response to the committee's report.

Tabled paper: Education, Employment and Training Committee: Report No. 22—Industrial Relations and Other Legislation Amendment Bill 2022, government response 1758.

During the course of the committee's inquiry, Justice Davis identified examples of unscrupulous agents charging fees to provide representation in the Queensland Industrial Relations Commission and the Industrial Court. Justice Davis stated that in one recent matter before the commission an agent strongly suspected of charging fees simply did not have the skill to advocate for the applicant. The claim lodged by the agent was baseless and came at the time and expense of the parties and the commission. Unfortunately, this has not been an isolated incident.

Justice Davis has also observed the agent provisions being used inappropriately by lawyers, who are usually subject to strict regulatory obligations. In one recent case the commission questioned the lawyer's appointment. The lawyer then claimed that their name had been included erroneously and that

the whole thing was an administrative error. This is despite the client most probably being charged for the services provided. This is clear evidence of the circumvention of legal representation requirements under the act. These actions are simply not acceptable and undermine existing regulatory safeguards for workers seeking to protect their industrial relations rights in Queensland.

The conduct of unscrupulous representatives is not a problem unique to Queensland. Recently the Fair Work Commission also identified a current regulatory gap in the Fair Work Act where agents impose themselves on the commission's processes with no responsibility. The Fair Work Commission noted that the agent had 'no skin in the game' and described their actions as 'reckless to the point of deleterious'. It was highlighted that if this representative was a lawyer they would have been rightly at risk of being subject to costs which would conceivably be passed on to the client.

The Queensland Law Society's submission to the committee supports the need to address the concerns raised by Justice Davis and changes that will ensure a fair and balanced industrial relations framework that include necessary consumer protections to support the delivery of social justice for Queenslanders.

The Office of Industrial Relations has investigated options to respond to the committee's recommendation 2, and I will move amendments during consideration in detail to ensure agents are properly representing the interests of Queensland workers and employers. These further amendments will require that agents be granted leave by the commission or court in order to provide additional oversight that agents are not charging fees and are not lawyers circumventing legal representation requirements or obtaining clients through misleading advertising about the nature of the services or skills that can be offered.

Every worker has the right to earn a living without being sexually harassed. The reality for many workers, however, is quite the opposite. The federal Sex Discrimination Commissioner's national *Respect@work* report confirmed what many suspected: that sexual harassment is prevalent across workplaces throughout the nation and there needs to be systemic change to address this scourge. The Palaszczuk government is committed to doing all we can to prevent and address this serious issue, including through ensuring robust industrial protections for workers subject to sexual harassment.

The amendments in the bill send a strong message to all Queensland workers that sexual harassment and sex- or gender-based harassment in the workplace is unacceptable and will not be tolerated. In order to protect and prevent sexual, sex- or gender-based harassment in the workplace, the bill: aligns the definition of 'sexual harassment' to the meanings provided for under the Sex Discrimination Act and the Anti-Discrimination Act 1991; provides for the inclusion of sexual harassment or sex- or gender-based harassment as an industrial matter, enabling the Queensland Industrial Relations Commission to exercise its conciliation and arbitration powers to quickly address and resolve these forms of harassment; and, finally, ensures that sexual harassment or sex- or gender-based harassment is added to the list of behaviours that constitute misconduct an employer may dismiss an employee for without the requisite notice period. These amendments will ensure that the Queensland IR system provides comprehensive and contemporary industrial protections to protect workers subject to sexual, sex- or gender-based harassment in the workplace. I might add: this is a mighty step forward.

This bill makes a number of changes to the Queensland Employment Standards to mirror national employment standards in the Fair Work Act 2009. These changes ensure workers under the Queensland industrial relations jurisdiction have access to equal or superior standards as those in the federal jurisdiction.

The bill removes traditionally gendered divisions of parental care. The government believes that individual parents should decide how to allocate child care responsibility to best fit their family circumstances. During the committee public hearing process, suggestions were made that changes to gendered language would devalue the role of mothers or take away rights and entitlements when it comes to the rights of workers, including those who give birth. This is simply not true. The amendments ensure Queensland families can make their own decisions on parental care and ensure our legislation reflects contemporary family units.

The bill also supports parents or those with responsibility for caring for children returning to work by allowing them to apply to their employer to change their work from a full-time to part-time basis. The bill also provides for flexible parental leave for eligible employees to take up to 30 days of flexible unpaid parental leave. The amendment does not increase the total number of days that may be taken as parental leave but, rather, allows for a portion of those days to be taken flexibly. The leave can be taken in unbroken or broken periods and within the first two years after the child is born, is adopted, began residing with the employee under a surrogacy arrangement or had parentage transferred to the employee under a cultural recognition order.

Importantly, the bill clarifies that the entitlement to unpaid parental leave extends to pregnancies that sadly end in stillbirth. An employee and their spouse are each entitled to this leave. This is an important and significant amendment. It is absolutely essential to provide employees with the time they need to heal from such a devastating experience. The bill also provides employees greater access to parental leave by increasing the age of the child for these purposes from five years to 16 years, including for adoption leave and cultural parental leave.

We have listened to concerns raised that requirements for a doctor's certificate were overly prescriptive under the act. The bill relaxes this requirement so an employee need only provide sufficient evidence of pregnancy or illness to satisfy a reasonable person should the employer require it. The bill also provides that a certificate from a relevant health practitioner, such as and including a midwife, doctor or Aboriginal and Torres Strait Islander health practitioner, is sufficient evidence. These changes are particularly important for rural and regional Queenslanders as they provide greater flexibility so that employees can access services readily available to them in their community.

Lastly, in relation to changes to employment standards, I propose to move amendments during consideration in detail to provide all casual workers with access to paid domestic and family violence leave, ensuring consistency with the recently introduced paid family and domestic violence leave by the Albanese government. I am proud that in 2016 Queensland was the first jurisdiction in Australia to legislate for 10 days of paid family and domestic violence leave. Since this time I have consistently advocated for this critical entitlement to form part of the national workplace relations system. As noted in the second reading speech by the federal Minister for Employment and Workplace Relations, Tony Burke, to the Commonwealth bill, casuals are already dealing with the consequences of being in insecure work and are unable to access other forms of paid leave, making them more vulnerable when they are dealing with the impact of domestic violence. This amendment will ensure that Queensland continues to lead the nation by ensuring access to paid family and domestic violence leave, regardless of employment status.

Queensland has been nation-leading in supporting equal remuneration and gender equality through bargaining. The bill's amendments will ensure that Queensland remains a leader in this area. The IR Act currently requires some wage related information to be given when parties are seeking certification of an agreement. Requiring that detailed wage related information be provided at the outset of bargaining will permit equal remuneration issues to be considered throughout the negotiations rather than at the conclusion when parties are seeking certification and are less likely to return to the bargaining table to examine issues afresh.

For the past decade Queensland's state wage case outcomes have mirrored the federal annual wage review outcome. However, Queensland's industrial relations jurisdiction enjoys several unique features such as Queensland's award reliant workforce is 1.8 per cent compared to 22.5 per cent under the federal awards and the IR Act allows for flow-on provisions from certified agreements into relevant state awards, which means award wages are lifted to the prevailing standards in the relevant collective agreement rather than the prevailing community standard. In the recent state wage case decision handed down by the full bench of the Queensland Industrial Relations Commission, it was observed that there is a potential for state wages case outcomes to 'impede, disincentivise or protract collective bargaining negotiations' where award rates are lifted to an extent that they are commensurate with or exceed the collective bargaining standard and there is a duty to guard against any diminution in collective bargaining. The Palaszczuk government supports fair and reasonable wage increases to the Queensland minimum wage. This government recognises that, for some workers, the state wage case decision may be the only way to secure a wage increase.

The bill makes it explicit that the commission has discretion to consider whether state wage outcomes are to flow on to awards. Particular consideration will be given to awards which benefited from receiving rate increases through other means such as rolling up expired agreement rates and where increasing the award would exceed rates in a prevailing agreement or determination. The bill also clarifies the commission's discretionary powers to apply different outcomes to different classes of employees within an award. This provides clarity which allows the commission to recognise the unique circumstances of Queensland's jurisdiction while ensuring fair standards comparable to the living standards in the community.

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 industrial organisations representing both employers and employees has been a central feature of industrial relations systems throughout Australia. The Queensland 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 for 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. The holding of open and transparent elections is another key feature which ensures members' views are appropriately represented by their leadership. Like any true democracy, once the votes are counted, we accept the result and move forward. 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 or reporting and prudential standards or democratic processes. In recent years we have seen unregistered entities misrepresenting their status to represent the interests of workers and employers before the commission. As a result, confusion has resulted for employees and employers because they do not know who can legitimately represent their industrial interests.

To address these concerns and provide clarity, the bill: provides clear definitions and a consistent approach when referring to industrial organisations with standing to represent their members' interests; provides a civil penalty for misrepresentations by persons or entities purporting to be able to represent employees or employers when they do not have that capability; and introduces collaborative information-sharing arrangements between the Industrial Registrar and the chief executive of the Office of Fair Trading relating to applications for incorporation under the Associations Incorporation Act 1981. Importantly, these amendments maintain freedom of association rights to join or not join an industrial organisation and also provide a pathway for entities to be established and become a registered organisation under the IR Act.

During the committee's public hearing it was suggested that registered organisations should compete for membership like businesses do in the open market. I remind the House that registered employer and employee organisations do not operate for profit. Their role is to represent their members' interests. This bill does not change any of those established practices; it simply provides clarity to identify which organisations can fully represent the industrial interests of its members before the industrial umpire. Nothing in this bill impacts on longstanding requirements for those seeking registration. No rights are being taken away.

Some submissions to the committee also suggested these amendments may be inconsistent with International Labour Organization conventions to which Australia is a party, particularly the Freedom of Association and Protection of the Right to Organise Convention 1948 No. 87 and the Right to Organise and Collective Bargaining Convention 1949 No. 98. The existing 'conveniently belong' rule found in section 608(1)(b)(ii) of the IR Act was also suggested by some to be contrary to these ILO conventions. It was further suggested that these amendments are incompatible with Queensland's Human Rights Act 2019. I will say at the outset that the Palaszczuk government places great importance on upholding Australia's international labour obligations. Giving effect to the ILO conventions is enshrined in the IR Act as a way by which the legislation achieves its main purpose of providing a framework for cooperative industrial relations that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.

The IR Act, with the current 'conveniently belong' rule and representation rights reserved for registered industrial organisations, is consistent with the ILO conventions as ratified by Australia and consistent with federal legislation on the 'conveniently belong' rule. I did not see it change in 10 years under the LNP. The bill's provisions will not change this. Relevantly, the committee's inquiry report also did not consider that these amendments unreasonably limit human rights and did not note any potential inconsistencies with the ILO conventions; nor did it make recommendations to amend the bill in this regard. Let me tell members that it will be a brave government that ever tries to remove the 'conveniently belong' rule.

It was suggested to the committee that the bill's delineation of entities that do have standing to represent their members before the Industrial Court or commission, being registered organisations and industrial organisations eligible for registration and entities that do not have such standing, constitutes a breach of the ILO conventions. The IR Act currently requires that entities which seek standing to represent members in our industrial courts and tribunals abide by stringent standards of governance and accountability. These standards are necessary to ensure that such entities, which collect fees from their members in exchange for advancing their members' industrial interests and have the right to

appear before decision-makers to do so, are fulfilling their obligations to effectively protect their members' interests. The bill does not change this longstanding requirement to meet registration criteria in exchange for standing to represent in industrial matters.

It was contended by some that the 'conveniently belong' rule will stymie an unregistered entity's attempt to seek registration and it was suggested that the rule breaches the ILO conventions and freedom of association. I reiterate that the 'conveniently belong' rule is not being amended and forms part of both the IR Act's and the federal Fair Work Act's foundational frameworks of collaborative industrial relations which seek to reduce demarcation disputes that impact on work and productivity and other inefficiencies associated with competitive unionism. The rule currently exists and Australia is compliant with the ILO conventions. The bill will not change this.

It was also put to the committee that ILO conventions were breached by the bill, empowering the commission to order that an entity is ineligible for registration and that this limits an individual's right to join or form an association. I wish to reiterate that this bill does not diminish or abolish any individual's right to join or form an association, registered or not. The bill permits the commission to make an ineligibility order where it is satisfied that the applicant entity does not meet the criteria for registration. The bill amends the criteria for registration to require that an entity must not have an officer who has been found to have misrepresented the entity's right to represent its members' industrial interests and must not be subject to, or be under the control or influence of, an entity or individual who is the subject of an ineligibility order.

The aims of the amended criteria are clear: to ensure workers and employers are not misled by an entity which has misrepresented its ability to represent their industrial interests and to confirm that entities which engage in such misrepresentation can be penalised for doing so and will not be recognised as an industrial organisation under the IR Act.

This government has consistently encouraged collaborative workplace relations between employers, employer organisations, workers and unions, and it will continue to do so. The ability of workers to act collectively and belong to industrial organisations is safeguarded under the IR Act's general protections. The ability for new unions to form is given an additional layer of protection by the bill by including discussion of workplace rights and employment conditions for, or on behalf of, an industrial organisation as protected industrial activity.

In the committee process it was suggested that these amendments are targeted at so-called unions which are not registered under the act because they are not politically affiliated to the ALP. These so-called unions also purport to be not aligned with any political party. Both of these propositions are false. Firstly, these changes are predicated on enhancing effective representation of workers and employers in Queensland's IR system and ensuring rogue entities who misrepresent themselves are held to account. Secondly, those who have set up and run these so-called unregistered unions, in fact, have deep and enduring links to the LNP.

An honourable member interjected.

Ms GRACE: I take that interjection. How does anyone know how many members they have? They have no accountability whatsoever. It is notable that since the bill was introduced and throughout the committee process clear support has been provided by legitimate employer and employee groups and the legal profession who recognise the importance and stability of a transparent and accountable industrial relations framework for both employers and workers. This includes the National Retail Association which stated—

We strongly support the right of workers or businesses to join any association they want to join, but we think an association should be required to meet the same standards of accountability and transparency that we are required to meet if they want to call themselves a union.

Ai Group, in its submission to the committee, stated—

Ai Group supports the policy intent of limiting the industrial rights of associations that purport to be unions but are not subject to the onerous duties and reporting requirements of registered organisations.

The Queensland Law Society, in its submission to the committee, stated—

It is incongruous that unregistered organisations can operate and attempt to exercise representational and other rights without the correlative obligations that registered organisations are required to comply with to exercise those same rights. The amendments in the bill ensure that organisations that seek to represent employees and employers are subject to the obligations of transparency and probity that their members, and the public at large, expect if they are to exercise those rights.

The Local Government Association stated—

The LGAQ accepts the distinction between registered organisations that are heavily regulated with self-styled industrial associations and the need for the legislation to ensure those distinctions are recognised.

For an example of the lack of transparency surrounding unregistered associations we only need to look at the transcript from the public hearing of the committee's inquiry into the bill and the structure of the Red Union and its sub-entities, which appear to be run by three people. Reminiscent of the recent former prime minister's comments that he was not sure if he was minister for other portfolios, the Red Union representative made a similar claim: that he was not sure if he was the treasurer or secretary in the various subsets of the Red Union franchise. This evidences a clear lack of accountability and transparency. Do not take my word for it, read *Hansard*. No real union member would not know who the secretary and treasurer was in that union.

I now turn to provisions in the bill that address precarious and insecure employment in the independent courier driver industry. Independent courier drivers play an important part in our vibrant economy, but these drivers are often in precarious or insecure work. The Palaszczuk government does not believe these business operators should have to forego decent working conditions for us to have a thriving economy. This is not an either-or proposition. The bill gives the Queensland Industrial Relations Commission the power to make determinations in relation to minimum standards and to hear and determine related disputes. These provisions are based on the long-standing model adopted in New South Wales to set minimum entitlements for specified groups within an industry.

The bill also introduces the following provisions: defines the contractual relationship between the principal contractor and independent courier; provides for any person or business that acts as a principal contractor as defined will be within scope, whether or not that is the main activity of their business; provides the commission with the power to set minimum conditions for independent courier drivers in the same manner that the New South Wales Industrial Relations Commission sets minimum entitlements for specified groups within an industry; and creates minimum standards for independent courier drivers and supports a growing industry sector.

The new chapter 1OA provisions in the bill attracted comment in several submissions and during the public hearing which I would like to address. First, the bill does not seek to define independent courier drivers as employees, nor does it seek specific application to gig or platform-based businesses. A business and driver are within scope of the new jurisdiction only when they meet the definition of principal contractor and independent courier as prescribed in the bill and the work undertaken is a courier service contract as prescribed in the bill. If that is the case, then chapter 1OA may apply subject to a contract determination by the commission. Even then, the business may apply for an exemption under section 406R.

Second, a business can lead by example and apply for a contract determination—especially for those businesses which acknowledge the benefits to their sector if there are minimum standards. By getting on the front foot, a business can tailor a contract determination to meet their needs. In his submission, Professor David Peetz pointed to evidence that the New South Wales regulation contributed to the downward trend in road fatalities involving articulated vehicles. Between 1989 and 2020 New South Wales experienced an average annual decline of five percent compared to two percent for the rest of country—more than double. Let us look at this another way—that is around 205 lives saved: 205 drivers who got to go home to their families and loved ones. These figures do not include the lives of the general public that could be saved who were involved in articulated truck road fatalities.

Finally, I remind the House 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 will continue to work with the Minister for Employment and Workplace Relations, Tony Burke, on this important issue.

The bill's amendments reflect the Palaszczuk government's commitment to a collaborative and appropriately regulated industrial relations system which provides fair and appropriate protections for workers and employers. The bill ensures Queensland's industrial laws are contemporary, responsive to, and keep pace with economic, social and cultural change. I recommend that these amendments be accepted by the House. I thank the committee for its work. Its members did an excellent job. I think the public hearings went extremely well. I look forward to the debate in this House regarding the amendments in this legislation. I commend the bill to the House.