Parliamentary Committees

Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012

Report No. 14

Finance and Administration Committee

June 2012

Finance and Administration Committee

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Abbreviations

AMWU	Australian Manufacturing Workers' Union
AWU	The Australian Workers' Union
BSCAA	Building Services Contractors' Association of Australia
CCIQ	Chamber of Commerce and Industry Queensland
DJAG	Department of Justice and Attorney-General
DPC	Department of the Premier and Cabinet
ECQ	Electoral Commission Queensland
ETU	Electrical Trades Union of Employees
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the *Legislative Standards Act 1992*
IR Act	*Industrial Relations Act 1999*
LGAQ	Local Government Association of Queensland
PSC	Public Service Commission
QCU	Queensland Council of Unions
QIEU	Queensland Independent Education Union of Employees
QIRC	Queensland Industrial Relations Commission
QTT	Queensland Treasury and Trade
QTU	Queensland Teachers' Union
RTBI	Australian Rail, Tram and Bus Industry Union
UFUA	United Firefighters Union of Australia

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
the Act	*Industrial Relations Act 1999*
the bill	*Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*
the commission	Queensland Industrial Relations Commission
the committee	Finance and Administration Committee
the department	Department of Justice and Attorney-General

Chair's foreword

This report presents a summary of the committee's examination of the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

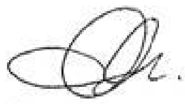
The public examination process allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

The bill amends the *Industrial Relations Act 1999* and the *Public Service Act 2008.* The committee has recommended that the bill be passed and has made three additional recommendations which the committee considers will improve the bill.

On behalf of the Committee, I would like to thank those that took the time to provide submissions and those who met with the Committee and provided additional information during the course of this inquiry.

I also wish to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the committee for their hard work and support.



Michael Crandon MP
Chair

June 2012

Recommendations

Standing Order 132 states that a portfolio committee report on a bill is to indicate the committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for Explanatory Notes.

The committee has made the following recommendations:

Recommendation 1 **3**

The committee recommends that the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* be passed.

Recommendation 2 **5**

The committee recommends that the bill be amended to include transitional arrangements ensuring that all processes which have already commenced be concluded under the previous arrangements.

Recommendation 3 **11**

The committee recommends that the bill 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.

Recommendation 4 **13**

The committee recommends that the bill be amended to allow for additional ballot methods if the ECQ considers these other methods to be appropriate.

1 Introduction

1.1 Role of the committee

The Finance and Administration Committee (the committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 18 May 2012.[1] The committee's primary areas of responsibility are:

- Premier and Cabinet; and
- Treasury and Trade.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

a) the policy to be given effect by the legislation;

b) the application of fundamental legislative principles to the legislation; and

c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

a) determine whether to recommend that the bill be passed;

b) may recommend amendments to the bill; and

c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the bill by any of the following methods:

a) calling for and receiving submissions about a bill;

b) holding hearings and taking evidence from witnesses;

c) engaging expert or technical assistance and advice; and

d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Attorney-General and Minister for Justice, the Hon Jarrod Bleijie MP, introduced the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* to the Legislative Assembly on 17 May 2012. The bill was referred to the Finance and Administration Committee (FAC). The committee is required to report to the Legislative Assembly by 1 June 2012.

[1] *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The committee's consideration of the bill included calling for public submissions; a public briefing by officers from the Department of Justice and Attorney-General (DJAG); and a public hearing.

The committee also considered expert advice on the bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The committee advertised its inquiry into the bill on its webpage on 21 May 2012. The Committee also wrote to stakeholder groups inviting written submissions on the bill.

The closing date for submissions was Friday 25 May 2012. The committee received fourteen submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the committee's website and are available from the committee secretariat.

1.5 Public hearing

The committee held a public hearing on Wednesday 30 May 2012 at Parliament House, Brisbane. The following groups, invited by the committee, attended the hearing:

- Queensland Teachers' Union (QTU)
- United Firefighters Union of Australia (UFUA)
- Chamber of Commerce and Industry Queensland (CCIQ)
- Queensland Council of Unions (QCU)
- United Voice Queensland
- Electrical Trades Union of Employees (ETU)
- Queensland Independent Education Union of Employees (QIEU)
- Building Services Contractors' Association of Australia (BSCAA)
- Local Government Association of Queensland (LGAQ)

The committee also invited the following groups however they were unable to attend:

- Together
- Australian Rail, Tram and Bus Industry Union (RTBI)
- The Australian Workers' Union (AWU)

A list of witnesses who gave evidence at the public hearing is contained in Appendix B. A transcript of the hearing will be published on the Committee's website and available from the committee secretariat

1.6 Public briefing

The Committee held a public briefing on the bill with officers from the Department of Justice and Attorney-General on Wednesday 30 May 2012. A list of witnesses who gave evidence at the public briefing is contained in Appendix C. A transcript of the briefing will be published on the Committee's website and available from the committee secretariat.

1.7 Policy objectives of the Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012

The objective of the bill is to amend the *Industrial Relations Act 1999* (IR Act) to modernise the law to reflect certain key aspects of the commonwealth industrial relations regime and to require the Queensland Industrial Relations Commission (QIRC) to give consideration to the prevailing economic conditions when determining wages and employment conditions. In addition, the Bill amends the *Public Service Act 2008* to allow members of the QIRC to hear public service appeals.

Pursuant to Standing Order 132(1)(a), the committee recommends that the bill be passed.

Recommendation 1

The committee recommends that the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012* be passed.

2 Examination of the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012*

The following list is a summary of the objectives to be achieved by the proposed amendments to the IR Act by the bill:

- require the QIRC to give consideration to the State's financial position and fiscal strategy, including the financial position of the relevant public sector entity, when determining wage negotiations by arbitration;
- for local government, local government owned corporations and parents and citizens associations, require the QIRC to give consideration to the financial position of the employer;
- provide a process whereby the treasury chief executive may brief the QIRC about the State's financial position, fiscal strategy and related matters;
- introduce a power for the Minister to make a declaration terminating industrial action if the Minister is satisfied that the action is threatening the safety and welfare of the community or is threatening to damage the economy;
- introduce an arrangement modelled on the Commonwealth's Protected Action Ballot Order regime to clarify and strengthen the employee balloting process for the taking of protected industrial action in connection with a proposed certified agreement;
- introduce a specific process for an employer to directly request employees to approve a proposed certified agreement; and
- provide that QIRC members are able to be appointed as appeals officers under the *Public Service Act 2008* for the purpose of dealing with the review of certain decisions which affect public service employees.

2.1 Commencement

The amendments to the *Public Service Act 2008* contained in Parts 4 and 5 of the bill are scheduled to commence on 1 July 2012. All other parts commence on the date the bill receives assent.

The committee heard from the QTU that their enterprise bargaining negotiations commenced on 23 November 2011. They advised that they appeared before the commission on 29 May 2012 because they have still not received a log of claims from the government. They advised that they are four weeks out from the expiry date of their agreement and have no log of claims, no interests and no positions being canvassed by the government. They are concerned that the proposed amendments remove the obligation to bargain in good faith under section 146 of the current Act. They are also concerned that if a government at this time decides to ballot employees directly, it effectively removes the right of an employee to have it considered in a reasonable time and negotiate around conditions.[2]

The UFUA also advised the committee that they have unsuccessfully been attempting to arrange a meeting with the management of the Queensland Fire and Rescue Service to discuss enterprise bargaining. They iterated their concern that the government was stalling and the passage of this legislation will take away their members' rights to motivate the government to get on with bargaining.[3]

[2] Ms Edmonds, Transcript 30 May 2012: 10
[3] Mr Oliver, Transcript 30 may 2012: 4

2.2 Committee Comments

The committee is concerned that the proposed amendments will impact on processes already commenced under the existing legislation. In the interests of fairness, it recommends that transitional arrangements be put in place to ensure that all processes which have already commenced be concluded under the previous arrangements.

Recommendation 2

The committee recommends that the bill be amended to include transitional arrangements ensuring that all processes which have already commenced be concluded under the previous arrangements.

2.3 Reasons for the bill

The Queensland Government referred their private sector industrial relations powers to the Federal Government in 2010 leaving the IR Act primarily covering State public service and local government employees. The bill proposes to harmonise some aspects of the state legislation with the Commonwealth industrial relations regime

In Queensland the power to determine industrial relations entitlements through awards and certified agreements remains with an independent tribunal - the QIRC.

The explanatory notes state that the major employers are state and local government entities, funded from public revenue and therefore it is considered appropriate that the act recognise the importance of prevailing economic conditions and in particular consider the financial position of the state and individual public sector entities, the state's fiscal strategy and public revenue when decisions are made on wages and other entitlements.

The bill will also enable the government to refocus the work of the Public Service Commission (PSC) away from a regulatory function towards a public sector efficiency agenda. The department advised the committee that the legislation moves the responsibility for dealing with appeals from the PSC to the QIRC in that industrial relations commissioners will be undertaking that work as opposed to an appeals officer located in the PSC but appeals matters will continue to be heard.[4]

The committee noted that the proposed legislation does not harmonise with all aspects of the federal legislation. The department advised that the decision in relation to this bill was to harmonise some important elements within the Fair Work Act (Cwlth). They advised that there was a decision to pick up on some important elements the government considered should be the subject of harmonisation. They further noted that the harmonisation process has been ongoing since the early 1990s and a lot of the provisions in the IR Act, whilst not written in exactly the same format, are similar.[5]

The LGAQ advised the committee that they welcomed the bill as it will provide certainty to the local government sector as it firmly establishes that the sector will remain in the single jurisdiction and that will be the state jurisdiction. They noted that they have made several submissions over recent years supporting harmonisation with the federal system.[6]

[4] Dr Blackwood, Transcript 30 May 2012: 7
[5] Dr Blackwood, Transcript 30 May 2012: 3
[6] Mr Goode, Transcript 30 May 2012: 5

The ETU advised the committee that they consider the title of the bill to be misleading on the basis that the proposed amendments are selective in the provisions included and ignore some of the provisions of the Fair Work Act that would provide support to employees when they are trying to negotiate a wage outcome with their employer. These provisions include the majority support determination provisions, the capacity for employees to apply for scope orders and also good-faith bargaining requirements.[7]

Together further advised the committee that it is their experience that legislative change which seeks to import outcomes from other jurisdictions can result in possible unintended consequences. They advised that reliance upon legislative activity that remains relatively untested, or if tested has been tested in regard to provisions that do not mirror those proposed within this jurisdiction, can also impede the effective operation of the bill.[8]

2.4 Stakeholder consultation

The explanatory notes state that there has been no community consultation on this proposal. Consultation with the Department of the Premier and Cabinet (DPC) and Queensland Treasury and Trade (QTT) was undertaken on 3 May 2012 and 16 May 2012. They supported the bill.[9]

The majority of submissions received by the committee noted their concerns that there had been no consultation with stakeholders prior to the introduction of the bill. They also noted their concern that the time line provided for tendering of submissions to the committee did not allow for consultation with the members of their organisations affected by the proposed legislation. The Australian Manufacturing Workers' Union (AMWU) expressed the view that the consultation period allowed did not constitute appropriate consultation and is entirely unreasonable.[10]

The committee's hearing explored the issue of how much time the witnesses considered would be a satisfactory consultation period. The QCU suggested that at least a month would have been an appropriate timeframe to examine industrial legislation which affects more than 300,000 people.[11] The UFUA agreed that this time frame would have been appropriate.[12]

The committee also explored the issue of whether stakeholders were consulted on this issue prior to the state election. The QCU[13], UFUA[14], the ETU[15] and the CCIQ[16] advised that they had not been consulted on the legislation, however, the CCIQ advised that the Chamber has had detailed conversations about the need to protect the state's finances and support in wage negotiations with the unions.[17]

[7] Ms Rogers, Transcript 30 May 2012: 4-5
[8] Submission 5: 1
[9] Correspondence from Mr B Leahy, Director-General, Department of Justice and Attorney-General, to the FAC dated 28 May 2012: 1
[10] Submission 7: 1
[11] Mr Monaghan, Transcript 30 May 2012: 5
[12] Mr Oliver, Transcript 30 May 2012: 8
[13] Mr Monaghan, Transcript 30 May 2012: 6
[14] Mr Oliver, Transcript 30 May 2012: 8
[15] Mr Behrens, Transcript 30 May 2012: 10
[16] Ms Rogers, Transcript 30 May 2012: 10
[17] Mr Behrens, Transcript 30 May 2012: 11

2.5 Committee Comments

The committee wishes to express the view that, whilst it understands the governments reasons for the prompt passage of this legislation, it considers that realistic consultation times should be adhered to particularly when legislation affects numerous stakeholders.

2.6 Clause 4 – Principal object

Clause 4 provides that the principal object of the Act is to ensure that when wages and employment conditions are determined for the public sector of the state, the relevant public sector entity and the state's fiscal strategy are taken into account.

The UFUA contended in both their written submission and at the committee's hearing that the proposed amendments were not necessary as the current legislation and the powers of the QIRC already contain more than enough opportunity for the state government, as employer, to have its views and situation taken into account.[18] The UFUA advised the committee that they supported the retention of the existing laws on the basis that they have worked well and balanced the interests of all parties – employees, employers and the state government. They feel that the proposed amendments tilt bargaining and industrial relations arrangements in the government's favour in circumstances where the government is the employer.[19]

The AWU was also of the view that the proposed amendment is unnecessary, by reason of the fact that existing provisions contained within the IR Act already sufficiently contemplate such matters and give the QIRC latitude to take account of such considerations.[20]

The QCU agreed that the emphasis on the prevailing economic conditions and the state fiscal strategy in determining wage agreements will alter the balance between competing interests and will likely result in inferior outcomes for employees.[21]

United Voice Queensland considered that it would be inconceivable in any other forum that one party's preferred outcome should be given special consideration.[22] They also indicated their concern that the government has already flagged a fiscal strategy of restraining increases in wage costs to three percent and the apparent intent of the amendments is to require the QIRC to give special consideration to one party's preferred wage outcome. They consider that the commission must continue to be allowed to take other relevant factors into account when deciding the remuneration levels to be paid.[23]

The ETU noted its concern that the emphasis on the requirement to consider the State's and applicable public sector entities' finances because the government determines the budget for public sector entities and they felt that this requirement could be manipulated to force downward pressure on employee wage claims.[24]

The department advised that the principle object of the bill is to provide a framework for industrial action that supports economic prosperity and social justice and a variety of measures have been included in order to facilitate this.[25]

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[18] Submission 3: 3
[19] Mr Oliver, Transcript 30 May 2012: 4
[20] Submission 9: 2
[21] Submission 6: 3
[22] Submission 8: 2
[23] Ms Badke, Transcript 30 May 2012: 3
[24] Submission 10: 2
[25] Dr Blackwood, Transcript 30 May 2012: 2

The CCIQ advised the committee that the Chamber is strongly supportive of the object of the bill. They advised that the Queensland business community has a right to be heard on this issue as it contributes significantly to the state's revenue. They advised that they consider that there is a need to improve the fiscal management of the state. They also advised that over the past five years public sector wages growth has significantly outpaced private sector wages growth in Queensland.[26]

The CCIQ considers that the QIRC has had very little regard for the capacity of the state government to pay in determining wage outcomes for the public sector in recent years.[27]

The LGAQ also welcomed the objective requiring the QIRC to give greater consideration to the financial position of local government. The LGAQ advised that since amalgamation the debt levels of local government have risen and at the same time a number of caps have been imposed on their revenue raising opportunities.[28]

2.7 Clause 6 – What is to be done when an agreement is proposed

Clause 6 provides that where an employer and an employee organisation are parties to an agreement and an employee asks employees to approve an agreement by voting for it the following requirements no longer apply:

- Section 144(2)(c) – each relevant employee is informed that he or she may ask a relevant employee organisation to represent the employee in negotiating with the employer about the agreement; and
- Section 144(3) – if a relevant employee does ask a relevant employee organisation to represent the employee, the employer must give the organisation a reasonable opportunity to represent the employee in negotiating with the employer about the agreement before it is made.

The explanatory notes detail that the reason for this is that the agreement is no longer an agreement between an employer and an employee organisation but is an agreement between an employer and an employee.

The QCU advised the committee that the proposed amendment takes away the employees' right to be represented. QCU noted that the proposed amendments differ from the Fair Work Act. They advised that the Fair Work Act (section 173) requires that an employer must take all reasonable steps to give notice of the right to be represented by a bargaining representative. They contended that the proposed changes are contrary to the intention of the good faith bargaining provisions which requires parties to negotiate in good faith.[29]

The QCU suggested that this amendment be altered to maintain the rights of employees to be represented by an employee organisation in the event that an employer directly ballots employees.[30]

The AWU agreed that the proposed amendment deviates from the Fair Work Act and will operate to the distinct disadvantage of workers who can freely choose to be represented by their union, including representation for the purposes of wage and employment conditions setting through enterprise bargaining processes.[31]

[26] Mr Behrens, Transcript 30 May 2012: 2
[27] Mr Behrens, Transcript 30 May 2012: 2
[28] Mr Goode, Transcript 30 May 2012: 5
[29] Submission 6: 4
[30] Mr Monaghan, Transcript 30 May 2012 :3
[31] Submission 9: 3

The QIEU considered that the proposed amendments to clause 144 will allow an employer to refuse to meet or negotiate with representatives of its employees once it has put the agreement to ballot. They noted that whilst there may be an attempt to justify this change on the basis that the agreement would be between the employer and its employee, those employees should still retain the right to representation by their union. The QIEU also indicated its concern that the proposed amendment does not impose any conditions precedent which must be fulfilled by an employer before it can unilaterally decide that it will put a proposed agreement to ballot. They therefore consider that this will facilitate a 'take it or leave it' approach by employers to agreement making.[32]

2.8 Clause 7 – Employer may ask employees to approve a proposed agreement being negotiated with an employee organisation

Clause 7 inserts a new section 147A. The clause sets out the process by which an employer may ask employees to approve a proposed agreement being negotiated with an employee organisation. Any such requests may not be made until after a peace obligation period for the making of the agreement has ended. A peace obligation period means the period of 21 days after the giving of written notice of the proposer's intention to begin negotiations for the agreement, ending no earlier than 7 days after the nominal expiry date of any existing certified agreement.

The clause stipulates that whilst the employer may chose how to conduct the vote, the employer must comply with the provisions of sections 144(2)(a) and (b) when asking the employees to vote on the agreement. Section 144(2) requires that the employer must take reasonable steps to ensure that employees have ready access to the proposed written agreement at least 14 days before the employees are asked to approve the agreement and the terms of the agreement (including the procedures for preventing and settling disputes) and the effect of the terms, are explained to each relevant employee before approval is given. If a valid majority approves the making of the agreement it may be submitted to the QIRC for certification.

The AWU advised the committee that they consider that the proposed amendment seeks to introduce a mechanism enabling the employer to unilaterally ask employees to approve the making of a proposed agreement. They consider that the introduction of this new mechanism should include mechanisms requiring this not take place without first having taken steps to seek the assistance of the QIRC in the resolution of outstanding bargaining issues.[33]

The UFUA advised the committee that they consider the proposed amendments are tantamount to legislating an option to refuse to recognise union representatives. They advised that the bill presents a confusing situation where bargaining can be commenced between the employer and an employee organisation and an agreement directly between employees and the employer results. They consider that this runs the risk of employees not genuinely agreeing to an agreement due to the misapprehension that the agreement is made with their union as initially intended. It is possible that employees would expect the ballot to approve an agreement, which would be the agreement with their union as initially planned. They consider that the structure of the new provisions can create misunderstandings and confusion.[34] They also considerthat even where an agreement is between the employer and employees, the employees should still have the right to be represented by the employee organisation to which they belong.[35]

[32] Submission 12: 2-3
[33] Submission 7: 3
[34] Submission 3: 5
[35] Submission 3: 6

The RTBU advised the committee that the proposed amendment is legislating a bad faith bargaining tactic which in their experience will simply aggravate those involved, undermine the relationship of those who are bargaining and elongate negotiation.[36]

The department advised the committee that the proposed amendment clarifies the situation by expressly providing for a process for an employer to approve a proposed certified agreement by voting for it. They advised that it is consistent with the stated policy objectives of the bill to modernise the law to reflect aspects of the Commonwealth's industrial relations regime and the amendment brings the IR Act into line with the federal Fair Work Act, which gives employers the ability to request employees to approve a proposed enterprise agreement.[37]

2.9 Clause 8 – Arbitration if conciliation unsuccessful

Clause 8 amends section 149(5) to prescribe the things, and their likely effects, to be considered by the QIRC as part of the public interest in arbitrating the making of an agreement. These include:

- For a matter involving a public sector entity – the state's financial position and fiscal strategy and the financial position of the public sector entity.
- For any other matter – the employers' financial position.

A public sector entity is defined as including a department; a public service office; or an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose. It does not include a local government or a local government owned corporation, or a subsidiary of a local government owned corporation or a parents and citizens association.

Under the existing provision the commission was required to consider the likely effects of the commission's determination on the community, economy, industry generally and on the particular enterprise or industry concerned. The amendments propose to amend the section so that the commission is no longer required to consider the likely effects on industry generally and the particular enterprise or industry concerned.

The UFUA articulated their concern that requiring the QIRC to consider the financial position of the public sector entity may result in an imbalance if the state government reallocates resources away from certain entities when the matter is being considered by the QIRC.[38]

The QCU advised the committee that it believes that the greater emphasis on the fiscal strategy will further distort the balance between the interests of economic prosperity and social justice. They advised that the position of capacity to pay is already put before the commission in any wage case employers want to and this has been a longstanding practice of hearings.[39]

[36] Submission 11: 3
[37] Dr Blackwood, Transcript 30 May 2012: 2
[38] Submission 3: 4
[39] Mr Monaghan, Transcript 30 May 2012: 2

2.10 Clause 9 – Certifying an agreement

The LGAQ have suggested that amendment is required to proposed section 147A. They have indicated their concern that if for any reason an employer/employee certified agreement is used, the way the bill may be read is that it will still require the parties to have a signatory to the agreement.[40] The QIEU agreed that the effect of proposed section would be that an employer can refuse to engage with its workforce and their legitimate representatives and this would be counterproductive to good relationships.[41]

The IR Act (s156(1)(c)) currently provides that the QIRC must not certify an agreement unless it is satisfied the agreement is in writing and signed by or for all the parties. They advised the committee that where an agreement is proposed with relevant employee organisations, as would be the case in most instances, negotiations have commenced between the employer and the employee organisation and the employer subsequently seeks the approval of employees pursuant to the proposed section 147A, notwithstanding that an employee organisation may not have approved of the proposed agreement. Upon a valid majority having subsequently approved the agreement, the IR Act would appear to still require that the QIRC is unable to certify the agreement until the agreement is signed by or for all employee parties.[42]

They have suggested that this could be rectified by the inclusion of an additional clause within proposed section 147A stating that: '*subsection (5) does not prevent a relevant employee organisation being bound by the agreement under section 166(2)*.'[43]

They noted that the amendment they are proposing would provide assurance that should an employer move to an employer/employee agreement and if a proper ballet is conducted and the majority of employees agree and sufficient evidence is provided to the QIRC then there is no requirement for a signatory on behalf of the employees to the agreement.[44]

2.11 Committee Comments

The committee considers that the amendment proposed by the LGAQ is what was in fact intended in the drafting of the bill and the omission is a technical oversight. The committee therefore concurs with the suggestion as proposed by the LGAQ.

Recommendation 3

The committee recommends that the bill 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.

[40] Mr Goode, Transcript 30 May 2012: 7
[41] Mr Spriggs, Transcript 30 May 2012: 4
[42] Submission 14: 4
[43] Submission 14: 4
[44] Mr Goode, Transcript 30 May 2012: 7-8

2.12 Clause 10 – Protected industrial action

Clause 10 inserts a new section 174(3A) to provide that certain industrial action taken after the peace obligation period is protected from legal action only where the proposed sections 175, 176 and 177 are complied with.

2.13 Clause 11 – Proposed sections 175, 176, 177 and 177A

Clause 11 replaces current sections 175, 176 and 177 and replaces them and inserts a new section 177A. These sections deal with industrial action in relation to a proposed agreement.

Proposed section 176 sets out the requirements for industrial action by an employee organisation or by employees. The section requires that industrial action must be authorised by a ballot conducted under a protected action ballot. The section requires that industrial action is authorised by a protected action ballot if:

- a protected action ballot order has been made by the QIRC;
- the action was the subject to the protected action ballot;
- at least 50% of the employees on the roll of voters for the ballot voted;
- more than 50% of valid votes cast approved the industrial action; and
- the industrial action starts during the 30 day period starting on the date the results of the ballot are declared; or if the commission has extended the period, during the extended period.

The QTU highlighted that the limitation of a protected action ballot to 30 days after declaration (or 60 days if extended by the Commission) leads to a 'use it or lose it' situation which they believe is not conducive to bargaining.[45]

The QTU noted its concern that protected action ballots conducted by the ECU by postal ballot would be a major logistical exercise and a disability to unions in their representation of members. They noted that the provision requires 50% of the membership to cast a vote. The scope of this operation is magnified for QTU by the complexity of teachers employed as supply or contract and retired teachers and by teachers located in regional and remote areas. They advised that this leads to significant issues underpinning the entire process in relation to timeframes.[46]

The QTU provided anecdotal evidence from the Australian Education Union in Victoria, where their protected action ballot has had reports of teachers being incorrectly removed from the ballot roll after an electoral commission review and teachers not receiving ballot papers.[47]

The department advised, with respect to the concerns raised regarding the time frames included in the bill for protected ballots, that what is required to take place is a ballot. This is conducted by the ECQ and that is determined by their processes and procedures. Once the balloting has taken place and if requirements are met, then the period begins when industrial action can be taken.[48]

[45] Submission 2: 2
[46] Submission 2: 2
[47] Ms Edmonds, Transcript 30 May 2012: 7
[48] Dr Blackwood, Transcript 30 May 2012: 5

The QCU highlighted the fact that the amendment stipulates that a protected action ballot must be in the form of a postal ballot. They advised that the Fair Work Regulations stipulate that other forms of ballot are available such as:

- giving the notice to the employee personally or
- sending the ballot to the employee's email address at work (or to another email address nominated by the employee) or
- provision of an electronic link that takes the employee directly to a copy of the notice on the employer's intranet or
- by fax or
- by displaying a notice in a conspicuous location that is known by and readily accessible to the employee.[49]

The QCU considered that this range of options to be more practicable in certain circumstances and provides the parties with greater flexibility to adapt to short time frames. They suggested that emails are more convenient and less costly for the parties and costs can be reduced where the workforce is located in one central location and can register their vote in person over a set period of time.[50]

United Voice also suggested that ballots not be limited to postal ballot only. They advised that having a wider and more flexible range of options, including email, electronic link, fax etc would provide parties with greater convenience, choice and help minimise cost.[51]

The ETU also noted that the restriction to postal ballots included in the proposed amendments potentially make it difficult for workers to have access to the ballot in a timely manner.[52]

2.14 Committee Comments

The committee considers that it is sensible to offer alternative ballot formats where practical in line with those suggested in the Fair Work Regulations. The committee also considers that scope should be included within the parameters of the Act to electronic voting should the ECQ move in that direction in the future.

Recommendation 4

The committee recommends that the bill be amended to allow for additional ballot methods if the ECQ considers these other methods to be appropriate.

2.15 Clause 12 – Termination of protected industrial action by Minister

Clause 12 prescribes the circumstances and procedures under which the Minister may terminate protected industrial action in relation to a proposed certified agreement.

[49] Submission 6: 5
[50] Submission 6: 5
[51] Submission 8: 2
[52] Submission 10: 3

Proposed section 181E allows for the QIRC to have the power conciliate a matter to help the parties reach agreement during the post industrial action negotiation period. However, the commission is not allowed to make any order that is inconsistent with the termination declaration or direction. This section allows for a post industrial action negotiation of 21 days or 42 days if the commission extends the period.

The department advised that the ministerial power to terminate industrial action mirrors the Fair Work Act where declarations may be subject to similar criteria. They advised that this amendment brings the legislation into line with federal provisions that already apply to Queensland private sector employees. They further advised that this creates greater consistency across jurisdictions, enabling the entire industrial relations system to function more smoothly.[53]

The department also advised that this power has yet to be tested federally and it is expected that the minister would exercise the same caution in employing the state power and such declarations would only be made in extreme cases where it was considered in the public benefit to take such action. The advised that placing the power with the Attorney-General ensures that the power is linked to a position of accountability, both to Parliament and the public.[54]

The QCU confirmed that the similar provision in the Fair Work Act has not as yet been invoked and therefore it is not known whether it is effective and will assist in the resolution of disputes or acts as a hindrance to achieving this outcome. The QCU suggested that the intervention of the Minister should be restricted until the matter has been before the QIRC.[55]

The QTU articulated their concern that the termination provisions have the potential to be misused. They considered that as the majority of people covered by the Act are employed by government, it is inappropriate for a member of the government, as the employer, to have unilateral power to terminate protected industrial action. They consider that the power to terminate a bargaining period or make orders concerning industrial action should remain with an independent industrial relations commission as is currently the case.[56]

The UFUA advised that they consider there is not need to incorporate these provisions in the state system as there are sufficient powers already available. They advised that the Minister already has the authority to direct a declaration under section 148 be filed with the QIRC. They stated that there is a distinction between the circumstances whereby the Federal Minister and the State Minister might exercise such a power. The Federal provision allows the Minister to make a declaration when the government is not the employer.[57]

The UFUA also noted their concern that the 21 day negotiation period was unrealistically brief. They advised that their experience is that the machinery of government turns slowly and so a 21 day negotiation period is insufficient time for state government agencies. They suggested that a better option would be to allow the QIRC to conciliate and allow the tribunal member to assess the likelihood of an agreement being reached before referring the matter to arbitration.[58]

[53] Dr Blackwood, Transcript 30 May 2012: 2
[54] Dr Blackwood, Transcript 30 May 2012: 2
[55] Submission 6: 6
[56] Submission 2: 3
[57] Submission 3: 9
[58] Submission 3: 11

The CCIQ indicated their support for these powers to be vested with the Attorney-General on the basis that it brings Queensland into line with the Federal Minister in relation to their industrial relations jurisdiction. They noted that industrial action can have a negative impact on Queensland businesses and the community and they consider that severe economic and social damage must be mitigated.[59]

The ETU voiced their concern regarding the circumstances that would justify the termination of protected action by the Minister. They felt that there is a need for further clarification of these circumstances.[60]

2.16 Clauses 13 and 14 – Penalty provisions

The QCU noted their concern that the term industrial action is very broad and may not involve a threat of a strike or a stop-work meeting. They advised that it could involve during the legitimate bargaining process workers wanting to withhold work in relation to particular matters as a legitimate weapon. They are concerned that the provision allow for fines to be imposed on works for taking any form of industrial action.[61]

The ETU provided the committee of an example of where penalty provisions would have adversely affected workers. When the implementation of the new payroll system in Queensland Health occurred a number of workers did not get paid or received substantially reduced pays. They found that the only way they were able to get some assistance was to take industrial action. The action was technically illegal. Under the proposed changes these workers, who were already not getting paid could be fined $2,700 for participating in that kind of action when the only outcome they were after was to get a payroll person to come and sit down with them on the day after payday and go through their pay slip. Once they got that the industrial action was ceased.[62]

2.17 Clauses 5, 15, 16, 17, 19, 21, 22, 23 and 24 – Protected action ballots

The department advised that with regard to protected action ballot orders, the current act does not prescribe a clear process for the balloting of employees on matters giving rise to proposed industrial action in support of certified agreement negotiations. They advised that the Fair Work Act contains a number of regulatory provisions.[63]

The department advised the committee that the cost of conducting protection action ballots will be a cost borne by the government. They advised that it would not be reasonable to impose such a financial burden upon the industrial parties.[64]

2.18 Clause 18 – Government briefing on state's financial position etc

Clause 18 inserts a new clause which enables the treasury chief executive to, at any time, give the members of the QIRC a briefing about the State's financial position and fiscal strategy and related matters. The clause requires that the briefing be given in an open hearing or otherwise available to the public. The briefing is to be for information purposes only.

[59] Submission 4: 2
[60] Submission 10: 3
[61] Mr Battams, Transcript 30 May 2012: 9
[62] Mr Reichmann, Transcript 30 May 2012: 10
[63] Dr Blackwood, Transcript 30 May 2012: 2
[64] Dr Blackwood, Transcript 30 May 2012: 3

The department indicated, however, that whilst the briefing provided by the Under Treasurer is for information purposes only and the provision does not provide for other parties to raise issues, the commissioners will be able to put questions and clarify issues raised in the briefing. The department indicated that they would see that any questions put by the commission would be seeking to clarify information only.[65]

United Voice advised that they consider the proposed change to be unfair due to their being a lack of capacity or provision to interrogate or cross-examine the information by either the commission or other bargaining representatives.[66]

The QCU voiced their opinion that if the act is to contain such a provision, then the making of such briefings should only be made with respect to matters currently before the commission. They also felt that the information should be able to be examined. They felt that this provision gives one party an unfair advantage in matters before the commission.[67]

The QCU also noted its concern that government can produce figures base on economic advice, however, economic advice is variable depending on who is giving the advice.[68]

The QTU also questioned the admissibility, reliability and relevance of any information presented to the commission to be viewed in isolation. They stated that the ambit stating that this is merely information, not evidence, is inherently wrong.[69]

2.19 Clauses 25 - 58 – Amendments to Public Service Act

These clauses relate to the proposed changes to the Public Service Act which allow appeals to be heard by the QIRC.

The explanatory notes detail that it is no longer considered necessary to retain a distinct body to deal with public sector employment disputes. The department advised that the legislation moves the responsibility for dealing with appeals from the PSC to the QIRC in that industrial relations commissioners will be undertaking that work as opposed to an appeals officer located in the PSC. They confirmed that appeals matters will continue to be heard.[70]

2.20 Other issue

The BSCAA advised the committee of their support for the bill but suggested an improvement would be to have the legislation extended to cover contractors who are obligated by contract to comply with the proposed arbitrated outcome.[71] They advised that the QIRC in handing down decisions that will impact on the employment relationship should be able to hear the views of the parties to that employment relationship.[72]

[65] Dr Blackwood, Transcript 30 May 2012: 4
[66] Ms Badke, Transcript 30 May 2012: 3
[67] Submission 6: 6
[68] Mr Battams, Transcript 30 May 2012: 7
[69] Submission 2: 4
[70] Dr Blackwood, Transcript 30 May 2012: 7
[71] Submission 13: 1
[72] Mr Pollard, Transcript 30 May 2012: 8

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

3.1 Rights and liberties of individuals – does the bill have sufficient regard to the rights and liberties of individuals?

Clause 6 inserts a new section 144(4A) to provide that where, under proposed section 147A, an employer or one or more employee organisations are negotiating parties for an agreement and an employer asks employees to directly approve an agreement by voting for it, certain requirements will no longer apply. As the agreement becomes one between the employer and employees rather than between the employer and an employee organisation, the requirement to inform employees that an employee organisation can represent them in negotiations (section 144(2)(c)) and the requirement to give the employee organisation a reasonable opportunity to represent the employee in negotiations (section 144(3)) will no longer apply. This provision may therefore operate to remove the rights of employees to be represented by their employee organisation/union in negotiations over wage and employment conditions.

Employees from non-English speaking backgrounds may be significantly disadvantaged in their ability to fully comprehend the implications of what they have been asked to vote for. In addition there is the risk that employees may vote to accept a workplace or wage agreement under the misapprehension that the terms of the agreement as presented to them for the vote have been negotiated and settled between the employer and the employee organisation/union (as representative of the employees' interests) as they were the parties who had commenced the negotiations.

The committee asked the department to explain how employees' from non-English speaking backgrounds rights would be protected in terms of how proposed section 144(4A) applies. The department advised that they would not see any changes as a consequence of the amendments.[73]

Clause 7 inserts a new section 147A to provide that where an employer and one or more employee organisations are parties to a proposed agreement, an employer may directly ask employees to approve it. Such requests may only be made after the peace obligation period for the making of the agreement has ended. The employer may choose how to conduct the vote but must comply with section 144(2)(a) and (b). If a valid majority approves the making of the agreement it may be submitted to the QIRC for certification and the agreement is taken to be an agreement made between the employer and the employees.

[73] Dr Blackwood, Transcript 30 May 2012: 5

Clause 12 inserts a new Chapter 6, Division 6A '*Termination of protected industrial action by Minister*' to prescribe the circumstances and procedures under which the Minister may terminate protected industrial action in relation to a proposed certified agreement. The Explanatory Notes state that '*this division generally reflects provisions and ministerial powers already existing under the Commonwealth Fair Work Act 2009.'* The relevant provision in the Commonwealth Act is section 431. The Commonwealth Act allows the Minister to intervene and make a termination declaration where the effects of an industrial dispute is endangering, or threatening harm to, the community or the economy.

In Division 6A, new section 181B allows the Minister to make a written declaration terminating industrial action if satisfied that it is threatening or would threaten to damage the economy, the community or part of the economy, or is threatening or would threaten the safety and welfare of the community or part of it. The termination declaration is gazetted and takes effect on the day it is made. Section 181C requires the Minister to inform the QIRC and ensure parties to the proposed certified agreement are made aware of the termination declaration.

Section 181D prescribes that once a termination direction has taken effect, the Minister may give written directions to employees who will be covered by the agreement or employer or employee organisation parties to it, to take or not take stated actions if satisfied the direction is reasonably directed to reducing or removing threats, damage or danger from industrial action. Under sections 182 and 183 of the Act as amended by this Bill, persons not complying with a direction are liable to a maximum penalty of 135 penalty units ($13,500) for corporations and 27 penalty units ($2,700) for an individual.

Section 181E prescribes that once a termination direction takes effect during the post-industrial action negotiation period (as defined, up to 42 days after the termination declaration is made) the QIRC has the power to conciliate the matter to help parties reach agreement as if s.148 applied. Orders made by the QIRC using its powers under section 148 must not be inconsistent with the termination declaration or any direction given by the Minister. This section ensures that although the QIRC can take steps to conciliate the dispute under section 148, it cannot do anything inconsistent with both the declaration and directions. Section 181F prescribes that if the matters at issue in negotiation for the agreement have not been settled at the end of the post-industrial action negotiation period the QIRC must determine the matter by arbitration as quickly as possible as if section 149 applied.

The consequence of the granting of the powers under clause 12 to the Minister to terminate protected industrial action is an erosion of employees' right to take industrial action. The department advised the committee that these provisions are the same as those found in the Commonwealth Fair Work Act and have been the subject of considerable debate in the federal arena in their development.[74]

The new penalties created under this section in respect of section 181D declarations are comparable to others existing in the *Industrial Relations Act 1999*.

3.2 Rights and liberties of individuals – is the bill unambiguous and drafted in sufficiently clear and precise way?

In Chapter 6, division 6A, new section 181B allows the Minister to make a written declaration terminating industrial action if satisfied that it is threatening or would threaten to damage the economy, the community or part of the economy, or is threatening or would threaten the safety and welfare of the community or part of it.

[74] Dr Blackwood, Transcript 30 May 2012: 6

The Explanatory Notes state that: *It is anticipated that this power would only ever be utilised in relation to industrial disputes in essential services where there is a real threat to public safety and welfare or to the economy.*

When introducing this Bill to the House the Attorney-General stated in respect of the termination declaration power being proposed under section 181 that:

> ……*Intervention by the Queensland Government in industrial disputes will not be undertaken lightly and will only be utilized when there are strong public interest grounds warranting such action."* ([75]).

No guidance is given under the provision to indicate what criteria or matters, other than the Minister's own discretion, are to be considered by the Minister when determining if he/she is satisfied that there is an actual or potential threat to the economy, the community, or part thereof. In this way this provision is arguably ambiguous, especially given the serious action it authorises.

The committee asked the department whether additional guidance would be provided. The department advised that it is expected that the Minister would exercise caution in employing this power and that such declarations would only be made in extreme cases where it is considered in the public benefit to take such action. The Committee was advised that they consider that there are safeguards set out in the legislation around the use of the power.[76]

3.3 Legislation should not prejudice the independence of the judiciary

The former Scrutiny of Legislation Committee had recognised that an independent judiciary is an essential element of a parliamentary democracy based on the rule of law, a cornerstone of our democratic system of government.[77]

Clause 4 of this Bill amends the IR Act to require the QIRC to consider, when determining public sector wages and employment conditions, the prevailing economic conditions, being the financial position of the State and individual public sector entities, the State's fiscal strategy and public revenue. In respect of bodies outside the public sector such as local government, local government owned corporations, and parents and citizens associations, the QIRC is required to give consideration to the financial position of the employer.

The rationale for this as given in the Explanatory Notes for this bill is that, as the State's industrial relations jurisdiction is now concentrated on the public sector, with major employers being State and Local Government entities funded from public revenue, '*it is considered appropriate to amend the IR Act to recognise the importance of prevailing economic conditions.'* The Explanatory Notes further advise that this amendment to the object of the IR Act has been introduced to reflect the requirement for the QIRC to consider the public interest when arbitrating in accordance with section 149(5)(c).

Clause 8 amends section 149(5) to prescribe the things that are to be considered by the QIRC as part of the public interest in arbitrating the making of an agreement. For matters involving a public sector entity these things include the State's financial position and fiscal strategy, and the financial position of the relevant public sector entity. In matters involving a non-public-sector entity (ie. a local government, local government owned corporations or parents and citizens association) the employer's financial position is to be considered. The likely effects of a determination on the economy and the community are also to be considered in all matters.

[75] *Qld Parliamentary Debates* (Hansard), 17 May 2012, p.93
[76] Dr Blackwood, Transcript 30 May 2012: 6
[77] see *Alert Digest* 2005/6, p. 12; *Alert Digest* 2003/11, p. 17

For each thing the QIRC is required to report on their findings and the evidence or other material on which their findings are based.

These new requirements for section 149 will only apply to matters which have been referred to arbitration in accordance with sections 149(a), (b) or (c) of the Act after the commencement of this section.

There had previously been a requirement (section 320(5) IR Act) that, in making a decision, the QIRC consider the public interest, including the objects of the Act and the likely effects of their decision on the community, local community, economy, industry generally and the particular industry concerned. In respect of QIRC decisions under section 149 (re. arbitrating the making of a certified agreement), those decisions must (per clause 17) take into account the public interest as set down in section 149(5)(c) rather than be based on the public interest as described in section.320(5).

The State's fiscal strategy is set by the government of the day, who, in respect of this legislation, is frequently the employer. Where such fiscal strategy promotes or prioritises reduced government spending on public sector services or agencies, this would prima facie conflict with the pursuit, by public sector employees or their representative organisations, of public sector wage increases. Essentially it requires the QIRC to give particular consideration or 'weight' to the financial position and goals of one party (the government/employer) over the outcome sought by the other party to the agreement (the employees or the employees through their representative organisation).

Requiring the QIRC to take account of the State's financial position or fiscal strategy appears to have real potential to pre-empt the outcome of wage arbitration. This is because, where information given to the QIRC shows budgetary deficits and/or the Government's fiscal strategy dictates reduced public sector spending, the statutory requirement that the QIRC must, in their deliberations, take account of that financial situation or fiscal strategy, renders it unlikely that the QIRC would feel able to rule in favour of a wage increase. In addition it is true that, to a significant extent, the financial position of a public sector entity is tied to the budget allocation it receives from the government. In such a situation a public sector entity that received insufficient government funding would be in a position to challenge employee wage claims by pointing to the entity's operating deficit. A situation could conceivably arise where most or all future public sector wage claims could fail because the public sector entities that are the employers are able to show they lack capacity to pay higher wages. That lack of financial capacity in turn could be largely attributable to the government choosing to reduce the budget allocation set for those entities.

It could also reasonably be feared that consideration of the state's fiscal strategy by the QIRC will add to the complexity of QIRC deliberations with consequent delays in resolving matters.

Aside from those more practical matters, statutorily requiring government policy (or 'fiscal strategy') to be a 'relevant consideration' in the deliberations of a judicial body arguably erodes the doctrine of the separation of powers by legislative fettering of judicial independence and discretion. This is not unprecedented, however, with other legislation also prescribing matters to be taken into account by the judiciary (eg. the sentencing guidelines in the *Penalties and Sentences Act 1992)*.

In the case of the QIRC it has long had a broad capacity to inform itself of matters relevant to its deliberations. The existing section 149 of the IR Act already requires the QIRC to consider general economic issues when arbitrating on a matter. It is reasonable to presume that economic and financial considerations including the employer's capacity to pay higher wages would typically have been raised by parties (including the government as an employer) in respect of wage and employment matters brought before the QIRC and that the evidence presented by parties in support of their position would have been given due judicial consideration by the QIRC members.

Under the amendments to this Bill (clause 18 inserting new section 339AA), the treasury chief executive may brief the QIRC about the State's financial position, fiscal strategy and related matters at any time. These briefings are to be open to, or otherwise available to, the public. The Explanatory notes advise that: *This briefing is for information purposes only and there is no link between the briefing and any other proceedings before the QIRC."* As the information is not being given in evidence in a particular matter, nor being introduced into evidence by the State in its capacity as an employer during arbitration of a particular matter, arguably there is little scope for the other parties (employees and their representatives) to test the veracity of the information given in the briefing. It would be desirable for the QIRC, in fulfillment of its obligation to consider the financial position of the State when arbitrating in respect of a particular matter, to collate independent economic indicia from sources external to the Government, both to test the accuracy of the economic data presented on behalf of the State, and to reassure employees and their representative organisations that information sourced from one party to negotiations is not just being accepted in the consideration of a particular matter, untested by external verification.

Also, in relation to a potential erosion of judicial/quasi-judicial independence, orders made by the QIRC using its powers under section 148 must not be inconsistent with a termination declaration/direction given by the Minister (see section 181E(3)(a) which states that during the post-industrial action negotiation period the QIRC must not make any order that is inconsistent with the termination declaration or a direction given by the Minister under section 181D.)

3.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by section 23 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

3.5 Proposed New Offence Provisions

The following table details the proposed new offence provisions created by the bill:

Clause	Proposed offence	Proposed maximum penalty
Cl 19 664A (1) H	Failure to mark a ballot paper other than a ballot paper received by the person from the balloting agent for the ballot.	40 penalty units ($4,000)
Cl 19 664A (2)	Failure to protect the showing of an action ballot to another person, or allow another person to have access to a ballot paper except in the course of performing those functions or exercising those powers.	40 penalty units ($4,000)
Cl 19 664A (3)	Failure to protect an action ballot order; an order made by the commission in relation to a protected action ballot or action ballot order; or following a direction given by the commission, or the ECQ in relation to a protected action ballot or action ballot order.	40 penalty units ($4,000)
Cl 13 182 and 183	These provisions are specifically not 'offences' but attract penalties –see below: Cl. 13 inserts s181D(3) into the list of penalty provisions in s.182. Failure to comply with a s.181D(1) termination declaration means the non-compliant person (via s.181D(3) and 182) has contravened a penalty provision. Under s. 183(1), contravention of a penalty provision is not an offence; but under s.183(3) a magistrate may impose a penalty on a person who contravenes a penalty provision. Per s.183(3) the maximum penalty that can be imposed is 135 penalty units ($13,500) for a corporation and 27 penalty units for an individual ($2,700). Cl. 13 also inserts schedule 4, s.9(4) in the same way as s.181D(3) above.	135 penalty units ($13,500) for a corporation and 27 penalty units ($2700) for an individual

3.6 Key FLP issues for consideration

The committee wishes to highlight the following matters with respect to the FLP issues identified during the course of the inquiry:

- Provisions included under clause 6 may operate to remove the rights of employees to be represented by their employee association.
- Provisions included under clause 6 may significantly disadvantage employees from non-English speaking backgrounds in their ability to fully comprehend the implications of what they have been asked to vote for.
- Provisions included under clause 6 increase the risk that employees may vote to accept a workplace or wage agreement under the misapprehension that the terms of the agreement as presented to them for the vote has been negotiated and settled between the employer and the employee association.

- Provisions included under clause 12 may operate to erode an employees' right to take industrial action.
- Provisions included under clause 12 give no guidance to indicate what criteria or matters, other than the Minister's own judgement/discretion, are to be considered by the Minister when determining if he/she is satisfied that there is an actual or potential threat to the economy, the community or part thereof. This provision is arguably ambiguous, especially given the serious action it authorises.
- Provisions included under clauses 4 and 12 have potential to pre-empt the outcome of QIRC's deliberations.
- Provisions included under clauses 4 and 12 have potential to add to the complexity of QIRC deliberations with consequent delays in resolving matters.
- Provisions included under clauses 4 and 12 which statutorily require government policy to be a 'relevant consideration' in the deliberations of a judicial body arguably erode the doctrine of the separation of powers by the legislative fettering of judicial independence and discretion. It should be noted, however, that this is not unprecedented with other legislation also prescribing matters to be taken into account by the judiciary.
- Provisions included under clause 12 have potential to erode judicial/quasi-judicial independence due to the fact that orders made by the QIRC must not be inconsistent with a termination declaration or direction given by the Minister.
- Provisions included under clause 18 do not allow for the information provided by the Under Treasurer to be tested for its veracity as it is only provided as information and not being given in evidence in a particular matter.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Queensland Nurses' Union
2	Queensland Teachers' Union
3	United Firefighters Union of Australia
4	Chamber of Commerce and Industry Queensland
5	Together
6	Queensland Council of Unions
7	Australian Manufacturing Workers' Union
8	United Voice Queensland
9	The Australian Workers' Union
10	Electrical Trades Union of Employees
11	Australian Rail, Tram and Bus Industry Union
12	Queensland Independent Education Union of Employees
13	Building Service Contractors' Association of Australia Inc.
14	Local Government Association of Queensland

Appendix B – Witnesses at public hearing – Wednesday 30 May 2012

Witnesses
Ms Thalia Edmonds, Industrial Advocate, Queensland Teachers' Union
Mr John Oliver, State Secretary, United Firefighters Union of Australia Mr John Spreckley, Senior Industrial Officer, United Firefighters Union of Australia
Mr Nick Behrens, General Manager, Advocacy, Chamber of Commerce and Industry Queensland Ms Leanne Connell, Senior Policy Analyst, Chamber of Commerce and Industry Queensland
Mr Ron Monaghan, General Secretary, Queensland Council of Unions Mr John Battams, President, Queensland Council of Unions
Ms Kylie Badke, Senior Industrial Officer, United Voice Queensland
Ms Pat Rogers, Industrial Officer, Electrical Trades Union of Employees Mr Scott Reichman, Organiser, Electrical Trades Union of Employees
Mr John Spriggs, Senior Industrial Officer, Queensland Independent Education Union of Employees
Mr Craig Pollard, Senior Consultant, Jones Ross Pty Ltd representing Building Service Contractors' Association of Australia – Queensland Division, Industrial Organisation of Employers
Mr Tony Goode, Workforce Strategy Executive, Local Government Association of Queensland Mr Shaun Blaney, Senior Advisor, Industrial Relations and Governance, Local Government Association of Queensland

Appendix C – Officers appearing on behalf of the department at public briefing – Wednesday 30 May 2012

Witnesses
Dr Simon Blackwood, Deputy Director-General, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General
Mr Tony James, Executive Director, Private Sector Industrial Relations, Department of Justice and Attorney-General
Mr Michael Anderson, Manager Industrial and Employee Relations, Public Service Commission
Ms Candice Jacobs, Senior Policy Officer, Private Sector Industrial Relations, Department of Justice and Attorney-General

Dissenting report

Dissenting report

We the undersigned wish to notify of our dissent to the recommendation to pass the bill. Due to the shortened timelines allowed for consideration of the bill by the committee we have had insufficient time to provide a detailed statement of our reasons. We will detail the reasons for our dissent upon the resumption of the second reading debate.

Mr Curtis Pitt MP
Deputy Chair
Member for Mulgrave
Manager of Opposition Business, Shadow Minister for Treasury and Trade, Energy and Water Supply, Main Roads, Aboriginal and Torres Strait Islander Partnerships, Sport and Recreation

Mr Tim Mulherin MP
Member for Mackay
Deputy Leader of the Opposition, Shadow Minister for State Development, Infrastructure, Planning and Racing, Agriculture, Fisheries and Forestry, Local Government, Science, IT and Innovation