Industrial Relations and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Industrial Relations and Other Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

The objectives of the Bill are to give effect to Queensland Government response to the recommendations of the *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report* (the Review Report). The Review Report made 40 recommendations, 36 of which were accepted in full by the Queensland Government, and four were accepted in principle. Of the accepted in full recommendations, 31 called for legislative amendment.

The Bill also includes complementary amendments with the objective of addressing the risk of employers and employees being confused about the ability of entities to represent industrial interests where the entity is not an employer or employee organisation under the *Industrial Relations Act 2016* (IR Act) but is incorporated under the *Associations Incorporations Act 1981* (AI Act).

Achievement of policy objectives

The Bill's amendments to the IR Act strengthen protections against workplace sexual harassment, ensures the primacy of registered employee and employer organisations by providing a scheme whereby only industrial organisations can seek and provide representation rights for employees and employers, ensure that workers under the jurisdiction of the IR Act have access to prevailing employment standards, introduce minimum entitlements and conditions for independent courier drivers, update the collective bargaining framework to ensure access to arbitration by a single Commissioner during enterprise bargaining negotiations, and enhance equal remuneration in collective bargaining provisions.

The Bill's sexual harassment amendments are necessary to provide protections and deterrents against sexual harassment and sex or gender-based harassment connected with employment by adding key provisions to the main purpose of the IR Act; and replacing existing definitions of 'sexual harassment' and 'discrimination' in the IR Act with those contained in the *Anti-Discrimination Act 1991* (AD Act).

The Bill's amendment to the definition of 'industrial matter' to include sexual harassment and sex- or gender-based harassment will facilitate access to orders and permit the Queensland Industrial Relations Commission (QIRC) to exercise its general conciliation and arbitration powers for sexual harassment and sex or gender-based harassment complaints.

These provisions will ensure that sexual harassment is misconduct for the purposes of summary dismissal and require that the QIRC consider whether a dismissed employee engaged in sexual harassment or sex or gender-based harassment in deciding whether a dismissal was harsh, unjust or unreasonable.

The Bill amends the terminology used in the IR Act to provide clarity about the rights and responsibilities of employee and employer organisations registered under the IR Act to represent employees and employers. The Bill confirms that the rights and protections conferred upon these entities by the IR Act are limited to employee and employer organisations which are registered, or otherwise eligible for and seeking registration, under the IR Act. Under the IR Act registered organisations are subject to a range of accountability and transparency obligations including reporting to ensure they operate with rigour and integrity. The provisions clarify that an incorporated unregistered industrial association does not have the right to represent its members under the IR Act, and that the term "association" does not mean an entity with some distinct corporate personality from that of its individual members. The Bill clarifies the distinction between registered and unregistered bodies and the corresponding rights and obligations of such bodies and introduces penalties for the misrepresentation of an organisation's registration status under the IR Act.

The Bill updates Queensland Employment Standards (QES) to ensure personal and parental leave provisions of the IR Act are aligned with prevailing federal standards. This includes the provision of evidence for taking leave, flexibility in how unpaid parental leave is taken including in cases of stillbirth, increasing the age limit for a child from 5 to 16 years of age for the purposes of adoption-related leave or cultural parent leave, and removing language that implies gendered divisions in parental care.

The Bill responds to recommendation 25 of the Review Report. When making its decision in the annual State Wage Case, the full bench of the QIRC considers a range of matters, including whether to flow on the increase to state jurisdiction awards. Under the IR Act, award rates can be increased not only by the State Wage Case, but also through the rolling up of expired agreement rates. The amending provision provides explicit discretion for the QIRC to consider the unique features of the Queensland industrial relations jurisdiction when making its determination as to the application of a State Wage outcome on awards. In particular, the discretion relates to whether State Wage outcomes are to be flowed onto awards that have had the benefit of receiving rate increases through other means available under the Act and where increasing the award would exceed rates in a prevailing agreement or determination.

Amendments relating to incorporated associations

To achieve the objective of addressing the risk of employers and employees being confused about the ability of entities to represent industrial interests where the entity is not a registered employee or employer organisation under the IR Act, but is incorporated under the AI Act, the Bill amends the IR Act and AI Act.

The Bill provides that, if an association incorporated under the AI Act is subject to certain adverse orders or industrial penalties under the IR Act, then the chief executive under the AI Act must cancel the association's incorporation. This will ensure there are significant consequences for incorporated associations under the AI Act that, among other things, falsely present themselves as having a right to represent the industrial interests of employees or employers under the IR Act.

The Bill provides a mechanism to review applications for incorporation by associations and applications to register amendment of rules of an incorporated association, that have a purpose of furthering, or protecting, or representing the industrial interests of members or other persons. The purpose of the review mechanism is to ensure that the application cannot be approved if there is an objection ground – that is, if the application were to be granted, it would be reasonable for the incorporated association to be mistaken for an organisation under the IR Act; or an entity that has functions that are the same or comparable to an organisation under the IR Act; or an entity that is lawfully able to further, protect or represent the industrial interests of its members or other persons under the IR Act. The review mechanism will provide that all registered employee and employer organisations and State Peak Councils under the IR Act are made aware of the application, provide opportunity for an objection to be made in relation to the application, and provide for access to review rights under the IR Act.

Alternative ways of achieving policy objectives

For 31 of the accepted in full recommendations there is no alternative to achieve the policy objective other than through legislative reform.

Amendments relating to incorporated associations

No reasonably available alternative way to effectively achieve the objective has been identified. A non-legislative response would not provide the degree of clarity and certainty necessary to address the risk of employers and employees being confused about the ability of entities to represent industrial interests where the entity is not a registered employee or employer organisation under the IR Act, but is incorporated under the AI Act.

Estimated cost for government implementation

The Bill's repeal of the health employee-specific wage recovery provisions for historical overpayments are expected to have cost implications for government as an employer through Queensland Health. However, given the provisions being repealed were designed to respond to a unique and specific event in time, and not as an ongoing tool to allow Queensland Health to access recovery mechanisms not available to any other employer, and that the transitional provision will ensure that existing agreements concerning an overpayment or transitional loan between Queensland Health and a relevant employee continue to be recognised, the cost implications should be manageable and reasonable. Queensland Health will retain the same rights available to all other employers in relation to recovery of overpayments to employees.

While there are no direct cost implications to Government with the remaining provisions of the Bill, the following reforms will be accommodated within existing agency resources:

- increasing the age limit for a child (from 5 years to 16 years of age) for the purposes of adoption and cultural parent leave will expand access to adoptive or cultural parents for adoption-related or cultural parent leave;
- the expansion of the QIRC's jurisdiction to deal with workplace sexual harassment and workplace sex- or gender-based harassment will require the development of subject matter-specific guidance material for staff and members of the Commission;
- the QIRC's expanded jurisdiction in setting minimum standards of work for independent couriers can be expected to draw on the QIRC's resources particularly in the initial

determination-making phase and to a lesser extent over time in the agreement-making processes and in relation to disputes that arise; and

- complementary amendments relating to incorporated associations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles arising from the amendments to the registered employee and employer organisations framework are addressed below.

The amendments to the registered employee and employer organisations framework will:

- Clarify the existing framework for the registration of employee and employer organisations and the existing representation rights including that an unregistered entity does not have the right to represent a person's (including both employees or employers) industrial interests under the IR Act until and unless it becomes a registered employee or employer organisation;
- Permit the QIRC to, on application, make orders that an entity is ineligible for registration and supporting ancillary orders prohibiting an ineligible entity (or an associated entity) from representing a person, arranging for an agent to represent a person, or holding out membership on the basis of being able to provide representation in industrial matters; and
- Provide for civil penalties to be ordered against an entity which misrepresents its registration status and/or ability to lawfully act on behalf of a person's industrial interests under the IR Act.

Under the Bill, the QIRC continues to be responsible for determining whether an entity meets the criteria for registration, deciding applications for registration, and issuing ineligibility orders and/or penalties where an entity is found to be ineligible or has engaged in misrepresentation.

The amendments are considered to be justified as an individual employee or employer remains free to choose whether or not to become a member of an employee or employer organisation, association or other entity purporting to advance, protect and/or represent the industrial interests of a person or group of persons as provided for by the International Labour Organisation's *Freedom of Association and Protection of the Right to Organise Convention* (No 87) ratified by Australia. The Bill does not restrict an individual's freedom to join an ineligible entity, though it does seek to make clear that such entities cannot lawfully represent their members' industrial interests so as to reduce the risk of employees and employers being misled or confused about the ability of an entity to represent a person, or the entity's standing under the IR Act.

The purpose of the amendments are to ensure that employees' and employers' industrial interests are effectively represented by entities subject to regulation under the IR Act, rather than unregulated entities who are not required to fulfil the high level of governance duties under the IR Act. The amendments are designed to protect members interests by prompting integrity, accountability and transparency of the employee and employer organisations. The amendments are also considered to be consistent with a free and democratic society based on human dignity, equality and freedom as their application by the QIRC, a public entity under the *Human Rights*

Act 2019 (HR Act), is required to act compatibly and give proper consideration to human rights when making decisions/orders under section 58 of the HR Act.

Further, the exercise of administrative power to limit an entity's standing under the IR Act through ineligibility orders is justified as the Bill expressly provides the criteria for the QIRC to decide whether an entity may be registered as an employee or employer organisation under the IR Act. The entity may also apply to the QIRC for revocation of an ineligibility order (and any ancillary orders).

Amendments under the Associations Incorporations Act 1981

The amendments under the AI Act relating to incorporated associations may not accord with the fundamental legislative principle that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992)*. This is on the basis that the Bill includes a new ground to cancel incorporation of an association for certain IR Act contraventions, new requirements to refuse incorporation under the AI Act and new requirements to refuse to register amendments to rules of an incorporated association.

However, any potential breach of fundamental legislative principles is considered justifiable. The limitation is not considered significant, as individuals can still associate and express their views and beliefs through the established industrial relations framework, and there is an expected benefit resulting from reduced confusion about the status of organisations with respect to the IR Act.

The amendments under the AI Act relating to incorporated associations may not have sufficient regard to the fundamental legislative principles that legislation be consistent with principles of natural justice (section 4(3)(b) of the *Legislative Standards Act 1992)*, and that legislation should ensure that rights, liberties or obligations are dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a)). This is on the basis that the Bill removes a right of appeal to QCAT in relation to the chief executive giving notice of an application for incorporation or application to register amendment of rules to the Industrial Registrar.

However, any potential breach of fundamental legislative principles is considered justifiable, as there will remain a right of appeal against the substantive objection and notification process under the IR Act. This is considered to be the most appropriate avenue of appeal given the subject matter, and will maintain a single, coherent appeals process.

Consultation

Extensive consultation was held with stakeholders and experts, including but not limited to employers, registered employee and employer organisation and peak councils, and the legal profession, which helped inform understanding of the main issues. Initial consultation was undertaken between 16 July and 13 October 2021.

The independent reviewers held face-to-face meetings and sought written submissions from stakeholders. To help guide stakeholders in their written submissions, a discussion paper with questions to generate feedback relating to the Terms of Reference was provided to stakeholders. A total of 24 submissions were received, either written or oral.

Further targeted consultation was undertaken during the drafting of the Bill with key stakeholders from industry, government, and the legal profession. Two exposure drafts were distributed to stakeholders and the feedback received has been incorporated into the final draft of the Bill where appropriate.

Community organisations which participated in consultation for the Bill include the Queensland Council of Unions (QCU), the Queensland Nurses and Midwives Union (QNMU), Together Queensland (TQ), the Queensland Teachers Union (QTU), the United Voice Union, the Australian Workers Union (AWU), the Queensland Police Union (QPU), the Australian Manufacturing Workers Union (AMWU), the Australian Industry Group (AiG), Brisbane City Council, the Chamber of Commerce and Industry Queensland (CCIQ), the Local Government Association of Queensland (LGAQ), the Queensland Trucking Association (QTA), the Queensland Law Society (QLS), the Bar Association of Queensland, and Basic Rights Queensland.

No consultation was undertaken on the amendments relating to incorporated associations. However, the amendments are complementary to provisions in the Bill clarifying the rights and obligations of registered employee and employer organisations that have been subject to consultation.

Further community consultation was undertaken with key transport industry stakeholders on the Bill's courier driver provisions, with feedback received from the Transport Workers Union (TWU), the QCU, the AiG, the CCIQ, the QTA, Amazon Flex, Uber, Deliveroo and Menulog.

Government agencies which participated in consultation for the Bill include the Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney General, Queensland Human Rights Commission, Queensland Police Service, Public Service Commission, Department of Education, the Office of Best Practice Regulation, Queensland Health, Queensland Industrial Relations Commission, Public Trustee Office, and Department of Transport and Main Roads.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. The Bill's consistency with comparable reforms introduced by other jurisdictions is discussed below.

Workplace sexual harassment

Following the release of the national *Respect@Work* Report in March 2020, various Australian jurisdictions have introduced reforms to support the elimination of sexual harassment and sex- or gender-based discrimination.

Queensland's response to the *Respect@Work* Report will include other legislative reforms in addition to those introduced by the IR Bill, such as amendments arising from the Queensland Human Rights Commission (QHRC) review of the *Anti-Discrimination Act 1991* (AD Act). The QHRC review includes in its terms of reference consideration on whether the AD Act should contain a positive duty on employee and employer organisations to eliminate

discrimination and other objectionable conduct prohibited by the AD Act, similar to the duty contained in section 15 of the *Equal Opportunity Act 2010* (Vic).
In June 2021, the Australian Government introduced the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth) (the SD Amendment Act) responding to recommendations 16, 20, 21, 22, 29 and 30 of the *Respect @Work* Report. The SD Amendment Act was passed on 10 September 2021 and came into effect the following day. Among other matters, the SD Amendment Act provides that sexual harassment in connection with a person's employment can be a valid reason for dismissal, permits workers to apply for a 'stop sexual harassment order' from the Fair Work Commission, prohibits discrimination involving harassment on the ground of sex, extends sexual harassment protections to all paid and unpaid workers, and extends the time limit for the making of a complaint under the SD Act from six months to two years. The Australian Government also noted that the SD Amendment Act does not represent the entirety of the government's response.

In response to the 2016 Royal Commission into family Violence, the Victorian Government introduced the *Gender Equality Act 2020* (Vic) which was passed in Parliament on 20 February 2020 and took effect on 31 March 2021. The *Gender Equality Act 2020* requires the Victorian public service entities to take positive action toward achieving workplace gender equality. The *Gender Equality Act 2020* imposes a duty to promote gender equality on defined entities (i.e., the public sector, local councils, and universities). A defined entity must, in developing policies and programs in delivering service that are to be provided to the public or have a direct and significant impact on the public, consider and promote gender equality; and take necessary and proportional action towards achieving gender equality. This is complemented by the *Equal Opportunity Act 2010* under which employers have a positive duty to eliminate discrimination, sexual harassment, and victimisation as far as possible. The *Gender Equality Act 2020* includes in its objects identification and elimination of systemic causes of gender inequality in policy, programs, and delivery of services in workplaces and communities, and establishes the position of Public Sector Gender Equality Commissioner to provide education, support implementation, and enforce compliance.

In December 2021, the Western Australian Government introduced the *Industrial Relations Legislation Amendment Act 2021* (WA) (WA Act), which amended WA's *Industrial Relations Act 1979* (among other Acts) to provide for the making of stop sexual harassment orders by the WA Industrial Relations Commission, based on the provisions inserted into the *Fair Work Act 2009* (Cth) (FW Act) by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth). The provisions were intended to complement obligations in the *Work and Safety Act 2020* (WA) placed on a person conducting a business or undertaking (PCBU) to ensure, so far as is reasonably practicable, the health and safety of workers at work in the business or undertaking.

In October 2020, the South Australian Parliament passed the *Equal Opportunity (Parliament and Courts) Amendment Act 2020* (SA) which amended the *Equal Opportunity Act 1984* (SA) to make it unlawful for a Member of Parliament to sexually harass another Member of Parliament. Further, the SA Commissioner for Equal Opportunity undertook a Review of harassment in the South Australian parliamentary workplace, releasing the final report in February 2021. Notably, the review recommended that the Attorney-General considers a referral to the South Australian Law Reform Institute to review the benefits of amending the *Equal Opportunity Act 1984* (SA) to impose a positive duty on employers to prevent workplace sexual harassment and unlawful harassment, and for the Equal Opportunity Commissioner to

be provided with the powers to enforce that obligation and investigate systemic unlawful discrimination, including systemic sexual harassment.

Similarly, in April 2021 the New South Wales Sex Discrimination Commissioner delivered a review report of policies and procedures for Ministerial offices in relation to bullying, harassment and sexual misconduct. All review recommendations were accepted by the NSW Government. In July 2021, the NSW Parliament also engaged former Sex Discrimination Commissioner Elizabeth Broderick to conduct a review of the parliamentary workplace (including sexual harassment and misconduct), due to report in April 2022.

The Tasmanian Anti-Discrimination Commissioner also began its own review of the Tasmanian Ministerial and Parliamentary Services in July 2019, with the review still ongoing.

The Northern Territory Government has released a *Gender Equality Statement of Commitment* and *Gender Equality Action Plan 2022 – 2025* to support initiatives, processes and practices that drive equality for women, men, and people with diverse gender identities. The commitment did not include propose to investigate or introduce legislative amendments.

Similarly, the Australian Capital Territory Government established the *ACT Women's Plan 2016 – 2026* and *ACT Implementation Plan for the National Fourth Action Plan to Reduce Violence against Women and their Children 2012 – 2022*. In response to the recommendations of the *Respect@Work* Report, the Australian Capital Territory Government released a paper in 2021 agreeing or agreeing in principle to all recommendations and noting that some recommendations fall within the jurisdiction of the Commonwealth Government.

Employee and employer organisations

Commonwealth

Registered employee and employer organisations in the national jurisdiction are regulated by the FW Act and the *Fair Work (Registered Organisations) Act 2009* (FW (RO) Act). Both registered and unregistered organisations are defined as ‘industrial associations’ under the FW Act.

The FW (RO) Act does not define unregistered organisations. It provides for the conditions required to apply to become a registered organisation and the subsequent powers and obligations provided to and required of registered organisations. Chapter 5 of the FW (RO) Act regulates the conduct of registered organisations.

Unregistered organisations are not prohibited from forming in sectors or representing groups of employees already eligible to be covered by an existing union, but if such an organisation seeks registration the Fair Work Commission (FWC) may require an undertaking as to the avoidance of demarcation disputes before registering the organisation.

Unregistered organisations cannot obtain an entry permit or exercise right of entry powers. Unregistered organisations do not have a right to represent their members before the FWC in disputes or bargaining without the leave of the FWC. Unregistered organisations may represent their members if they have been appointed as bargaining representatives.

New South Wales

Registered employee and employer organisations in NSW are regulated by the NSW IR Act. Unregistered organisations are not included by the definition of 'industrial organisations' under the NSW IR Act. Unregistered organisations are classified as trade unions under the NSW IR Act, though the Act does not make further provision regarding trade unions beyond stating that the purposes of trade unions in restraint of trade are not unlawful.

Unregistered organisations cannot obtain an entry permit or exercise right of entry powers.

Unregistered organisations can form in sectors or represent employees already covered by an existing union. The NSW IR Act requires an organisation of employees seeking registration as an industrial organisation to ensure there is no other employee organisation to which the members might more conveniently belong, but unregistered organisations are not bound by these provisions unless they seek registration.

Members of unregistered organisations may be represented by an industrial agent (defined as a person receiving a fee for their services) before the Industrial Relations Commission of NSW. Under the NSW IR Act, employees or officers of registered organisations are exempt from the 'industrial agent' classification. Section 90A prohibits an applicant using an industrial agent to represent them in unfair dismissal claims where an order for compensation is sought, unless a certificate filed with the Industrial Registrar certifies they have reasonable grounds for believing the applicant's claim in the proceedings has reasonable prospects of success.

The NSW IR Act provides that only registered employee or employer organisations may enter into enterprise bargaining on behalf of their members and apply to the NSW Industrial Relations Commission for approval of an agreement.

Victoria

Victoria's *Equal Opportunity Act 2010* (Vic) distinguishes registered industrial organisations and unregistered industrial associations by defining a registered organisation as one formally recognised under a State or federal Act, and unregistered industrial associations as groups of employees or employers formed informally or formally to represent their members' views in a particular industry (excluding registered organisations).

The Act prohibits discrimination by a registered industrial organisation against applicants to or members of the organisation, a protection which does not extend to unregistered industrial associations.

The *Occupational Health and Safety Act 2004* (Vic) which provides for workplace rights of entry for officers of industrial organisations. Unregistered organisations cannot obtain an entry permit or exercise right of entry powers.

Western Australia

The *Industrial Relations Act 1979* (WA) (WA IR Act) defines an 'organisation' as an organisation as defined in the FW (RO) Act. The WA IR Act only permits registered organisations to represent their members in collective bargaining and access entry permits for authorised representatives of an organisation.

Australian Capital Territory

The *Discrimination Act 1991* (ACT) defines 'industrial organisations' as organisations registered or recognised under a federal, State or Territory law, and classifies unregistered industrial groups as 'industrial associations.'

Employment standards

The Bill aligns various entitlements under the QES to the equivalents under the National Employment Standards (NES) in the FW Act to ensure that workers in Queensland's industrial relations jurisdiction have access to equal or superior standards in comparison to the standards for workers in the federal jurisdiction. Amendments to the QES made by the Bill and the equivalent provisions under the NES are as follows:

- Clarifying that sick leave is, and always has been, exclusive of a public holiday that falls during the leave. The FW Act provides at section 98 that if a public holiday falls during a period of paid person/carer's leave taken by an employee, the employee will be taken not to be on paid personal/carer's leave on that public holiday.
- Providing that the evidence which an employer may require of an employee who is absent for more than two days on sick or carer's leave is to be evidence that would satisfy a reasonable person. Section 107 of the FW Act provides that an employee, if required by the employer, must give the employer evidence that would satisfy a reasonable person that the relevant leave is taken for a permissible reason under section 97, being illness or injury affecting the employee, or illness, injury or an unexpected emergency affecting a member of the employee's immediate family or household.
- Providing for an employee who is entitled to parental leave to take up to 30 days of flexible unpaid parental leave in an unbroken period or broken periods, within 104 weeks of the entitlement crystallising (e.g., the birth or adoption of a child). These provisions mirror section 72A of the FW Act.
- Providing that an employee who returned to work on a full-time basis following parental leave may apply to the employer to change to work on a part-time basis. This is consistent with section 65(1B) of the FW Act, which provides that an employee who is a parent or has responsibility for the care of a child, and is returning to work after taking leave in relation to the birth or adoption of the child, may request to work part-time to assist the employee to care for the child.
- Providing that an employee's entitlement to unpaid parental leave is available in cases of stillbirth, which the FW Act provides for in section 77A.
- Increasing the age limit in the definition of a 'child' for the purposes of adoption-related leave and cultural parent-related leave to 16 years, consistent with section 68 of the FW Act.
- Providing that the evidence which an employer may require of an employee who is intending to take birth-related leave (for the employee's own pregnancy or that of the employee's spouse) is to be evidence that would satisfy a reasonable person that the employee or employee's spouse is pregnant and the expected date of birth, consistent with section 74(4) and (6) of the FW Act. The amendment to the QES retains the employer's discretion to require that the evidence be a health practitioner's certificate, similar to the employer's discretion under the NES to require that the evidence be a medical certificate.

Independent courier drivers

The Bill introduces a new Chapter 10A which empowers the QIRC to make determinations setting minimum standards of work for independent courier drivers.

Currently, the federal *Independent Contractors Act 2006* (Cth) (IC Act) and subordinate *Independent Contractors Regulation 2016* (Cth) (IC Regulation) govern the services contracts under which independent couriers are engaged to perform work. The *Commonwealth of Australian Constitution Act* provides at section 109 that a Commonwealth law will prevail over a State law which is inconsistent with the federal instrument, with the State law being invalid to the extent of the inconsistency. The IC Act in section 7(1) makes express that the Act is intended to cover the field and exclude State or Territory laws from having application.

Section 7(2) of the IC Act provides that specified State laws may continue to apply despite subsection (1). Section 7(2) IC Act permits Chapter 6 of New South Wales *Industrial Relations Act 1996* (NSW IR Act) and Victoria's *Owner Drivers and Forestry Contractors Act 2005* to have application, as well as laws specified in the IC Regulation, which includes Western Australia's *Owner-Drivers (Contracts and Disputes) Act 2007.*

On 24 August 2020, the Minister wrote to the Commonwealth Attorney-General and Minister for Industrial Relations requesting in-principle agreement to amend the IC Regulation to permit the Queensland Government to introduce legislation setting minimum conditions for independent courier drivers modelled on Chapter 6 of the NSW IR Act. The Commonwealth Attorney-General requested that draft legislation and outcomes of consultation on same be provided before an amendment to the IC Regulation would be considered.

Draft legislation has now been prepared and consultation undertaken with stakeholders. The Commonwealth Attorney-General will be provided with the draft legislation and outcomes of consultation, and an exemption from section 7 of the IC Act requested in order to allow Chapter 10A of the Bill to have application. The Bill provides that Chapter 10A will commence by proclamation, which will be arranged should the exemption be obtained from the Commonwealth Government.

A discussion of the Bill's consistency with existing legislation in this area is below.

New South Wales

Chapter 10A of the Bill is modelled on Chapter 6, 'Public vehicles and carriers', of the NSW IR Act. The NSW IR Act confers powers on the Industrial Relations Commission of New South Wales (sitting as the Contract of Carriage Tribunal) to inquire into any matter arising under contracts of carriage and make a contract determination with respect to:

- remuneration of the carrier, and any condition, under such a contract;
- the reinstatement of a contract of carriage which has been terminated; and
- compensation for cancelled contracts of carriage.

Chapter 6 of the NSW IR Act applies to contracts of bailment and contracts of carriage.

Applications to the Contract of Carriage Tribunal for the payment of money may be made by the person to whom the money is payable, or an officer of the NSW IR Inspectorate with the consent of the aggrieved party.

The Contract of Carriage Tribunal may, after inquiry, make a contract determination with respect to the reinstatement of a contract of bailment or contract of carriage that has terminated. The Contract of Carriage Tribunal may also hear industrial disputes involving a bailor or principal contractor.

Associations of contract drivers representing at least 50 bailees or carriers may also seek registration as an industrial organisation under the NSW IR Act. An industrial organisation representing the interests of carriers may enter into a contract agreement with one or more principal contractors with respect to the conditions of contracts of a specified class and apply to the Contract of Carriage Tribunal for approval of the contract agreement, upon which the contract agreement would have effect.

Victoria

The *Owner Drivers and Forestry Contractors Act 2005* (Vic) (the Victorian Act) which provides for the Wage Inspectorate Victoria to provide information to contractors and hirers about the Act, monitor compliance, investigate potential contraventions, and prosecute offences under the Act.

The Victorian Act confers powers to the Small Business Commission to arrange the resolution of disputes through alternative dispute resolution, and to the Victorian Civil and Administrative Tribunal (VCAT) to hear and determine disputes from contractors or hirers on referral by the Small Business Commission should alternative dispute resolution be unsuccessful. VCAT may make any order is considers fair in relation to a dispute under the Victorian Act, including payment of a monetary sum to a party, the refund of money paid under a regulated contract, and specific performance of a regulated contract.

The Victorian Act applies to owner drivers who carry on a business of transporting goods in a vehicle, who supply and operate their own vehicle.

Western Australia

The *Owner Driver (Contracts and Disputes) Act 2007* (WA) (the WA Act) which provides for Industrial Inspectors to monitor compliance with and investigate contraventions of the WA Act. The WA Act applies to owner driver contracts entered into in the course of business by an owner driver with another person for the transport of goods in a heavy vehicle by the owner driver.

The WA Act confers power on the Western Australian Industrial Relations Commission (sitting as the Road Freight Transport Industry Tribunal) to hear and determine disputes arising under or in relation to the terms of an owner-driver contract; breaches of the WA Act; breaches of the Code of Conduct under the WA Act; and other matters arising in relation to the conduct of joint negotiations for a relevant contract.

Applications can be made to Road Freight Transport Industry Tribunal for disputes relating to a relevant contract by the aggrieved party of the contract, a transport association of the aggrieved party, an Industrial Inspector, or the Minister.

Equal remuneration and collective bargaining

The Bill introduces a new mechanism to further enshrine equal remuneration (ER) for work of equal or comparable value in collective bargaining which is, at time of writing, a unique feature in Australia's industrial relations jurisdictions.

ER is listed as an object of the NSW IR Act, *Industrial Relations Act* 1979 (WA) and *Fair Work Act 1994* (SA).

Currently, Western Australia, the Northern Territory, Australian Capital Territory and Victoria have no legislative requirements for ER to be addressed in collective bargaining.

Both the Tasmanian Industrial Commission and New South Wales Industrial Relations Commission have adopted equal remuneration or pay equity for men and women doing work of equal value as a wage fixing principle in the making of awards, though do not require that ER is provided for in a bargained agreement.

South Australia's *Fair Work Act 1994* (SA) which provides that a rate of remuneration fixed by a contract of employment, or an award or enterprise agreement, must be consistent with the International Labor Organisations' C100 Equal Remuneration Convention, 1951.

In Victoria and the federal jurisdiction, agreements are made under the *Fair Work Act 2009* (Cth), where Part 2-7 allows the FWC to make orders to ensure that there will be equal remuneration for men and women workers for work of equal or comparable value.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act which will be the *Industrial Relations and Other Legislation Amendment Act 2022.*

Clause 2 provides that Part 3 of the Bill, which introduces a new Chapter 10A relating to independent courier drivers, will commence on proclamation. The commencement on proclamation is due to the requirement for an exemption from the coverage of the *Independent Contractors Act 2006* (Cth) to be obtained from the Australian Government before these provisions can have effect.

Part 2 Amendments of Industrial Relations Act 2016

Division 1 Preliminary

Clause 3 provides that Part 2 and schedule 1 of the Bill amend the *Industrial Relations Act 2016.*

Division 2 Amendments commencing on assent

Clause 4 amends section 4(i) (How main purpose is primarily achieved) to include preventing and eliminating sexual harassment, sex or gender-based harassment.

Clause 5 amends section 40 (Entitlement to sick leave) to clarify that if a public holiday falls during a sick leave period, the employee is entitled to be paid the public holiday (rather than debited the sick leave).

Clause 6 amends section 41(1)(b) (Requirement for employee to give notice etc.) to provide that if an employee is absent for more than 2 days and the employer requires evidence of the illness, the employee must provide the employer sufficient evidence of the illness to satisfy a reasonable person. Prior to amendment, section 41(1)(b) provided that if absent for more than 2 days, an employee's entitlement to sick leave was conditional on the employee giving the employer a doctor's certificate or other evidence of the illness to the employer's satisfaction.

Clause 7 amends section 45(1) (Employee to provide evidence to employer) to provide that an employee taking carer's leave for more than 2 consecutive days must (if required by the employer) give the employer sufficient evidence to satisfy a reasonable person that the person requiring care or support by the employee is unwell with an illness. Prior to amendment, section 45(1) required an employee (if required by the employer) to provide the employer a doctor's certificate or statutory declaration evidencing that the person is ill with an illness requiring care or support by another person.

Clause 8 amends section 57 (Definitions for division) to omit the definition of 'maternity leave' as this language implies gendered division of parental care. Section 57 is also amended to include a definition for 'stillborn child'. The Bill defines 'stillborn child' as a child who has

shown no sign of respiration or heartbeat, or other sign of life, after delivery of the child has been completed, and who has been gestated for 20 weeks or more or weights 400g or more.

Clause 8 also amends section 57 to amend the definition of 'child' for the purposes of adoption leave and cultural parent leave. The amendment increases the age of a child, as defined for the purposes of the relevant leave, from 5 years to 16 years. Clause 8 further amends section 57 to amend the definition of 'long birth-related leave' as a consequence of the amendment to the term 'maternity leave'.

Clause 8 amends the definition of 'short adoption leave' in section 57 (Definitions for division) to replace the words 'placed with' with 'adopted by'. Clause 8 also amends section 57 to amend the definition of 'short birth-related leave' to enable this leave provision to also be available when a pregnancy ends with a stillborn child.

Clause 9 amends section 58 (Application of subdivision) to insert new section 58(2) to provide that the subdivision applies subject to section 87B. Section 87B ends an employee's entitlement to parental leave under this subdivision when the employee takes unpaid flexible parental leave under that section.

Clause 9 also amends the definition of 'continuous service' in section 58(2) to replace the term 'employment contract' with the term 'contract of employment' for consistency in the IR Act.

Clause 10 amends section 59(1) (Entitlement to birth-related leave) to replace the term 'maternity' with the term 'birth-related' to remove language implying gendered divisions of parental care.

Clause 10 also amends section 59(3)(a) (Entitlement to birth-related leave) to replace the term 'maternity leave' with 'long birth-related leave'.

Clause 11 amends section 63 (Employee notice – intention to take maternity leave) to replace the heading with 'Employee notice – intention of pregnant employee to take birth-related leave'.

Clause 11 amends section 63(1) and 63(2) to replace gendered language e.g. 'maternity leave' to 'birth-related leave' and 'she' to 'the employee'.

Clause 11 also amends section 63(3)(a) to provide that an employee must (if required by the employer) give the employer sufficient evidence to satisfy a reasonable person that the employee is pregnant and the expected date of birth. Prior to amendment, section 63(3)(a) required an employee (if required by the employer) to provide the employer a doctor's certificate confirming that the person is pregnant and the expected date of birth. Clause 11 further amends section 63(4) to retain the employer's discretion to require that the evidence to be provided by an employee is to be a health practitioners' certificate. 'Health practitioner' is defined in Schedule 5 and means a health practitioner registered to practice under the Australian Health Practitioner Regulation Agency; for example a midwife, doctor, or Aboriginal and Torres Strait Islander health practitioner. Sufficient evidence to satisfy a reasonable person is not defined, though relevant matters for the purposes of such evidence may include the issuing entity, the date of attendance, and the employee's condition.

Clause 12 amends section 64 (Employee notice – intention to take birth-related leave other than maternity leave) to replace the heading with 'Employee notice – intention of pregnant employee's spouse to take birth-related leave'. This amendment removes gendered language.

Clause 12 amends section 64(1) to clarify this provision applies to an employee who wishes to take birth-related leave because the employee's spouse is pregnant or has given birth to a child.

Clause 12 also amends section 64(3)(a) to provide that an employee must (if required by the employer) give the employer sufficient evidence to satisfy a reasonable person that the employee's spouse is pregnant and the expected date of birth. Prior to amendment, section 64(3)(a) required an employee (if required by the employer) to provide the employer a doctor's certificate confirming that the employee's spouse is pregnant and the expected date of birth. Clause 12 also inserts a new subsection 64(4) to retain the employer's discretion to require that the evidence to be provided by an employee is to be a heath practitioner's certificate; for example a midwife, doctor, or Aboriginal and Torres Strait Islander health practitioner.

Clause 13 amends section 67(1)(b) (Reasons not to give notice or documents) to replace the term 'placement date' (in relation to the date a child is placed for adoption) with the term 'adoption date'. This provides consistency with the *Adoption Act 2009*.

Clause 13 also inserts a new subsection 67(2)(c) (Reasons not to give notice or documents) clarifying that, for the purpose of taking birth-related leave, in the event of the birth of a stillborn child, the employee must provide the employer with a health practitioner's certificate (for example a midwife, doctor, or Aboriginal and Torres Strait Islander health practitioner) stating the date on which the child was stillborn.

Clause 14 amends the heading of chapter 2, part 3, division 8, subdivision 4 (Application to extend parental leave or return part-time) to replace the term 'return' with the term 'work'.

Clause 15 amends section 73(1) (Application for extension of parental leave) to provide that an employee may apply to an employer for an extension of parental leave for an unbroken period of up to 104 weeks in total, minus the period of any short parental leave taken by the employee. This amendment supports flexibility for employees to access parental leave and does not change the total amount of leave available to workers under the IR Act.

Clause 16 inserts a new subsection 74(1) (Application to work part-time) to provide that an employee who returned to work on a full-time basis after taking parental leave may apply to the employer to change to work on a part-time basis. This provision supports the flexible work arrangement provisions in the IR Act.

Clause 17 amends section 75(1)(b) (Application for extension or part-time work) to insert a new subsection (iv) providing a timeframe for an employee's application to extend parental leave under section 73 or to work part-time under section 74. The application must be made at least 7 weeks before the requested change is to start.

Clause 17 also makes minor amendments to section 75 to provide consistency and reflect the applications that may be made under section 73 or section 74.

Clause 18 amends section 78 (Cancelling parental leave) to provide for the cancellation of parental leave in the case that a relevant pregnancy ends in the birth of a stillborn child. Clause

18 also makes minor amendments to section 78 to replace the term 'placement' (in relation to the adoption of a child) with the term 'adoption'.

Clause 18 also amends section 78(4) to provide that the section does not affect an employee's entitlement to special pregnancy-related leave or sick leave under section 85, or an employee's entitlement to short birth-related leave under section 59 if the pregnancy of an employee's spouse ends other than by the birth of a living child or a stillborn child, or an employee's entitlement to birth-related leave for the birth of a stillborn child under section 85A.

Clause 19 amends the section 85 heading (Special maternity leave and sick leave) to replace 'maternity leave' with 'pregnancy-related' for the Bill's consistency in adopting gender neutral language.

Clause 19 also amends section 85 to provide for the birth of a stillborn child for the purposes of an employee's entitlement to unpaid birth-related leave and/or paid sick leave, and replace 'doctor' with 'health practitioner' (for example: a midwife, doctor, or Aboriginal and Torres Strait Islander health practitioner) for the purposes of the provision of evidence to an employer for the taking of special pregnancy-related leave. Clause 19 also makes minor amendments to remove gendered language.

Clause 20 inserts a new section 85A (Birth-related leave – stillborn child) to provide an entitlement to birth-related leave where an employee's pregnancy ends by the birth of a stillborn child. This entitlement enables the employee and the employee's spouse to access birth-related leave as they would have had the child been born living. Under the parental leave provisions of the IR Act, the employee and the employee's spouse are taken to be responsible for caring for a child.

Clause 21 inserts a new section 87B (Flexible parental leave) to provide flexibility under parental leave provisions for employees to access 30 days unpaid flexible parental leave. The amendment sets out the criteria to access this leave entitlement. If, under Chapter 2, Part 3, Division 8, Subdivision 2 (Parental leave entitlement) an employee is entitled to parental leave to be responsible for the care of the employee's child, and the periods of parental leave the employee has taken for the child, if any, total less than 52 weeks, the employee is then entitled to a maximum of 30 days unpaid flexible parental leave in relation to the child. The flexible parental leave entitlement ends:

- when the employee's total periods of parental leave exceeds 52 weeks;
- when the number of days of flexible parental leave taken by the employee expressed as a 5-day work week by addition of 2 days of notional weekend for each 5 days of leave taken exceeds 52 weeks; or
- when 104 weeks (2 years) have lapsed after:
  - the child was born; or
  - the child was adopted by the employee; or
  - the child started living with the employee under a surrogacy arrangement, or
  - the child's parentage was transferred to the employee under a cultural recognition order.

The flexible parental leave may be taken:

- whether or not the employee has taken any of the parental leave they are entitled to; and
- in an unbroken or broken periods; and

- concurrently with the employee's spouse's parental leave for the child (if the total period of the parental leave taken by the employee for the child concurrently with the employee's spouse does not exceed 8 weeks).

The entitlement to flexible parental leave will apply jointly in the instance of a multiple birth, or adoption on the same day of multiple children (i.e., the entitlement does not apply separately in relation to each child).

The entitlement to parental leave in relation to a child ends on the first day the employee takes flexible parental leave in relation to the child.

For clarity, reference to parental leave in section 87B refers to parental leave entitlements taken by an employee under Chapter 2, Part 3, Division 8, Subdivision 2 (Parental leave entitlement) but does not include parental leave taken as part of an application for extension of parental leave under section 73.

Clause 22 amends section 88 (Return to work after parental leave etc.) to replace gendered language and provide that the section applies to an employee who returns to work after special pregnancy related-leave or sick leave under section 85 (in addition to parental leave).

Clause 23 amends section 89 (Transfer to a safe job) to replace gendered language. Clause 23 also amends section 89(2)(a) to replace the term 'doctor' with the term 'health practitioner', which is consistent with other amendments of the Bill.

Clause 24 amends section 90 (Continuity of service) to provide that a period of flexible parental leave under section 87B does not affect an employee's continuity of service for the purposes of calculating entitlements such as long service leave.

Clause 25 amends section 121 (What employer must do to dismiss employee) to include sexual harassment or sex or gender based-harassment as a type of misconduct for the purposes of the notice period otherwise required for an employee's dismissal under section 123. An employer will not be required to give the employee the notice period required by section 123 if the employee engages in misconduct.

Clause 26 amends section 173 (Parties must negotiate in good faith) to require negotiating parties to obtain, and disclose early in the bargaining period, any information reasonably requested by a bargaining party that is relevant to understanding the gender pay gap of the employees to be covered by the proposed bargaining instrument, including but not limited to: the distribution of the employees by gender; the details of the gender pay gap; any major factors identified as contributing to the gender pay gap; if appropriate, the projected effect of the proposed bargaining instrument on the gender pay gap; any other information relevant to the gender pay gap reasonably requested by another bargaining party; and any other matter prescribed by regulation.

Clause 26 also defines the 'gender pay gap', for the purposes of a proposed instrument, as being the difference between the average weekly full-time equivalent earnings of male employees and female employees covered by the proposed instrument.

Clause 27 amends section 178 (Consent application for arbitration) to insert a new subsection (2)(c) providing that the application must state if the parties agree that the full bench may refer the matter for arbitration by a commissioner sitting alone.

Clause 28 inserts a new section 179A (Constitution of commission for arbitration proceedings) to provide that where the negotiating parties to a bargaining instrument request the assistance of the QIRC to reach agreement and the matter has subsequently been conciliated, with the conciliating member being satisfied that the parties are unlikely to reach agreement in further conciliation or all of the negotiating parties may apply to the commission for arbitration of the matter, the full bench of the QIRC must arbitrate the matter. The new section 179A also provides that the full bench may refer arbitration of the matter to a commissioner sitting alone with the consent of all the negotiating parties. The full bench is not required to convene a hearing or consider any submissions when deciding if it should exercise it discretion to refer the arbitration to a commissioner sitting alone. If the full bench refers arbitration to a commissioner sitting alone, the appeal rights remain as if the arbitration had not been referred to a commissioner sitting alone.

Clause 29 amends section 201 (Equal remuneration) to clarify that a proposed agreement or bargaining instrument must include information setting out how equal remuneration for work of equal or comparable value will be achieved in practice.

Clause 30 amends section 246 (Definition for chapter) to insert a new paragraph (e) to provide that the definition of *wage-related information* also includes information relevant to the gender pay gap set out in the regulation.

Clause 31 amends section 250(2)(c) (Requirement for application relating to proposed bargaining instrument). The amendment requires that when a bargaining instrument allows different groups of employees to be remunerated differently, the accompanying affidavit to the application for a certified bargaining instrument must state the reasons for the differential treatment of wages for the different groups of employees. This amendment supports the principles of equal remuneration and bargaining in good faith.

Clause 31 also amends section 250(3) remove the requirement for the affidavit that must accompany an application for the certification of a proposed bargaining instrument to be signed by or for each of the parties to the agreement.

Clause 32 amends section 260 (Definitions for chapter) to omit the definition of ‘party’.

Clause 33 amends section 279 (Definitions) to omit the definition of ‘industrial association’.

Clause 34 amends section 290 (Meaning of ‘engages in industrial activity’) to replace the term ‘industrial association’ with ‘industrial organisation’. The amended section now provides that a person engages in industrial activity as stated in the section if the person does so in relation to an industrial organisation, as defined in Schedule 5 of the IR Act.

Clause 34 also amends the legislative note under section 290(b) to replace the term ‘industrial association’ with ‘industrial organisation’. The amended note now clarifies that for subparagraph (vii), representation of a person (employer or employee) by an employee or employer organisation includes a member, delegate or officer of an industrial organisation making representations or advocating on the person’s behalf.

Clause 34 further amends section 290 to insert new subsection (c). The amended section now provides that a person engages in industrial activity if the person gives or distributes

information, or organises or encourages discussion, about the wages and employment conditions of employees or workplace rights for or on behalf of an industrial organisation. For clarity, a person engages in industry activity if either subparagraphs (i) and (ii) occurs under section 290(c).

Clause 35 amends the heading of section 293 (Misrepresentations) to read 'Misrepresentations – engaging in industrial activity' to clarify that the section relates to misrepresentations about a person's obligations regarding industrial activity. Clause 35 further amends section 293 to replace the term 'industrial association' with 'industrial organisation'.

Clause 36 inserts a new section 293A (Misrepresentation – right to represent). New subsection 293A(2) provides that a civil penalty may be ordered against a person or other entity who makes a false or misleading representation to another person that the person or entity has the right to represent the industrial interests of a person or a particular group of persons. An entity includes a person or an unincorporated association or body that is not an organisation. Subsection 293A(3) further provides that for subsection (2), an entity does not have the right to represent the industrial interests of a person or a particular group of persons only because the entity's rules state it has that right.

Clause 37 amends the definition of 'short term casual employee' in section 315 (Employees to whom this part does not apply) to reduce the period of time over which an employee must be engaged on a regular and systematic basis from one year to six months.

Clause 38 amends section 320 (Matters to be considered in deciding an application) to insert a new subsection (2) providing that the QIRC may decide that a dismissal was not harsh, unjust or unreasonable if the employee's conduct was unlawful, or included sexual harassment or sex or gender-based harassment.

Clause 39 omits section 354A (Definition for division) as the provision is redundant and omission supports consistency in defining the responsibilities of employee and employer organisations. Prior to amendment, the section defined 'registered employee organisation', for the purposes of Chapter 9, part 1, division 6, as an employee organisation that is registered under Chapter 12.

Clause 40 amends section 375 (Payment of unpaid wages if employee's whereabouts unknown). The amendment requires an employer to pay unpaid wages, that are owed to a former employee, to the Public Trustee immediately once 30 days have lapsed following the employee's employment ending. Prior to amendment, the section provided that the unpaid wages be paid to the nearest clerk of the Magistrates Court.

Clause 40 further amends section 375(4) to provide that the Public Trustee must deal with the amount as unclaimed moneys under the *Public Trustee Act 1978.*

Clause 41 amends section 418(4)(a) (Appointment of vice-president) to define a 'relevant entity' (for the purposes of section 418) to include an organisation, a State peak council or another entity that represents the interests of employers or has members who are employers.

Clause 42 amends section 442(3)(a) (Industrial commissioners) to define a 'relevant entity' (for the purposes of section 442) to include an organisation, a State peak council or another entity that represents the interests of employers or has members who are employers.

Clause 43 inserts a new section 459A (Provision about general ruling for State wage case) to provide the Commission with express discretion when considering whether to apply a State Wage Case general ruling to awards. A unique feature of the Queensland industrial relations jurisdiction is that awards, including increases to rates of pay, can be amended by a variety of means, including through rolling up of provisions from expired agreements. Section 145 provides for the flow-on of clauses (including clauses regarding rates of pay) in a certified agreement or determination into a parent award on application to the Commission.

The State Wage Case also facilitates increases in awards when the Commission determines to flow on the outcome. Since 2011 the full bench of the QIRC has mirrored the outcome of the Fair Work Commission's Expert Panel in its decision in the Annual Wage Review and all awards, regardless of whether they have received rate increases through other means have been increased. As of result of SWC outcomes being flowed on to all awards and the unique features under the IR Act, from time to time some award rates have exceeded the relevant agreement or determination rates for employees, most specifically in relation to public sector awards. Clause 43 provides the QIRC with discretion to limit the application of a State Wage Case increase so that it does not apply to an award or awards that would result in the increase exceeding award rates above the agreement or determination. This amendment is consistent with of the main purposes of the Act in relation to the primacy of collective bargaining as the means for determining wages and conditions for employees.

Clause 44 amends section 468 (Who may apply for an interpretation of an industrial instrument) to provide that a person who satisfies the QIRC that the person is not acting for an entity (other than an industrial organisation) that purports to represent the industrial interests of employees covered by the instrument may apply for an interpretation of an industrial instrument under section 467.

Clause 44 further amends section 468(2)(b) to provide that an employee or employer organisation (or other person) bound by an agreement or award may apply for an interpretation of the instrument. Clause 38 also amends section 468(2)(c) to provide that an employee whose employment is subject to the agreement or award may apply for an interpretation of the instrument, if the employee satisfies the QIRC that the employee is not an officer of, or acting for, an entity (other than an industrial organisation) that purports to represent the industrial interests of employees covered by the agreement or award.

Clause 45 amends section 473 (Power to grant injunctions) to make clear that the QIRC may grant an injunction that it considers appropriate to prevent or settle an industrial dispute involving allegations of sexual harassment or sex or gender-based harassment.

Clause 46 amends section 474(1) (Who may apply for an injunction) to provide that an applicant for an order in relation to a contravention, or alleged contravention, of a civil penalty provision may apply for an injunction under section 473.

Clause 46 also amends section 474 to omit subsection (2), removing the requirement for an application for an injunction by an organisation must be under the organisation's seal and signed by the organisation's president and secretary.

Clause 47 omits section 478 (Definitions for subdivision), removing the definitions for 'association' and 'right to represent' for the purposes of Chapter 11, Part 2, Division 4, Subdivision 10 (Orders about right to represent a group of employees).

Clause 48 amends section 479 (Power of full bench to make orders about rights of associations or employee organisations to represent) to omit the word 'association(s)' throughout the section and heading to clarify that such orders may only be made about an organisation. Clause 48 further amends section 479(b) and (c) to clarify that the 'right to represent' refers to the right to represent the industrial interests of a particular group of employees.

Clause 49 amends section 480 (Who may apply for order) to provide that the entities that may apply for an order under section 479 are an organisation or an employer.

Clause 50 amends section 481 (Limitations on when order may be made) to omit the term 'association' throughout the section and replace it with the term 'organisation' where appropriate.

Clause 50 amends section 481(2)(a) to insert a new 481(2)(a)(iii) providing that the QIRC may make the order only if satisfied that the conduct (or threatened conduct) of an organisation to which the order would relate (or an officer, member or employee of the organisation) is preventing, obstructing or restricting negotiations or discussion between the employer and another organisation or the employer and the employer's employees.

Clause 50 also amends section 481(2)(b)-(d). Section 481(2)(b) provides that the QIRC may make the order if it is satisfied that the organisation or its officer, member or employee of the organisation is making representations or has made representations directed to employees that the organisation has rights and functions, which it does not have, under the IR Act. The amendment to section 481(2)(c) also recognises the consequences of the conduct, threatened conduct or representations may have stopped but are expected to recur or the consequences are imminent. 50 Section 481(2)(d) is omitted as it is absorbed into the previous amendments.

Clause 51 inserts a new Chapter 11, Part 2, Division 4, Subdivision 10A (Orders about entities not eligible for registration under chapter 12), containing new sections 483A to 483F.

Clause 51 inserts a new section 483A(1) (Meaning of *eligible for registration under Chapter 12*) which provides that for the purposes of the subdivision, an entity is eligible for registration under Chapter 12 of the IR Act as an employee organisation if:

- the entity is an association; and
- the entity satisfies the criteria for registration mentioned in sections 607(1)(a) and (d) and 608(1)(a), (b) and (d); and
- the entity has, under the entity's rules, passed a resolution in favour of being registered under Chapter 12 of the IR Act; and
- the entity has members who are employees; and
- the entity has applied for registration within a set time frame once it has a certain number of members, being the earlier of:
  - if the entity had at least 20 members who are employees for a continuous period of at least 12 months, within 12 months of signing up the 20th member; or

  - if the entity had at least 100 members who are employees for continuous period of at least 4 weeks, within the 4 week period of signing up the100th member; and
- the entity has not been refused an application for registration under Chapter 12 within the past 5 years.

Clause 51 inserts a new section 483A(2) which further provides that an entity will be eligible for registration under Chapter 12 as an employer organisation if:
- the entity is an association or corporation; and
- the entity satisfied the criteria for registration mentioned in section 607(1)(a) and (d) and 609; and
- the entity has not been refused an application for registration under Chapter 12.

Clause 51 inserts a new section 483B (Power of commission to make order about ineligible entity) which provides that on application by an entity under section 483C, the QIRC may make an order declaring an entity (other than an organisation) to be an ineligible entity. The QIRC may make such an order if it is satisfied that the entity is not eligible for registration under Chapter 12 as an employee or employer organisation, or if registration of the entity under Chapter 12 would be inconsistent with the IR Act.

Clause 51 inserts a new section 483C (Who may apply for order) which provides that the following entities may apply for an order that an entity is ineligible for registration under section 483B: an organisation, an entity that is eligible for registration under Chapter 12 as an employee or employer organisation, or an employer.

Clause 51 inserts a new section 483D (Ancillary orders) which permits the QIRC to make secondary orders it considers necessary to support an order made under section 483B, including:
- an order prohibiting an officer or employee or agent of the entity from representing a person in a matter before the court, the commission, the full bench or the registrar;
- an order prohibiting the entity from arranging for an agent to represent a person under Chapter 6 of the IR Act;
- an order prohibiting the entity from promoting membership of the entity on the basis of being able to provide representation in stated industrial matters; and
- an order prohibiting another entity associated with the entity, or an officer or employee or agent of another entity associated with the entity, from engaging in the above conduct.

Section 483D(2) further provides that an order under section 483B, and an ancillary order, may be subject to conditions and may apply to an individual or an entity. Section 483D(3) also provides that the QIRC may make the further order it considers appropriate to ensure the order, and ancillary order and the IR Act are complied with, on application by an individual or entity affected by an order. Subsection 483D(4) provides that an individual or entity to which an order or ancillary order applies must comply with the order and imposes a maximum penalty of 100 penalty units for non-compliance.

Clause 51 inserts a new section 483E (Revocation of order if grounds no longer apply) which provides that if an entity to which an order under section 483B applies, makes an application to the QIRC to revoke an order, the registrar must inform the original applicant (the applicant who made the application for the order about an ineligible entity), at last 7 days before the

application for revocation is heard. Section 483E(3) makes it clear the original applicant is entitled to be heard in the revocation application process.

Section 483E provides that if the QIRC is satisfied the conditions under section 483B (a) or (b) no longer apply, the QIRC must revoke the order made under that section. If the QIRC revokes an order under section 483(B), an ancillary order made under section 483D also ceases to have effect.

Clause 51 inserts a new section 483F (Requirement to give copy of order to chief executive (associations incorporation)) which applies if an order is made by the QIRC under section 483B, and either no appeal has been started during the appeal period, or an appeal has been withdrawn or declined. The Industrial Registrar must give a copy of any order made (and any ancillary order made under section 483D) in relation to an incorporated association to the chief executive under the *Associations Incorporation Act 1981*. The copies must be given as soon as practicable after the matter is decided.

Clause 52 amends section 485(c)(ii) (Who may apply to reopen proceedings) to replace the term 'an eligible association' and to provide that a person who is bound or affected by, or dissatisfied with, the proceedings and the Commission is satisfied, the person is not an officer of, or acting for, an entity (other than an industry organisation) claiming to represent the industrial interests of employees or employers.

Clause 53 amends section 530 (Legal representation) to insert a new subsection 530(1)(d) providing that the QIRC may grant leave for legal representation for industrial matters that include allegations of sexual harassment or sex or gender-based harassment that are before the commission, other than the full bench.

Clause 53 also amends section 530(4) to remove gendered language for consistency across the IR Act and replaces the term 'industrial association' with 'industrial organisation' in the example given in the first dot point. Clause 53 further amends section 530(5)(b)(ii) and (iii) to provide that a person will not be taken to be represented by a lawyer if the lawyer is an employee or officer of an entity representing a Stake peak council or another entity whose membership consists only of employees or employers.

Clause 54 inserts a new section 578A (Requirement to give copy of civil penalty order to chief executive (associations incorporation)) which applies if a civil penalty order is made against an incorporated association or an officer of an incorporated association, and either no appeal has been started during the appeal period, or an appeal has been withdrawn or declined. The Industrial Registrar must give a copy of any civil penalty order made to the chief executive under the *Associations Incorporation Act 1981.* The copy must be given as soon as practicable after the matter is decided.

Clause 55 inserts a new Chapter 11, Part 8A (Particular applications under the *Associations Incorporation Act 1981* (AI Act)).

Clause 55 inserts a new section 578B (Purpose of part) which provides that the purpose of this part is to provide for an objection process relating to particular applications made under the AI Act. This process includes the consultation of organisations and State peak councils, the provision of a notice of objection to the chief executive under the AI Act if an objection is

raised, and the declaration by the QIRC of whether the objection has been established if an objection is contested.

Clause 55 inserts a new section 578C (what is a *relevant Incorporation Act application* and who is the *applicant*) which provides that defines *relevant Incorporation Act application* as being an application under:

- section 9 of the AI Act for incorporation of an association, or
- section 48 of the AI Act for registration of an amendment of an incorporated association's rules.

Section 587C(2) provides that, for applications under section 9, the *applicant* is the appointed person for the application under the AI Act, and for applications under section 48 the *applicant* is the association making the application.

Clause 55 inserts a new section 578D (What is the *objection ground*) which defines *objection ground.* The objection ground exists if, after incorporation or the registration of a rules amendment, the resulting incorporated association could reasonably be mistaken for an organisation registered under the IR Act. This includes that the entity could reasonably be mistaken for an entity with the same or comparable functions as an organisation under the IR Act, or as being able to protect or represent the industrial interests of its members or other persons under the IR Act

Clause 55 inserts a new section 578E (Registrar must give notice of relevant Incorporation Act application) which requires the Industrial Registrar to give each organisation, and each State peak council, a copy of the relevant application along with a notice:

- stating the purpose of the application, and
- advising the recipient organisation or peak council of their right to object to the application, and the grounds on which they may do so.

Objections to an application under this Part must be filed within 14 days of the day after the recipient receives the registrar's notice.

Clause 55 inserts a new section 578F (No objections received) which provides that, if the notices under the preceding section have been provided and no objections have been filed, the registrar must give notice to this effect to the applicant and to the chief executive under the AI Act. The notice must state that the objection ground is not established for the application.

Clause 55 inserts a new section 578G (Notice of intended action to relevant Incorporation Act application) which applies if the notices under section 578E have been provided and one or more objections have been filed. Within 14 days of the filing of an objection, the registrar must consider whether the objection ground is established for the application. The registrar must then notify the applicant, and each objector, of whether the registrar intends to lodge an objection to the application with the chief executive under the AI Act. The registrar may only do so if they are satisfied that the objection ground has been established for the application.

The notice must state that the recipient may lodge an application with the QIRC, within 14 days beginning on the day on which the recipient receives notice of the registrar's decision, seeking a declaration from the QIRC about whether the objection ground is established.

Clause 55 inserts a new section 578H (Application for declaration) which provides that a person who receives a notice from the registrar under section 578G may apply to the QIRC for a declaration that the objection ground is established. The application must be made on or before the date stated in the registrar's notice.

Clause 55 inserts a new section 578I (Making of declaration by commission) which provides that the registrar must give notice of a hearing of an application under section 578H to the applicant for the relevant Incorporation Act application, and to each organisation and State peak council. Each person receiving a notice under this section is entitled to appear and be heard on the application. The QIRC must hear the objection in the manner prescribed by regulation, and may make a declaration of whether or not the objection ground is established in relation to the relevant Incorporation Act application. The QIRC is not reviewing a decision of the Industrial Registrar, it is making a decision de novo.

Clause 55 inserts a new section 578J (Notice of declaration made by the commission) which provides that the registrar must give notice of a declaration made under the preceding section to the applicant under the AI Act, the applicant under section 578H (if it is not the applicant under the AI Act) and to each entity that was heard on the appeal to the QIRC.

Clause 55 inserts a new section 578K (Notice to chief executive (Associations Incorporation Act) - objection) which requires the registrar to notify the chief executive under the AI Act of the objection ground being established if either:

- the registrar notifies the recipients under section 578F of their decision to notify the chief executive under the AI Act of the objection ground being established, and no appeal is made to the QIRC, or
- the QIRC makes a declaration that the objection ground is established.

The registrar must give their notice as soon as possible after the expiry of the period for filing objections under section 578E or the making of a declaration by the QIRC, and must give a copy of their notification to the applicant under the AI Act.

Clause 55 inserts a new section 578L (Notice to chief executive (Incorporation Act) - no objection) which requires the registrar to notify the chief executive under the AI Act that no objection ground has been established if either:

- the registrar notifies the recipients under section 578F of their decision to notify the chief executive under the AI Act of the objection ground not being established, and no appeal is made to the QIRC, or
- the QIRC makes a declaration that no objection ground is established.

The registrar must give their notice as soon as possible after the expiry of the period for filing objections under section 578E or the making of a declaration by the QIRC, and must give a copy of their notification to the applicant under the AI Act.

Clause 56 amends section 607(1) (Registration criteria for all applications) to insert a new subparagraph (e) providing that the QIRC may grant the application for registration only if satisfied that the applicant does not have an officer:

- who is the subject of an order made under section 483D;
- against whom a civil penalty order was made in the previous five years; or

- was an officer of an incorporated association at the point when its incorporation was cancelled under section 93B of the *Associations Incorporated Act 1981*.

Clause 57 amends section 608(1)(a) (Additional criteria for registration as employee organisation) to add that the QIRC must be satisfied that the applicant entity is free from control by, or improper influence from an employer, an employer organisation, or another entity that represents the interests of employers or has members who are employers.

Clause 57 also inserts new subparagraphs 608(1)(d)-(g) requiring that an applicant seeking registration as an employee organisation must make the application within 12 months of gaining its 20th member who is an employee or within four weeks after gaining its 100th member who is an employee, must not be the subject of an order made under section 483B, and must be free from control by, or improper influence from, an entity the subject of an order made under section 483B or, an officer, member or employee of an entity the subject of an order made under section 483B.

Clause 57 further amends section 608(2) to provide that despite subsections (1)(c), (d) or (e), the QIRC may grant the application if satisfied that special circumstances justify the applicant's registration.

Clause 58 amends section 878(g) (General deregistration grounds) for the purpose of consistency to provide that the QIRC may order deregistration of an organisation if the organisation is an employee organisation, and it is not free from control by, or improper influence from an employer, an employer organisation, or another entity that represents the interests of employers or has members who are employers.

Clause 59 omits Chapter 15, part 3 (Other provisions for health employees) (sections 947 to 952), which provided for the recovery of historical employee overpayments and related transitional loans by Queensland Health.

Clause 60 omits section 975(2) (Proceedings), removing the requirement for the Minister to convene a meeting of the Industrial Relations Consultative Committee at least twice per year.

Clause 61 inserts new sections 981A (Disclosure of information to assess achievement of Act's main purpose) and 981B (Requirement to give notice of conviction and penalty to chief executive (associations incorporation)).

Section 981A works to support information sharing to assess if the IR Act is achieving its objectives. The amendments enable the chief executive under the IR Act to ask the Industrial Registrar, or another chief executive, for statistical or other information to help the chief executive to assess the extent to which the main purpose of the IR Act is being achieved. The section does not permit the chief executive to ask for confidential information, nor does it require or permit the registrar or another chief executive to give confidential information. In this section, confidential information includes information that identifies or is likely to lead to an individual's identification, is commercially sensitive and is private or confidential in nature.

Section 981B applies if a penalty is imposed on an incorporated association, or an officer of an incorporated association, following conviction for an offence against the IR Act, and either no appeal has been started during the appeal period, or an appeal has been withdrawn or declined. The Industrial Registrar must give written notice of the conviction and the penalty imposed to

the chief executive under the *Associations Incorporation Act 1981*. The notice must be given as soon as practicable after the matter is decided.

Clause 62 inserts new Chapter 18, Part 6 (Transitional provisions for Industrial Relations and Other Legislation and Other Legislation Amendment Act 2022) (sections 1093 to 1101).

Clause 62 inserts a new section 1093 (Declaration about sick leave being exclusive of public holidays) which clarifies that sick leave under section 40 is, and always has been, exclusive of a public holiday that falls during the leave. New section 1093 further provides that the amended section 40 (on commencement) and new section 1093(1) do not affect an existing industrial instrument, or a replacement industrial instrument, to the extent the instrument provides for the effect on an employee's entitlement to sick leave on a public holiday that falls during a period of sick leave taken by the employee.

Sub-section 1093(3) defines an 'existing industrial instrument' as an instrument that existed before the commencement of this provision, and the instrument deals with an employee's entitlement to sick leave if a public holiday falls during a period of sick leave taken by the employee.

Sub-section 1093(4) defines a 'replacement industrial instrument' in relation to an existing instrument as an instrument made after commencement of the provision, and covers the same or mostly the same employees as the existing industrial instrument, and the instrument deals with an employee's entitlement to sick leave if a public holiday falls during the period of sick leave taken by the employee.

Clause 62 inserts a new section 1094 (Required evidence for personal leave taken or started before the commencement) that applies in relation to sick leave to which section 41 applies, carer's leave to which section 45(1) applies, and birth-related leave to which sections 63 and 64 apply, started by an employee before the commencement. For these matters, former sections 41, 45, 63 and 64 continue to apply in relation to the evidence an employee is required to give the employer for the leave as if the *Industrial Relations and Other Legislation Amendment Act 2022* had not been enacted. The new sub-section 1094(3) clarifies 'former' to mean provisions in force at various periods before the commencement. The intention is to not disturb arrangements in place before commencement.

Clause 62 inserts a new section 1095 (Entitlement to adoption leave and cultural parent leave in relation to a child over 5 years) which applies to a child aged over 5 years if an employee adopts, or has the parentage of transferred to the employee under a cultural recognition order. In these circumstances, Chapter 2, part 3, division 8 applies in relation to parental leave for the adoption or transfer of parentage, regardless of whether the adoption happened, or the cultural recognition order was made, before or after the commencement of the *Industrial Relations and Other Legislation Amendment Act 2022*.

Clause 62 inserts a new section 1096 (Application to work part-time after taking parental leave) which provides that an employee may make an application under section 74(2) regardless of whether the employee returned to work as mentioned in that section before or after the commencement of the *Industrial Relations and Other Legislation Amendment Act 2022*.

Clause 62 inserts a new section 1097 (Entitlement to birth-related leave after birth of stillborn child) which provides that section 85A applies in relation to the birth of a stillborn child

regardless of whether the pregnancy that ends by the birth started before or after the commencement of the *Industrial Relations and Other Legislation Amendment Act 2022*.

Clause 62 inserts a new section 1098 (Entitlement to flexible parental leave) which provides that section 87B applies to an employee regardless of whether the employee became entitled to the parental leave under Chapter 3, part 3, division 8, subdivision 2 mentioned in that section before or after the commencement of the *Industrial Relations and Other Legislation Amendment Act 2022*.

Clause 62 inserts a new section 1099 (Unpaid wages held by clerk of a Magistrates Court before commencement) which provides that section 1099 will apply if immediately before the commencement of the *Industrial Relations and Other Legislation Amendment Act 2022*, a clerk of a Magistrates Court held an amount paid to the clerk by an employer as wages payable to a former employee under former section 375. In such circumstances, the clerk must pay the amount to the Public Trustee and the Public Trustee must deal with the amount as unclaimed moneys under the *Public Trustee Act 1978.* The new section also defines, for the purposes of the section, 'former section 375', 'public trustee', and 'unpaid wages'.

Clause 62 inserts a new section 1100 (Existing applications for orders about right to represent group of employees) provides for transitional arrangements:

- section 1100 applies to an application for an order under section 479 made, but not decided, before the commencement
- section 1100 makes clear that former Chapter 11, part 2, division 4, subdivision 10 continues to apply as if the *Industrial Relations and Other Legislation Amendment Act 2022* had not been enacted
- section 1100 clarifies that in this section, former Chapter 11, part 2, division 4, subdivision 10 means Chapter 11, part 2 division 4, subdivision 10 as applied before commencement.

Section 1101 (Health employment overpayments and health employment transition loans) which provides that the repeal of Chapter 15, part 3 of the IR Act by the *Industrial Relations and Other Legislation Amendment Act 2022* does not affect the validity of an agreement between a health employer and a health employee or a former health employee, entered into before the commencement, about the recovery by the employer of an amount paid by the employer to the employee in relation to employment (or purportedly in relation to employment) to which the employee was not entitled, or a loan made by the employer to the employee mentioned in repealed section 949(1).

The new section 1101(2) and (3) provides that amounts outstanding, that are unrecovered by the State at the commencement of these provisions may not be recovered by the State where, immediately before commencement, there was no agreement in writing between a health employer and a health employee to recover outstanding moneys relating to the overpayment or load incurred before 14 August 2012, nor had the health employee repaid any of the amount of the overpayment or loan to the health employer.

The new section 1101(4) clarifies, for 1101(3)(b)(iii) that a deduction made by the employer from amounts payable to the employee under the repealed Chapter 15, part 3, is not considered a repayment for this section. For example, salary sacrifice deductions would not fit the intention of section 1101(3)(b)(iii).

The new section 1101(5) also defines, for the purposes of the section, 'health employee' and 'health employer'.

Clause 63 amends schedule 1 (Industrial matters) to insert a new item 26 'sexual harassment or sex or gender-based harassment of an employee in the workplace or otherwise in the course of the employee's employment.'

Clause 64 amends schedule 3 (Civil penalties) to omit the entry for Chapter 8, '293(1) (Misrepresentations) and add entries into the schedule for '293(1) (Misrepresentations – engaging in industrial activity)' and '293A(2) Misrepresentations – right to represent).

Clause 65 amends schedule 5 (Dictionary) to omit the definitions for: *amount in relation to employment, association, continuing health employee, discrimination, eligible association, expected placement date, final payment, health employee, health employer, industrial association, industrial cause, maternity leave, Queensland Health, registered employee organisation, right to represent, special maternity leave* and *untaken leave.*

Clause 65 also amends schedule 5 (Dictionary) to insert new definitions for: *association, chief executive (associations incorporation), discrimination, eligible for registration under Chapter 12, expected adoption date, health practitioner, incorporated association, industrial cause, industrial organisation, sex or gender-based harassment, sexual harassment, special pregnancy-related leave,* and *stillborn child.*

Clause 65 also amends schedule 5 (Dictionary) to amend the definition of 'demarcation dispute' to omit a reference to an association.

Clause 65 further amends schedule 5 (Dictionary) to amend the definition of 'remuneration' to replace the reference to 'service' in paragraph (b) with the word 'employment'. This is to ensure consistency in how the IR Act refers to an employee's employment contract.

Division 3 Amendments commencing on proclamation

Clause 66 inserts new Chapter 10A Independent couriers.

Part 1 Preliminary

Clause 66 inserts section 406A (Definitions for chapter) which provides definitions for terms used in the chapter. In particular, it defines *contract instrument* as a contract determination (made by the QIRC under section 406N(1)(a) or a negotiated agreement made between the parties and certified by the QIRC under section 406U. It also defines *courier vehicle* to include motor vehicles, bicycles (with or without a motor) and scooters (including electric scooters).

Clause 66 inserts section 406B (Who is an *independent courier*) which provides a definition of *independent courier*. This definition captures all drivers of vehicles engaged in transporting goods and are acting as individuals or members of a partnership or a company where the individual driving the vehicle (or vehicles) is an executive officer of the company or a member of an executive officer's family.

This broad definition is intended to encompass conventional courier services provided by individuals and small companies and it does not matter how the person is engaged to provide the service, whether employed by the independent courier or engaged through another arrangement.

The definition further provides that a person other than the independent courier may temporarily drive the courier's vehicle to provide the service while the courier is sick, taking leave or otherwise temporarily unavailable. This ensures that an independent courier driver will not inadvertently be excluded from the jurisdiction due to being on leave or otherwise temporarily unavailable and is intended to mirror clause 34 of NSW's *Industrial Relations (General) Regulation 2020.*

Clause 66 inserts section 406C (Who is a *principal contractor*) which provides a definition of 'principal contractor'. This definition captures all persons who carry on a business arranging for the transport of goods by independent couriers, and who engage at least two independent couriers in doing so. For example: if an agent of a principal contract arranges for goods to be transported by two or more independent couriers. the agent would be a principal contractor. If an independent courier had an excess of work and subsequently arranges for goods to be transported by two or more independent couriers, the independent courier would be a principal contractor. This definition is intended to mirror the relationship between a principal contractor and a 'carrier' as set out in section 310 of the NSW IR Act.

Clause 66 inserts section 406D (What is a *courier service contract*) which defines 'courier service contract' as a contract between the principal contractor and an independent courier to transport goods under arrangements made by the principal contractor and that is not a contract of employment. Courier service contracts include contracts declared by the commission to be courier service contracts. This contract may take the form of a franchise agreement.

Clause 66 inserts section 406E (Declaration that contact is courier service contract) which provides that the QIRC may make an order declaring that a contract is a courier service contract. The QIRC may make such an order only where a contract:

- is drafted in such a way as to avoid the effects of Chapter 10A; and
- affects the remuneration or working conditions of an independent courier who transports goods for another person, and
- is not a contract of employment.

This provision is intended to empower the QIRC to make orders bringing contracts which are courier service contracts in effect, though not in form, under the provisions of Chapter 10A. This is, in turn, intended to ensure that the provisions of the chapter are able to have their intended effect and to stymie any efforts to evade the operation of the chapter on the part of unscrupulous operators (whether principal contractors or independent couriers).

Part 2 General provisions for contract instruments

Division 1 General requirements for commission exercising powers

Clause 66 inserts section 406F which provides that, in exercising its powers under Chapter 10A, the QIRC must ensure that a contract instrument provides remuneration and working conditions that are fair and just; and comparable to the remuneration and conditions that a

person performing the work under an award, agreement of the IR Act would receive; and in the main reflects the current minimum standards for remuneration and working conditions. The intention is for the QIRC to balance the need to ensure a safety net for independent couriers' remuneration and working conditions while factoring in a range of other factors listed in this section including market conditions, business costs and financial risk. This is a non-exhaustive list of matters that the QIRC must consider in ensuring that a contract instrument provides for the above, in addition to any other relevant matters that the QIRC considers appropriate.

Division 2 Effect of contract instruments

Clause 66 inserts section 406G (Contravening contract instruments) which provides that a person must not contravene a contract instrument that applies to that person. This is a civil penalty provision. The section also clarifies that no benefits are granted, or obligations imposed, by a contract instrument that does not apply to a person.

Clause 66 inserts section 406H (Who a contract instrument *applies to*) which provides that a contract instrument covers a person or organisation if the instrument is in operation (has not expired) and the instrument includes the principal contractor, independent courier, organisation or federal organisation.

Section 406H clarifies that a contract determination does not *apply to* a principal contractor or independent courier that has an exemption under section 406Q excluding the principal person or organisation from the operation of the contract determination from the application of the instrument under section 406Q, or the instrument is not in operation.

Section 406H also sets out that a reference to a contract instrument in this Act means the instrument applied to independent couriers within a particular class of courier service contracts. This is intended to avoid the impracticality of needing to specify the individual independent couriers in contract instruments.

Clause 66 inserts section 406I (Who a contract instrument *covers*) which sets out who is covered by contract instruments that is in operation i.e., the instrument has not expired. For an operating contract instrument, the parties covered are those the instrument identified (however described), or the IR Act or an order made under the IR Act gives effect to the instrument to cover the parties. However, the contract instrument does not cover a principal contractor, independent courier, organisation or federal organisation if another provision in the IR Act or an order made under the IR Act negates the coverage of the contract instrument.

The section also provides that an organisation (including a federal organisation) is covered by a negotiated agreement if the organisation is a party to the agreement. An organisation is also covered if a decision of the QIRC certifying the agreement states that the agreement covers the organisation.

The section also provides that, if a negotiated agreement covers a group of independent couriers, any future member of that group becomes covered. This is intended to avoid circumstances where independent couriers who were not parties to contracts with a principal contractor at the time of the certification of a negotiated agreement, but who would otherwise be entitled to be covered by the agreement, are denied the benefits (and exempt from the obligations) that would otherwise follow from their coverage.

Section 406I also clarifies that a reference in the IR Act to a contract instrument covering independent couriers is taken to mean coverage of independent couriers in relation to a particular classification of independent courier contracts.

Clause 66 inserts section 406J (Application of contract determination to successor principal contractors) which provides that, where a contract determination applies to a principal contractor, the same determination applies equally to any successor of the principal contractor, and to all independent couriers who enter into courier service contracts with that principal contractor or any successor. This is intended to avoid circumstances where a transfer of a principal contractor's business to another party may otherwise result in the cessation of a contract determination. It will ensure that business operators cannot evade their obligations under a contract determination by transferring their business to a new person under their control.

Clause 66 inserts section 406K (Application of negotiated agreement to successor principal contractors) which provides that, where a negotiated agreement applies to a principal contractor and a subsequent person acquires the principal contractor's business (or part of it), the negotiated agreement ceases to apply to the previous principal contractor and applies instead to the subsequent person. If the subsequent person acquires only part of the principal contractor's business, the negotiated agreement will apply to both parties, to the extent that it is relevant to their activities.

Section 406K also clarifies that in this chapter, references to a principal contractor (in relation to a whole or part of a business), includes reference to a person who takes over as the new principal contractor, and no longer applies to the previous principal contractor (where the definition of the previous *principal contractor* no longer fits within the definition of the IR Act).

Division 3 Interaction of contract instruments and courier service contracts

Clause 66 inserts section 406L (Relationship of contract determination with negotiated agreement) which provides that a negotiated agreement and a contract determination may simultaneously apply to an independent courier in respect of the same class of courier service contracts. If this occurs, the terms of the negotiated agreement prevail over those of the determination, to the extent of any inconsistency.

This is intended to encourage parties to bargain for negotiated agreements, consistent with the well-understood benefits of collective bargaining in other workplace contexts such as building cooperative engagement, fair remuneration, improved working conditions and increased productivity.

Clause 66 inserts section 406M (Relationship of contract instrument with courier service contract) which provides that, where a contract instrument exists, its terms prevail over those of an applicable courier service contract to the extent of inconsistency irrespective of whether the contract instrument took effect before or after the courier service contract existed. An exception to this rule exists where the terms of the courier service contract are as beneficial, or more so, than those of the contract instrument.

Part 3 Contract determinations

Clause 66 inserts section 406N (Contract determination fixing minimum remuneration and working conditions for independent couriers) which provides that the QIRC may make or vary a contract determination. This may be either on the QIRC's own initiative, or following an application from a person set out in section 406O. A contract determination sets out pay and working conditions for one or more classes of courier service contracts. In doing so, the QIRC must ensure that:

- pay rates are fair and just, and that they are comparable with those provided for in industrial instruments, or under the IR Act, and
- the terms in the determination reflect the pay and conditions of the independent couriers to be covered, taking into account the value of leave entitlements under the Queensland Employment Standards, and
- the requirements on the QIRC's exercise of its powers when making or varying modern awards and other industrial instruments are observed.

The section also provides that a contract determination may state a day on which its effect ceases, and that it must state the class or classes of independent service contracts to which it applies. This class may be defined by reference to a principal contractor, including, for example, capture of all courier service contracts entered into by a particular principal contractor.

Clause 66 inserts section 406O (Who may apply for contract determination) which provides that an application to make or vary a contract determination may be made by either:

- a principal contractor who engages independent couriers under courier service contracts;
- two or more principal contractors who engage independent couriers under courier service contracts who are related bodies corporate, or engaged in a joint venture or common enterprise, or undertake similar work;
- an organisation of either employees or employers (including a federal organisation), or State peak council whose membership includes one or more independent couriers or principal contractors who may be directly affected by a determination.

This corresponds approximately to the provisions of section 147(2) of the IR Act, which set out who may apply for the making or variation of a modern award. The key difference is that the Minister has no ability to apply for a contract determination.

The section further provides that if an entity applies to make or vary a contract determination, a copy of the application must be served on each other principal contractor or organisation in relation to the class of courier contract, and any other person as directed by the QIRC.

Clause 66 inserts section 406P (Notice of application and hearing) which provides that if an application to make or vary a contract determination is made, the Industrial Registrar must place a notice in the registry stating details of the class of courier service contract that the application relates to, the hearing date and invite any person to make a written submission to the Commission before the hearing date, and publish a copy of the application and notice on the QIRC website. The Industrial Registrar must also ensure a copy of the notice is published in a newspaper circulating throughout Queensland and in another publication that the Registrar considers would bring the application to the attention of the public or those persons likely to be concerned with the application such as electronic or online publications.

Clause 66 inserts a section 406Q (Entities that may be heard on application) to provide that a those who will be covered by the proposed contract determination are entitled to be heard in the contract determination: an individual, organisation, federal organisation or State peak council. This section also enables others to be heard with the permission of the Commission. The Commission may grant permission to be heard if there is a reasonable possibility, that by not hearing from the person or entity seeking leave to be heard, that the Commission will miss information relevant to deciding the application. This does not affect another right of an organisation, federal organisation or another person to be heard, or to intervene in the application.

Clause 66 inserts section 406R (Exemptions from contract determination) which provides that the QIRC may make an order exempting a person, organisation, contract, negotiated agreement or other matter from the effect of a contract determination, so long as the order is not contrary to the public interest. This power applies only following an application, and cannot be exercised on the QIRC's own initiative. An exemption, once granted, lasts for a maximum of three years, and may subsequently be reviewed, revoked or varied by the QIRC on application or on the QIRC's own initiative. This is intended to allow the QIRC to respond to situations where a determination has captured parties or matters contrary to the intention of the QIRC.

Clause 66 inserts section 406S (When contract determination operates) which provides that the operation of a contract determination commences on a date stated in the determination. A determination may have retroactive effect, but this may only extend as far as the commencement of the matter in the QIRC, whether by application under section 406N, notice of an industrial dispute or the QIRC's own initiative. Once commenced, a contract determination continues in effect until it is superseded, or reaches the date of cessation stated in the determination, or the determination is revoked.

Clause 66 inserts section 406T (Commission's power to revoke contract determination) which provides that the QIRC may revoke a contract determination, subject to a requirement that no independent couriers are adversely affected by the decision to do so. The QIRC may make an order revoking a contract determination on its own initiative; or, on the application of an organisation (including a federal organisation) entitled to represent the interests of a person covered by the contract determination; or principal contractor covered by the determination; or following a review under section 406U.

Clause 66 inserts section 406U (Commission's power to review contract determination) which provides that the QIRC may review a contract determination on its own initiative. The QIRC may also review a contract determination following an application from a person covered by the determination or an organisation (including a federal organisation) entitled to represent the interests of such a person. The section also provides that an application for a review of a determination may include a request to vary provisions relating to remuneration and/or working conditions. This is intended to allow parties covered by a contract determination to suggest variations to a determination in the event that its terms are no longer appropriate in the context of the ongoing commercial relationship between the parties.

Part 4 Negotiated agreements

Division 1 Preliminary

Clause 66 inserts section 406V (What is a *negotiated agreement*) which provides that a 'negotiated agreement' is a written agreement about remuneration and working conditions for independent couriers in relation to a class of courier service contracts, certified under Division 3 (see below). A negotiated agreement is made between one or more principal contractors, or an organisation representing (or entitled to represent) them, and two or more independent couriers of the same class, or an organisation representing (or entitled to represent) them.

A group of principal contractors may only be considered a party to a negotiated agreement where the principal contractors are:

- related bodies corporate under the meaning of the *Corporations Act 2001* (Cth)
- engaged in a joint venture or enterprise, or
- undertaking similar work.

Division 2 Negotiation process

This Division sets out the process for negotiations for a negotiated agreement. In almost all respects, the provisions of this Division have been drafted to match those of Chapter 4, Part 2 of the IR Act, which sets out the required process for negotiations prior to making a bargaining agreement between an employer and employees.

Clause 66 inserts section 406W (Notice of intention to negotiate) which applies when a person proposes to open negotiations for a negotiated agreement. The section provides that the person proposing to open negotiations must give every other party intended to be covered notice in writing of their intention. If the person proposing to open negotiations is a principal contractor, they must provide written notice to every relevant employee organisation (i.e., an organisation that is to be covered by the proposed agreement or is entitled to represent the independent couriers to be covered).

The notice must be provided at least 14 days before the proposed commencement of negotiations, except where a negotiated agreement already exists between the parties. In this case, notice must be provided at least six months prior to the nominal expiry date of the agreement.

Clause 66 inserts section 406X (Notice of intention to be a party to negotiations) which applies when notice has been given under section 406V and the person who received the notice wishes to be a party to negotiations. It provides that the person must provide a written response to that effect to both the proposer and the QIRC within 21 days of their receipt of the notice of intention to negotiate. A negotiated agreement can only be made within 21 days of the receipt of a notice of intention to negotiate if all the proposed parties, and all relevant organisations, have already provided a notice of their intention.

Clause 66 inserts section 406Y (Proposed negotiated agreement to be given to independent couriers for approval) which applies when parties to a negotiation propose to make a negotiated agreement. It provides that the principal contractor must take reasonable steps to ensure that, at least 14 days prior to being asked to vote to approve the proposed agreement, all independent couriers to be covered:

- have access to a copy of the proposed agreement

- have the terms of the proposed agreement explained to them, and
- are informed that they may be represented in negotiations by a relevant employee organisation.

Independent couriers must not be asked to approve a proposed negotiated agreement until at least 21 days following their receipt of a notice of intention to commence bargaining, or the date of a scope order from the QIRC (see below) if one is made.

If an independent courier is represented by a relevant employee organisation, the principal contractor must allow a reasonable opportunity for the organisation to participate in negotiations prior to any negotiated agreement being made. This requirement applies until either the relevant employee organisation ceases to represent the independent courier or the independent courier ceases to be a person who will be covered by the proposed agreement, e.g. by ceasing to do business with the principal contractor.

The steps in this section must also be taken if the proposed negotiated agreement is varied or amended in any way that is not purely formal, or that adversely affects the interests of independent couriers.

Clause 66 inserts section 406Z (Parties must negotiate in good faith) which requires all parties to negotiate in good faith. This explicitly requires that negotiating parties:

- attend and participate in negotiating meetings
- disclose relevant information that is not confidential or commercially sensitive
- give genuine consideration to proposals from other parties, and provide a response and reasons for that response in a timely fashion, and
- conduct themselves in a way that is not capricious or unfair, and does not undermine freedom of association or the negotiation process itself.

Negotiating parties must obtain and disclose information as soon as practicable after the negotiations, information relevant to the gender pay gap including the gender breakdown of the independent couriers to be covered, a calculation of the gender pay gap, information about factors that contribute to any pay gap, (if appropriate) the projected impact of the proposed agreement on the pay gap, other relevant information reasonably requested by another party to the negotiation that pertains to the gender pay gap and other information prescribed by regulation regarding the gender pay gap.

Section 406Z(4) sets out that the *gender pay gap* for a negotiated agreement is the difference between the average weekly full-time equivalent earnings of male and female independent couriers covered by the proposed agreement.

Negotiating parties may, subject to the overall good faith requirement, make an agreement about procedures or principles under which the negotiation will be conducted.

Clause 66 inserts section 406ZA (Conciliation and arbitration by the commission) which provides that a party may request the QIRC to assist in negotiations for a negotiated agreement. If a request is received, the QIRC may conduct conciliation and determine the matter via arbitration. Arbitrations must be conducted subject to the normal requirements of Chapter 4, Part 3 of the IR Act, including the requirement in section 180(3)(a) (which is to be read as applying to a negotiated agreement in the same way as it applies to a proposed bargaining

instrument) that a full bench determine matters by arbitration. An agreement made by QIRC arbitration is taken to be a negotiated agreement certified by the QIRC.

Clause 66 inserts section 406ZB (Scope orders) which provides that a party negotiating for a negotiated agreement may apply to the QIRC for an order regarding the scope of the agreement if they are concerned that one or more independent couriers:

- should be covered by the agreement and are not, or
- should not be covered by the agreement and will be.

The QIRC may make orders regarding the independent couriers, principal contractors and organisations to be covered by the agreement. Scope orders made under this section are subject to the requirements of Chapter 4, Part 4 of the IR Act, other than sections 184(1) (application for scope orders) and 186 (matters to be stated in scope orders).

Division 3 Certifying negotiated agreements

This Division sets out the process to be followed by parties to a proposed negotiated agreement, and the QIRC, in certifying the agreement. As with Division 2 (above), the provisions of this Division have been drafted to match those of Chapter 4, Part 5 of the IR Act, which sets out the process for certifying agreements and making bargaining awards.

Subdivision 1 Making and hearing applications

Clause 66 inserts section 406ZC (Application for certification of negotiated agreement) which provides that a party to a proposed negotiated agreement can apply to the QIRC to have the agreement certified. The application must be made within 21 days of the signature of the agreement or its approval by all relevant independent couriers.

Clause 66 inserts section 406ZD (Notice of hearing) which requires the Industrial Registrar to place a notice in the registry identifying the parties to the proposed agreement and any relevant contract determination, and stating the date on which the matter will be heard by the QIRC. This must be done at least seven days prior to the hearing date.

For the purposes of this section, a 'relevant contract determination' is a contract determination that:

- regulates the working conditions of independent couriers performing the same kind of work as that performed by the independent couriers to be covered by the proposed agreement, and
- covers the principal contractor engaging the independent contractors immediately before the day on which the proposed agreement is certified.

Clause 66 inserts section 406ZE (Entities that may be heard on application) which provides that persons to be covered by the proposed negotiated agreement or organisations (including federal organisations) who will be parties to the proposed agreement may take part in a hearing before the QIRC. Organisations not covered by the proposed agreement may be heard with leave of the QIRC. The QIRC may only grant leave for an organisation to be heard if it reasonably believes that it will otherwise fail to be informed of an issue relevant to its decision regarding the application. If an organisation or another person has a right under another law to be heard on, or to intervene in, the matter, the right is not affected by this section.

Subdivision 2 Deciding applications

Clause 66 inserts section 406ZF (Requirements for the commission's decision) which provides that the QIRC must grant an application for a negotiated agreement if all the requirements in section 406ZF are met, and no requirement for the QIRC to refuse certification under sections 406ZK-406ZM exists. The QIRC must otherwise refuse certification. However, the section also requires the QIRC to grant persons to be covered by the proposed agreement to take action that may be necessary to permit certification (e.g. by rectifying formal defects or providing additional information). The QIRC may assist the parties to take this action by conducting conciliation.

Clause 66 inserts section 406ZG (Requirements for granting application) which provides that a proposed negotiated agreement must be certified if the QIRC is satisfied that:

- a notice of intention to begin negotiations under section 406W was given
- the principal contractor has taken the reasonable steps to provide information required under section 406Y
- no independent contractor was coerced to not make a request for representation by a relevant employee organisation, and no attempt was made to do so
- the requirements for a genuine agreement under section 406ZH (below) have been met
- the proposed agreement identifies the parties (including the names of members of any group of independent couriers), and the class of independent couriers to which the agreement will apply
- the proposed agreement contains a nominal expiry date that is no more than four years after the proposed commencement date
- the proposed agreement passes the no disadvantage test set out in section 406ZI, and the equal remuneration test set out in section 406ZK (below)
- every organisation with members covered by the proposed agreement, or who may become covered by the agreement, has been given an opportunity to be a party to the agreement and has either accepted or declined
- the proposed agreement is consistent with any scope order made by the QIRC under section 406ZB, and
- the proposed agreement is in plain English and is easy to understand.

Clause 66 inserts section 406ZH (Proposed negotiated agreement agreed by all parties) which provides that a proposed negotiated agreement is genuinely agreed between the parties if:

- all negotiating parties (or their representatives) have signed the agreement, or
- the QIRC is satisfied that all parties have agreed on the terms of the agreement, and that the required majority of independent couriers to be covered by the agreement have voted in favour of these terms

The required majority is 65% (in a secret ballot) if a group of independent couriers is identified as a party to the agreement, and otherwise a simple majority determined by a properly-conducted ballot.

When considering whether all parties have agreed on the agreement's terms, the QIRC may (but is not required to) consider whether the good faith bargaining requirement in section 406Z (above) has been followed, and any other evidence advanced by the parties.

Clause 66 inserts section 406ZI (No-disadvantage test) which provides that, before it may certify a proposed negotiated agreement, the QIRC must be satisfied that its terms do not:

- reduce the entitlements and protections provided to independent couriers by a relevant contract determination, or a contract determination decided by the QIRC under section 406ZJ (see below), or
- provide for remuneration and working conditions that are not fair and just, or are inferior to those provided for by the IR Act or an industrial instrument for performing similar work.

An exception to this rule exists where the QIRC considers that a reduced or less favourable conditions, taken as a whole, are not counter to the public interest. In exceptional circumstances, the President of the QIRC may direct the registrar to produce a report comparing a proposed negotiated agreement to a relevant contract determination or the relevant remuneration and working conditions for an employee performing the same work.

Clause 66 inserts section 406ZJ (Deciding relevant contract determination) which applies where a party proposes to make a negotiated agreement and no contract determination covers some or all of the relevant independent couriers. The section provides that the party must apply to the QIRC, which must then decide on a sufficiently similar contract determination as the basis for the no-disadvantage test in section 406ZI.

Clause 66inserts section 406ZK (Equal remuneration test) which provides that, prior to certifying a proposed negotiated agreement, the QIRC must be satisfied that:

- the proposed negotiated agreement provides for equal remuneration for work of equal or comparable value, and
- the principal contractor(s) to whom the proposed agreement applies has implemented equal remuneration for work of equal or comparable value, is implementing it, or will do so if the proposed agreement is certified.

Clause 66 inserts section 406ZL (Refusal to grant application – generally) which requires the QIRC to refuse certification of a proposed negotiated agreement if it considers that a provision of the agreement:

- is inconsistent with the equal remuneration provisions of the IR Act or with an equal remuneration order, or seeks to prevent applications being made for equal remuneration orders
- is an objectionable term that permits (or purports to permit) contravention of the general protections provided for in Chapter 8, Part 1 of the IR Act, or requires the payment of a bargaining services fee
- is discriminatory.

The section provides that a provision is not discriminatory if it merely contains provisions for minimum remuneration for independent couriers under the age of 21 years, or with a disability, that differ from those provided for other relevant independent couriers.

The QIRC may make an equal remuneration order in relation to the proposed negotiated agreement.

Clause 66 inserts section 406ZM (Refusal to grant application – contravention of industrial action provision) which requires the QIRC to refuse certification of a proposed negotiated agreement if it is satisfied that the principal contractor, or another person acting for the benefit

of the principal contractor, has engaged in coercion or adverse action against another person. Where the QIRC is satisfied that the effect of this action has been fully remedied, however, mandatory refusal does not apply.

Clause 66 inserts section 406ZN (Refusal to grant application – independent couriers covered by proposed negotiated agreement) which requires the QIRC to refuse certification of a proposed negotiated agreement if it considers that the proposed agreement unfairly excludes some independent couriers engaged by the principal contractor who could reasonably be covered.

In deciding which independent couriers could reasonably be covered by the proposed agreement, the QIRC must consider the work performed by the independent couriers covered and excluded from the agreement. This must include where work is performed and any operational or organisational reason for different treatment of a group of independent couriers.

Subdivision 3 Other provisions

Clause 66 inserts section 406ZO (Provisions for preventing and settling disputes) which provides that a negotiated agreement may, with the QIRC's approval, contain provisions allowing the QIRC to settle any disputes.

Clause 66 inserts section 406ZP (Publication of negotiated agreements) which provides that, once a negotiated agreement is certified, both the negotiated agreement and the reasons for its certification must be provided to the registry. The registrar must then advise the parties of the certification and publish the negotiated agreement on the QIRC website.

Clause 66 inserts section 406ZQ (When negotiated agreements operate) which provides that a negotiated agreement commences operation from the date of certification, and continues to operate until its termination under sections 406ZR or 406ZS (below).

Division 4 Amending and terminating negotiated agreements

Clause 66 inserts section 406ZR (Amendment on application) which provides that an application to amend a negotiated agreement may be made by a relevant employee organisation, a person wishing to become a party to the agreement (if the proposed amendment includes amending the list of parties to which the agreement applies), or the principal contractor.

The section also provides that, once an application has been received, the QIRC must approve it if (and only if) it is satisfied that the agreement, as amended, would meet the criteria for mandatory approval under Subdivision 2 (above) and that the amendments have been approved by either:

- a relevant employee organisation, or
- a required majority of the independent couriers to be covered by the amended agreement.

Amendments that amend the parties to the negotiated agreement must also be approved by the principal contractor.

As with section 406ZH, the required majority of independent couriers is 65% (in a secret ballot) if a group of independent couriers is identified as a party to the agreement, and otherwise a simple majority determined by a properly-conducted ballot.

For the purposes of mandatory approval, the requirement for all parties to have signed the agreement is taken to be satisfied. The QIRC is not required to give the parties an opportunity to take action to allow certification, and may not conduct conciliation. The section provides that amendments to a negotiated agreement take effect when the QIRC's approval takes effect.

Clause 66 inserts section 406ZS (Termination on or before nominal expiry date) which provides that the parties may, by universal agreement, apply to the QIRC to terminate a negotiated agreement on, or prior to, the agreement's nominal expiry date. If the QIRC is satisfied that the required majority of independent couriers covered by the agreement has approved the termination, it must approve the application. It may not do so in any other circumstance.

As with sections 406ZH and 406ZR, the required majority of independent couriers is 65% (in a secret ballot) if a group of independent couriers is identified as a party to the agreement, and otherwise a simple majority determined by a properly-conducted ballot. The section provides that the termination of the agreement takes effect when the QIRC's approval takes effect.

Clause 66 inserts section 406ZT (Termination after nominal expiry date) which provides that, following the nominal expiry date of a negotiated agreement, an application for termination may be made by:

- the principal contractor
- the required majority of independent contractors, or
- an organisation (including a federal organisation) that the agreement applies to, and that has at least one member who is a principal contractor or independent courier.

As with sections 406ZR-406ZS, the required majority of independent couriers is 65% (in a secret ballot) if a group of independent couriers is identified as a party to the agreement, and otherwise a simple majority determined by a properly-conducted ballot.

The person making the application must give notice of their intention to all other parties to the agreement at least three months prior to making their application. The QIRC must approve the termination if any conditions specified in the agreement itself for termination have been met, or if all parties to the agreement agree to its termination, or the termination is not counter to the public interest. It may not do so in any other circumstance.

The section provides that the termination of the agreement takes effect when the QIRC's approval takes effect.

Part 5 Individual courier service contracts

Division 1 Amending or voiding courier service contracts

Clause 66 inserts section 406ZU (What is an *unfair contract*) which defines 'unfair contract' for the purposes of this Part. An unfair contract is one that is harsh, unconscionable, unfair or against the public interest. A contract that provides for remuneration or working conditions

inferior to those which would apply to an employee under a contract instrument, the IR Act or an applicable industrial instrument is also unfair, as is any contract that is designed to avoid the provisions of a contract instrument.

Clause 66 inserts section 406ZV (Power to amend or declare void unfair courier service contracts) which provides that the QIRC may, on application from a person under the following section, may amend or declare void all or part of a courier service contract. In order to activate this power, the QIRC must consider that the contract is an unfair contract, or that it is inconsistent with a contract instrument.

The section provides that the QIRC may, in its deliberations, consider anything it considers relevant, including:

- the relative bargaining power between the parties (or their representatives)
- the exertion of undue influence or pressure, or any other unfair negotiating tactic, by one party upon another, and
- relevant contract instruments or industrial instruments (including instruments made under Commonwealth legislation).

The section provides that the QIRC may determine that a contract was an unfair contract at the point at which it was made between the parties, or that it became an unfair contract due to a subsequent variation, or through the conduct of one or more parties.

The section also empowers the QIRC to make orders for payment for contracts that it amends or voids.

Clause 66 inserts section 406ZW (Who may apply for amendment or declaration) which provides that an application for amendment or voiding of a courier service contract under section 406ZV (above) may be made by a party to the contract. Applications may also be made by an industrial inspector on behalf of an independent contractor, or an organisation (including a federal organisation) of which a party is a member, or has applied for membership, with the written consent of that party.

Division 2 Unfair termination of courier service contracts

Clause 66 inserts section 406ZX (When is courier service contract *unfairly terminated*) which provides that a courier service contract is 'unfairly terminated' if termination of the contract is harsh, unjust or unreasonable.

Clause 66 inserts section 406ZY (Unfair termination of courier service contract) which applies when an independent courier claims to have had their courier service contract unfairly terminated by the principal contractor. The independent courier, or an organisation (including a federal organisation) which is entitled to represent their interests, may apply to the QIRC for an order for reinstatement of an unfairly terminated courier service contract or payment of compensation. If an organisation is the applicant, it may only do so with the consent of the independent courier.

The section also provides that an application must be made within 21 days of the termination of the contract unless the QIRC specifically allows for an application at a later time, and the QIRC must deal with the application as quickly as possible.

Clause 66 inserts section 406ZZ (Conciliation before arbitration heard) which provides that the QIRC must hold a conciliation conference prior to hearing an application for an unfairly terminated courier service contract. The provisions set out in section 318 of the IR Act apply to this conciliation with any necessary modifications.

Clause 66 inserts section 406ZZA (Arbitration when conciliation unsuccessful) which provides that, if the QIRC considers that reasonable attempts at conciliation have failed, it may decide an application for reinstatement or compensation for an unfairly terminated courier service contract by arbitration. The QIRC may make orders for reinstatement (under section 406ZZB) or compensation (under section 406ZZC) or may dismiss the application.

The section provides that, in determining whether the termination of the courier service contract was harsh, unjust or unreasonable, the QIRC must consider any matter it considers relevant, including:

- the length of time the independent contractor was providing courier services to the principal contractor, whether under the terminated contract or otherwise
- whether the independent contractor was provided with reasons for the termination
- whether the termination related to the operational requirements of the principal contractor's business, or the conduct, capacity or performance of the independent courier, and
- if the latter, whether any warnings had been provided to the independent courier and whether they had been offered an opportunity to respond to the claims regarding their performance.

Clause 66 inserts section 406ZZB (Remedies – reinstatement of courier service contract) which provides that, if the QIRC finds that a courier service contract was unfairly terminated, it may order the principal contractor to reinstate the contract (including by re-engaging the independent contractor under a new contract). A reinstated contract must include terms at least as favourable to the independent contractor as those of the terminated contract.

The section also empowers the QIRC to order the payment of appropriate amounts in compensation for an unfair termination of a contract, including for the period between the termination and any reinstatement. The QIRC may also order that an appropriate period following an unfair termination be considered as a period of engagement under a relevant courier service contract. This section does not limit the power of the QIRC to make interim or interlocutory orders as provided for elsewhere in the IR Act.

Clause 66 inserts section 406ZZC (Remedies – compensation) which provides that, if (and only if) the QIRC does not consider reinstatement of an unfairly terminated courier service contract under section 406ZZB (above) to be a feasible remedy, it may order the principal contractor to pay an amount to the independent courier as compensation. This amount may not be more than the remuneration paid to the independent contractor in the six months immediately prior to the termination of the contract.

The section requires the QIRC to consider any amount already paid by the principal contractor upon termination of the contract. This section does not limit the power of the QIRC to make interim or interlocutory orders as provided for elsewhere in the IR Act.

Clause 66 inserts section 406ZZD (Further orders if principal contractor fails to reinstate) which applies only if an order of the QIRC for reinstatement of a courier service contract under section 406ZZB is wilfully contravened by a principal contractor. Under this section, the QIRC may make a further order requiring the principal contractor to pay compensation to the independent contractor for lost remuneration, and a penalty amount of not more than 50 penalty units (at the time of writing, $6892.50). Further orders under this section may be made until the principal contractor complies with the order for reinstatement.

The section also provides that other provisions of the IR Act allowing the commencement of proceedings against the principal contractor are not affected.

Part 6 General provisions

Clause 66 inserts section 406ZZE (Dispute resolution) which applies where a dispute exists regarding the interpretation or enforcement of a contract instrument, or another matter that would be an industrial dispute in an employment relationship. The dispute must be between a principal contractor or employer organisation (including a federal organisation) and an independent courier or employee organisation (including a federal organisation). The section provides that the provisions of Chapter 6 apply as if a reference in that Chapter to an industrial dispute were a reference to a dispute regarding a contract instrument, including:

- the requirement to give notice to the registrar
- prompt conciliation or mediation by the QIRC to prevent or promptly settle the dispute, including via compulsory conferences, and
- the power of the QIRC to direct orders to parties, and enforce these orders.

Clause 66 inserts section 406ZZF (Interpretation of applied provisions) which provides that, where a term is used in provisions elsewhere in the IR Act that are applied under Chapter 10A, particular terms pertaining to the employment relationship are to be applied as if alternative terms more applicable to an independent services contract were substituted. Notably, it provides that, where a provision in Chapter 10A refers to 'work of equal or comparable value', this is to be interpreted to mean all remuneration (including the fees, allowances and other amounts, or other benefits) payable or made available to an independent courier under a courier service contract.

The section also provides that references to obligations imposed by sections elsewhere in the IR Act are to be read as being obligations imposed under Chapter 10A, with any necessary changes.

Clause 67 amends section 595 of the IR Act to omit the definitions of *federal organisation* and *Commonwealth Registered Organisations Act*. Clause 69 moves these definitions to Schedule 5 without alteration.

Clause 68 amends Schedule 3 (Civil Penalties) of the IR Act, inserting an entry into the table to the effect that:

- an independent contractor to whom a contract instrument applies, an organisation that has a relevant independent contractor as a member, or an industrial inspector may apply to the QIRC regarding contravention of a contract instrument, and
- contravention of a contract instrument attracts a civil penalty of 27 penalty units (equivalent to $3721.95 at the time of writing).

Clause 69 amends Schedule 5 (Dictionary) of the IR Act, providing additional definitions of terms relevant to Chapter 10A.

Part 3 Amendment of other legislation

Division 1 Amendment of Anti-Discrimination Act 1991

Clause 70 (Act amended) provides that this division amends the *Anti-Discrimination Act 1991* (AD Act).

Clause 71 (Insertion of new s 190) provides for the insertion of new section 190 (Interim orders protecting complainant's interests (tribunal)). The amendment re-inserts section 190 (previously repealed by the *Queensland Civil and Administrative Tribunal (Jurisdictional Provisions) Amendment Act 2009*) into the AD Act. Under section 190, a complainant whose complaint has been referred to the tribunal (being the QIRC for a work-related matter, and the Queensland Civil and Administrative Tribunal for any other matter) may apply to the tribunal for an order prohibiting a person from doing an act that might prejudice an order that the tribunal might make after a hearing. A party may also apply to the tribunal for an order to vary or revoke such an interim order. This section does not limit the tribunal's powers under the relevant tribunal Act. For example, for matter where the tribunal is the Queensland Civil and Administrative Tribunal (QCAT), QCAT will retain the procedural powers in section 58 (interim orders) and section 59 (injunctions) under the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 72 inserts a new Chapter 11, Part 7 (Transitional provision for Industrial Relations and Other Legislation Amendment Act 2022) into the AD Act.

Clause 72 inserts a new section 279 (Application of s 190 to existing complaints) into the AD Act. The new section provides that the new section 190 (above) applies to complaints mentioned in that section whether or not the complaint predates the commencement of the section.

Division 2 Amendment of Associations Incorporation Act 1981

Clause 73 (Act amended) provides that this division amends the AI Act.

Clause 74 amends section 5 (Eligibility for incorporation) to make a technical amendment to refer generally to an organisation under the IR Act.

Clause 75 amends section 9(3) (Application for incorporation) to insert a new sub-section (c) requiring that an application for incorporation include a statutory declaration by the appointed person stating whether the association has an industrial purpose (that is, a purpose of furthering, protecting or representing the industrial interests of the members of an association or other persons).

Clause 76 inserts a new section 10A (Chief executive must advise industrial registrar about particular applications), which applies if an association's application for incorporation states (or the chief executive is otherwise satisfied) that the association has an industrial purpose (that

is, a purpose of furthering, protecting or representing the industrial interests of the members of an association or other persons).

The new section 10A requires the chief executive to give a copy of the application to the Industrial Registrar. The chief executive must also provide written notice to the applicant that the application has been provided to the Industrial Registrar, and that the chief executive will be required to refuse the application if they receive a notice from the Industrial Registrar stating that the objection ground is established for the application. The objection ground is defined in the IR Act. Until the chief executive receives a notice from the Industrial Registrar stating whether the objection ground under the IR Act has been established, the chief executive must not decide the application under section 12.

Clause 77 amends section 12 (Chief executive to make decision about application) to insert a new sub-section (3), which provides that the chief executive must refuse an application if they receive a notice from the Industrial Registrar that the objection ground under the IR Act is established for the application.

Clause 78 amends section 48(6)(b) (Application to register amendment of rules) to require a statutory declaration under the sub-section to state whether the effect of the amendment is to give the incorporated association an industrial purpose (that is, a purpose of furthering, protecting or representing the industrial interests of the members of the association or other persons).

Clause 78 also inserts a new sub-section 48(9) (after re-numbering), requiring the chief executive to refuse the application if they receive a notice from the Industrial Registrar that the objection ground under the IR Act is established for the application.

Clause 79 inserts a new section 48A (Chief executive must advise industrial registrar about particular applications) which applies if an incorporated association applies for registration of an amendments of its rules. If the application states (or the chief executive is otherwise satisfied) that the amendment gives the association an industrial purpose (that is, a purpose of furthering, protecting or representing the industrial interests of the members of an association or other persons), the chief executive must give a copy of the application to the Industrial Registrar. The chief executive must also provide written notice to the applicant that the application has been provided to the Industrial Registrar, and that the chief executive will be required to refuse the application if they receive a notice from the Industrial Registrar stating that the objection ground under the IR Act is established for the application.

New section 48A also provides that, until the chief executive receives a notice from the Industrial Registrar stating whether an objection ground under the IR Act has been established, they must not decide the application under section 48(8).

Clause 80 amends the heading of section 93 to add the word ‘generally’, given the insertion of new section 93B.

Clause 81 inserts a new section 93B (Cancellation of incorporation by chief executive - adverse order or industrial penalty), which requires the chief executive to cancel the incorporation of an incorporated association if the chief executive receives notice from the Industrial Registrar that an adverse order has been made, or an industrial penalty has been imposed, against the incorporated association, or an officer or member of the incorporated association. The chief

executive must give written notice about the cancellation to the Industrial Registrar and to a person who is last known to the chief executive as the secretary or another officer of the incorporated association before the cancellation. The chief executive must also give to the Industrial Registrar the name of each person who was known to the chief executive as an officer of the incorporated association immediately before the cancellation.

New section 93B also defines the meaning of *adverse order* and *industrial penalty*.

Clause 82 makes a consequential amendment to section 94 (Vesting of property on cancellation) to include a reference to the new section 93B (Cancellation of incorporation by chief executive - adverse order or industrial penalty).

Clause 83 makes a consequential amendment to section 94A (Definitions for part) to include a reference to the new section 93B (Cancellation of incorporation by chief executive - adverse order or industrial penalty).

Clause 84 amends section 109 (Affected person may apply for review) to provide that persons affected by decisions made under new sections 10A(1)(b), 12(3), 48(9), 48A(1)(b) or 93B(2) may not apply to the chief executive for a review of the decision. The amendment also has the consequential effect of removing a right of appeal to QCAT for these decisions. Persons affected by a decision relating to the objection ground have rights of appeal under the IR Act.

Clause 85 inserts a new section 163 (Existing applications related to industrial purpose) to provide a transitional provision in relation to applications made under section 9 or 48 that have not been decided before commencement of the Bill. These decisions must be decided under the amended provisions. Under the new transitional provision, the chief executive may also require the applicant to provide a statutory declaration regarding the industrial purpose of the relevant application.

Clause 86 amends Schedule 2 (Dictionary) to insert definitions for *industrial purpose, industrial registrar* and *objection ground*.

Division 3 Amendment of Associations Incorporation Regulation 1999

Clause 87 provides that this division amends the *Associations Incorporation Regulation 1999*.

Clause 88 amends section 3(1)(i) (General references) to insert a new sub-section (iv) providing that a name that may reasonably be mistaken for the name of an organisation under the IR Act is an unsuitable name for an incorporated association.

Division 4 Amendment of Public Trustee Act 1978

Clause 89 (Act amended) provides that this division amends the *Public Trustee Act 1978* (PT Act).

Clause 90 amends section 6 (Definitions) to insert new definitions for employer, *former employee,* and *unpaid wages.*

Clause 91 inserts definitions for employer, *former employee*, and *unpaid wages* into section 98 (Definitions).

Clause 91 also amends the definition of *unclaimed moneys* in section 98 to add a new paragraph (d) providing that unclaimed moneys includes an amount of unpaid wages.

Clause 92 inserts the new section 98B (Meaning of unpaid wages) defining *unpaid wages* as wages payable by an employer to a former employee that are required to be, or have been, paid to the public trustee under the IR Act, section 375 or section 1099.

Clause 93 amends section 99A (Public trustee's register of unclaimed moneys) to provide that the public trustee must keep a register of unclaimed moneys paid to the public trustee under section 375 of the IR Act, in addition to part 8, division 1 of the PT Act. If the moneys are an amount of unpaid wages, the register of unclaimed moneys must contain the following details: the name of the employer who paid the amount to the public trustee, and the name, date of birth, and last known address of the former employee to whom the amount was payable.

Clause 94 amends section 102 (Unclaimed moneys to be paid to public trustee by accountable person) to include unpaid wages as a type of unclaimed money that is not to be paid to the public trustee under section 102. The Clause also inserts a legislative note stating to see also the IR Act, sections 375 and 1099 in relation to the obligation of an employer to pay unpaid wages to the public trustee.

Schedule 1 Other amendments

Item 1 amends the heading and subsection (4) of section 20 to replace the term *service* (in reference to a contract of service) with the term *employment*. This is to ensure that the IR Act is consistent in referring to an employee's employment contract as a *contract of employment.*

Items 2 and 3 amend notes 1 and 2 of section 56(2)(a)(ii) (Explanation of types of parental leave) to omit gendered language (*maternity leave* and *birth of her child).*

Items 4 and 5 amend section 56(2)(b) (Explanation of types of parental leave) to amend the language that adoption leave is for an employee who adopts a child and omit the term *placement* (in reference to the placement of an adopted child with their adoptive family).

Item 6 amends section 60(2)(c) (Entitlement to adoption leave) to omit the term *placement* (in reference to the placement of an adopted child with their adoptive family).

Items 7 and 8 amend section 65 (Employee notice – intention to take adoption leave) to omit the term *placement* (in reference to the placement of an adopted child with their adoptive family).

Item 9 amends sections 79(4)(c) (definition *other paid leave*), 90(2)(b)(iii) and 124(3) to replace the term *employment contract* with *a contract of employment* to provide consistency in how the IR Act refers to an employee's employment contract.

Item 10 amends the definition of *strike* in sections 103(3) and 124(2)(c) to replace the term *employment contract* with the term *contract of employment.*

Item 11 amends the definition of *strike* in sections 103(2)(c) and Schedule 5 to replace the term *employment contracts* with the term *contracts of employment.*

Item 12 amends the third dot point of the examples under section 178(5) to replace the reference to *section 173(3)* with *section 173(5)*.

Item 13 amends the legislative note in section 179 to replace the reference to *full bench* with *commission*.

Item 14 amends the headings of sections 180 and 182 to replace the reference to *Full bench* with *Commission*.

Item 15 amends sections 180, 181, 182, 183(1)(a), 530(2)(a), 554(3) and 557(3) to replace the reference to *full bench* with *commission*.

Item 16 amends the definition of *strike* in sections 271(a) and (b), 282(1)(b) and schedule 5 definition 'strike', paragraph 3(b), to omit gendered language (*his or her)* and replace with *the employee's.*

Item 17 amends section 278(1)(b)(i) and (ii) to replace the term *industrial associations* and replace with *industrial organisations.*

Item 18 amends sections 282(4), 308 and 599(a) to (f) to replace the term *association* with *organisation.*

Item 19 amends section 284(1)(c)(ii) to omit gendered language (*his or her*) and replace with *the person's.*

Item 20 amends section 286(1) to omit gendered language (*he or she*) and replace with *the person's.*

Item 21 amends sections 291(a), 294(2) and 298 to replace the term *industrial association* with *industrial organisation.*

Item 22 amends section 291(c) to replace a reference to *section 290(c) to (f)* with *section 290(d) to (g)*.

Item 23 amends the heading of section 308 to replace the term *industrial associations* with *industrial organisations.*

Item 24 amends the heading of Chapter 9, Part 1, Division 6 and sections 354B(3)(b)(iv), 354C(1)(b), 354C(2), 354C(5), 354C(6) to omit the word *registered.*

Item 25 amends sections 354B(1), 354B(2)(b) and 354C(1)(a) to omit the words *a registered* and insert the word *an.* The amended sections refer to *an organisation.*

Item 26 amends section 373(4) to omit the words *are to be paid* to correct a typographical error so the provision reads '…*the employer must pay the employee's wages without deduction or any charge*…'

Item 27 amends section 398(3)(a) to omit the words *service or contract for service* with the words *employment or contract for services.* This is to ensure consistency in how the IR Act refers to an employee's employment contract.

Item 28 amends section 471(1)(a)(i) to replace the word *service* with the word *employment.*

Item 29 amends section 482(e) to insert the words *the industrial interests of* after *right to represent*. The amended provision reads '… *an employee organisation's right to represent the industrial interests of a particular group of employees*.'

Item 30 amends section 483(1) to omit the words *association or*.

Item 31 amends section 483(1)(b) to omit the words *in relation to making an agreement*.

Item 32 amends section 483(2)(b) to omit the words *an association.*

Item 33 amends section 483(4) to omit the words *an industrial*.

Item 34 amends section 599 to replace the term *industrial association* with *industrial organisation*.

Item 35 amends section 599(d) and (e) to replace *association's* with *organisation's*.