Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015.

Explanatory Notes

Short title

The short title of the Bill is the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015*.

Policy objectives and the reasons for them

The policy objectives of the Bill are to give effect to the Government's election commitments and priorities relating to:

1. 'Restoring Fairness for Government Workers', by:
    a. reinstating employment conditions for Government workers that were lost as a result of changes to the *Industrial Relations Act 1999* (IR Act) made in 2012 and 2013;
    b. re-establishing the independence of the Queensland Industrial Relations Commission (the Commission) when determining wage cases;
    c. returning the Commission to its position as a layperson's tribunal where employees and union advocates operate on a level playing field with employers; and
2. Restoring the ability of industrial organisations and their representatives to freely organise and access members so as to enhance and protect their industrial interests.

The IR Act provides the legislative framework for Queensland's industrial relations system as it applies to State system employers and employees.

The former Government made extensive amendments to the IR Act, including amendments that rendered certain provisions in industrial instruments applying to employment in a State Government entity to be of no effect. These provisions deal with contracting; employment security, policy incorporation; union encouragement; private practice; and resource allocation. These amendments also rendered termination, change and redundancy (TCR) provisions to be of partial effect and restricted the operation of provisions about giving personal employee information.

The former Government directed the Commission to commence an award modernisation process within a framework that prohibits provisions relating to particular subject matters from being included in modern awards and also required certain other provisions, prescribed by regulation, to be included in modern awards.

Restrictions were also placed on the content of a certified industrial agreement following the modernisation of the underpinning award.

The former Government also curtailed the independence of the Commission by mandating that the financial position and fiscal strategy of the State, public sector entity or relevant employer be part of public interest considerations when determining wages and employment conditions by arbitration. The former Government also amended the IR Act to broaden the circumstances in which any party may have legal representation without requiring the consent of all parties. This eroded the status of the Commission as a 'layperson's tribunal'.

The former Government introduced notice requirements before an authorised industrial officer could enter a workplace and exercise legitimate right of entry powers provided under the IR Act for certain purposes, such as inspecting time and wages records and/or discussing matters under the IR Act with members and others. This has impeded the ability of industrial organisations and their representatives to freely organise and access members to enhance and protect their members' industrial interests.

The proposed amendments to the IR Act (and consequential amendments to the subordinate legislation - the *Industrial Relations Regulation 2011* (IR Regulation)) abolish these aspects of the previous Government's industrial relations arrangements to ensure Queensland's Industrial relations system supports and promotes fair and just employment conditions for employees and their right to collectively bargain for those terms and conditions.

On 17 March 2015, the award modernisation process initiated by the former Government was suspended. It is envisaged that the award modernisation process will be continued under the framework of the amended IR Act. The Bill provides for modern awards made up to the time of the suspension of the award modernisation process to be reviewed and varied to ensure fairness is restored to those employees. The Bill also ensures that employers and employees covered by a modern industrial agreement made upon a modern award can re-bargain a new agreement under the amended industrial relations arrangements.

Achievement of policy objectives

Amendment of Industrial Relations Act 1999

The Bill will achieve its objective of 'Restoring Fairness for Government Workers' by repealing those sections of the IR Act introduced by the *Public Service and Other Legislations Amendment Act 2012* and the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013* that made certain provisions in awards and industrial agreements applying to employers and employees in Government entities to be of no effect*;* and repealing or amending provisions introduced in the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013* relating to award modernisation and the mandating and prohibition of certain content in modern industrial instruments

The Bill will achieve its objective of re-establishing the independence of the Commission by repealing those provisions that were introduced in the *Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012* relating to the Commission's consideration of the public interest to include the financial position and fiscal strategy of the State, relevant public sector entity and the relevant employer; and the Government's briefing to the Commission about the State's fiscal strategy and financial position.

The Bill will achieve its objective of returning the Commission to its status as a 'layperson's tribunal' by restoring legal representation arrangements for parties appearing before the Commission to be as they were prior to the *Public Service and Other Legislations Amendment Act 2012*.

The Bill will achieve its objective of restoring the ability of industrial organisations and their representatives to freely organise and access members, so as to enhance and protect their industrial interests, by restoring right of entry provisions to be as they were prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*

The Bill includes an amendment to the IR Regulation to remove provisions prescribing content in modern industrial instruments concerning consultation, dispute resolution and individual flexibility arrangements that are consequential to the amendment of the IR Act.

Transitional arrangements

The Bill provides transitional arrangements for those modern awards and modern certified agreements made. Ten modern awards and seven modern certified agreements have been made to date under the modern award and agreement framework that will require particular consideration.

The Bill's transitional arrangements will require the Commission to review and vary those modern awards made prior to the suspension of the award modernisation process to (1) remove the previously mandated clauses, and any ancillary provisions; and (2) return particular provisions that were removed through the modernisation process (i.e. provisions relating to union encouragement, union delegates, industrial relations training, and TCR).

For any other provisions that were contained in a relevant pre-modernisation award but were omitted or changed during the modernisation process, the Commission must reconsider the omission or change in light of the amended framework for award modernisation, the Queensland Employment Standards (QES) and the submissions of the parties.

The Commission also has the power to increase the number of awards covering an industry or occupation where the making of the relevant modern award resulted in a significant reduction in the number of awards covering the industry or occupation.

A new nominal expiry date, set at three months following the varying of the relevant modern award, will be applied to those certified agreements already made in connection with a modern award. Bargaining for a new agreement is taken to have commenced from the date of the variation of the underpinning relevant modern award. An agreement will continue to operate as a nominally expired agreement while bargaining for a new agreement occurs.

The Bill provides for a facility to vary a modern certified agreement already made by regulation.

The Bill provides that the Commission will be unable to certify any further agreements following the introduction of the Bill unless the relevant modern award has been reviewed and varied.

The transitional arrangements also provide that, where the Commission had started to modernise a pre-modernisation award but no modern award has been made, modernisation will be resumed under the amended arrangements. For the avoidance of doubt the transitional provision make clear that such resumption is a continuation of the current award modernisation process.

In relation to individual flexibility arrangements, although the IR Act will no longer mandate a clause for insertion in modern industrial instruments facilitating their usage, the transitional arrangement confirms that an individual flexibility arrangement that has already been made continues to operate; and an individual flexibility arrangement may be brought to an end by the parties, in accordance with the existing provisions.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objective other than through legislative reform.

Estimated cost for government implementation

While there are no direct cost implications to Government with the legislative reforms set out in the Bill, it is noted that the re-introduction of job security, protections against contracting out and other measures arising from the Bill have cost implications to Government.

Consistency with fundamental legislative principles

The Bill raises possible infringements of Fundamental Legislative Principles (FLP) regarding *Legislative Standards Act 1992* (Qld) s4(2)(a) - having sufficient regard to the rights and liberties of individuals; and *Legislative Standards Act 1992* (Qld) s4(2)(b) - having sufficient regard for the institution of Parliament.

Having sufficient regard to the rights and liberties of individuals.

The early termination of certain certified agreements potentially lessens the rights of individuals in that particular certified agreements, by operation of the legislation, will be provided with an earlier nominal expiry date than that originally negotiated and agreed between the parties. Furthermore, it is possible that some employees may receive conditions under a new negotiated certified agreement less than those provided in the agreement the subject of an early expiry. The Regulation making power to include a provision in a modern certified agreement may also impact the rights and liberties of individuals in that it may work to alter a previously agreed provision in a current agreement.

It is considered that the amended framework for modern certified agreements provided for under the Bill will result in fairer bargaining outcomes because the restrictions and qualifications previously imposed on content permissible in a modern certified agreement are

removed. The provision of a facility to vary a relevant certified agreement by regulation is considered appropriate as an interim measure before the parties can bargain for an agreement under the new framework without content restrictions.

The provision to impose a new nominal expiry date will have very limited scope in that it will apply only to the small number of certified agreements that have been made under the modern industrial instrument system introduced in 2013. On balance, it is considered preferable to bring those agreements to an early nominal expiry and allow the parties to re-bargain without the artificially imposed constraints on content, rather than to allow those agreements to continue.

The new nominal expiry date is not by reference to the commencement of the Bill but will occur 3 months from the date the Commission varies the relevant modern award. A new agreement can only be certified following the nominal expiry of the current agreement. It is considered 3 months is a reasonable minimum period to allow the parties to consider the terms of the varied award and to negotiate a new agreement to present to the Commission for certification.

Retrospectivity for the restriction on the certification of agreements reached by certain cohorts may also offend the FLP. The Bill provides that the Commission will be unable to certify a proposed agreement from the Bill's introduction day. While those cohorts who have a modern agreement would otherwise be free to continue to bargain and seek certification for agreements struck, it is considered appropriate to halt the certification of agreements and by consequence, stop bargaining under the current restrictive regime, until the amendments proposed in the Bill are considered for passage. It will also ensure that the parties and the Commission will have the benefit of considering the content of the relevant modern award, as reviewed and varied, before commencing bargaining.

Having sufficient regard for the institution of Parliament.

The Bill contains a transitional regulation-making power. Given the complexity around the transitional arrangements, including how employees are transitioned from modern awards made within the framework of non-allowable and required content to the varied modern awards made within the new framework, it is considered that such a power is appropriate to facilitate and manage the risk of issues arising after commencement. This power has a 'sunset' or 'automatic expiry' of two years after the date of commencement of the Bill. Having regard to the Minister's temporary suspension of the award modernisation process until the Bill is in effect as well as the likelihood that the Ministerial Request may allow the Commission greater time in which to complete award modernisation, a two year transitional regulation-making power is considered appropriate.

The Bill contains a provision allowing a regulation to vary a modern certified agreement made to include additional provisions. The provision is limited to only those modern certified agreement made up to the introduction of the Bill. Given the unique circumstances surrounding the negotiation of those particular modern agreements and the Government's objective to restore conditions that have been lost, this provision is considered appropriate.

In regard to the amendment of subordinate legislation by the Act, as the Act must commence on assent rather than on a later day the regulation dealing with the required content in modern industrial instruments must be amended to commence at the same time. Amending the subordinate legislation by the Act is considered appropriate in the circumstances.

Consultation

The policy objectives contained in the Bill were announced in the Government's pre-election commitment for 'Restoring Fairness for Government Workers' and as a priority in the 2014 Labor State Policy Platform.

Further consultation has been undertaken with Queensland industrial relations system stakeholders namely the Queensland Council of Unions; United Voice, Industrial Union of Employees, Queensland; the Australian Workers' Union of Employees, Queensland; Together Queensland, Industrial Union of Employees; Queensland Services, Industrial Union of Employees; Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland; Queensland Nurses' Union of Employees; Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland; Plumbers & Gasfitters Employees' Union Queensland, Union of Employees; the Electrical Trades Union of Employees Queensland; Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch; United Firefighters' Union of Australia, Union of Employees, Queensland; Queensland Teachers Union of Employees; and the Local Government Association of Queensland; and with the Department of Premier and Cabinet, Queensland Treasury, Queensland Health, other Government departments and the Public Service Commission. No further community consultation has been undertaken.

Consistency with legislation of other jurisdictions

The legislative amendments contained in the Bill will align IR Act provisions more closely with the federal *Fair Work Act 2009* (FW Act) in relation to award modernisation by removing restrictions and qualifications from what can be included in a modern award and agreement. The transitional arrangements for modern awards and agreements made are a consequence of unique factors and so do not reflect legislation of other jurisdictions. The right of entry amendments are similar to the New South Wales industrial relations legislation which does not require notice for the purposes of holding discussions. While the removal of notice requirements for right of entry is not consistent with the FW Act it should be noted that the FW Act responds to particular needs of the private sector.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides that the Act may be cited as the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015.*

Part 2 Amendment of Industrial Relations Act 1999

Acts as amended

Clause 2 provides that the part amends the IR Act.

Amendment of s 3 (Principal object of this Act)

Clause 3 amends the IR Act to omit section 3(p) and insert a new (j) and (o). Section 3 of the IR Act lists factors that support the principal object of the legislation; '*provide a framework for Industrial Relations that supports economic prosperity and social justice*.'

Section 3(p) specifically provided that the Commission, when determining by arbitration 'wages and employment conditions' was required to take into account, amongst other things, the financial position of the State and the State's fiscal strategy or alternatively the employer's financial position, depending on the type of employer that was the subject of the proceedings. This aspect of the object does not need to be reflected in the IR Act moving forward because firstly, section 140D (5) is being amended to remove the requirement for the Commission to consider the employer's and/or the State's financial position and secondly, because Chapter 8, Part 7, which contains section 339A (Government briefings about State's financial position etc.) is being repealed by the Bill.

New aspects are also being inserted into the object provision at (j) and (o) – these reflect those removed from the IR Act by the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013.* The aspects are to the '*promoting and facilitating the regulation of employment by awards and agreements*' and '*promoting collective bargaining and establishing the primacy of collective agreements over individual agreements'* respectively.

Amendment of s 71CA (Queensland Employment Standards subject to provisions of modern industrial instrument)

Clause 4 omits "note 2" at this provision, which referenced section 71OI, a 'non-allowable content' provision that will be omitted from the IR Act by this Bill.

Replacement of s 71LA (Required or permitted provisions)

Clause 5 omits and replaces section 71LA, which is the section that sets out the content requirements for modern industrial instruments by reference to relevant divisions and subdivisions of Part 2A (Modern employment conditions) of the IR Act.

This replacement has the effect of removing certain references to provisions of the IR Act that will be repealed as a consequence of the Bill, particularly the non-allowable provisions and certain required content provisions (as they relate specifically to modern awards or certified agreements or industrial instruments as a whole).

The replacement also reflects a change in the scheme of modern industrial instrument content, as introduced by the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013.* Part 2A created a scheme where all content was with either required, permitted or non-allowable. These proscriptive content requirements were at odds with how the IR Act was originally framed, with wide discretion given to the Commission and the parties in making awards and certified agreements. The removal of the concept of 'non-allowable content' as well as changes to how permitted content is framed is undertaken by the Bill so as to ensure the Commission is not unnecessarily constrained in its preparation of modern awards. The new framework specifies the required provisions for modern industrial instruments as a whole as well as modern awards and certified agreements specifically.

Amendment of s71LB (Non-allowable provisions)

Clause 6 omits section 71LB in its entirety, removing the restriction on modern industrial instruments containing content that contravened particular divisions of Chapter 2A (Modern employment provisions). This was defined under repealed section 71LB as 'non-allowable provisions' for industrial instruments.

The concept of 'non-allowable provisions' and section 71LB was introduced into the IR Act in 2013 by way of the *Industrial Relations (Fair Work Harmonisation No 2) and Other Legislation Amendment Act 2013*. No similar prohibitions are made in the FW Act. The non-allowable provisions had the effect of creating an absolute prohibition on certain content for industrial instruments, whether or not such content pertained to the employment relationship. The removal of these restrictions will again give the Commission the ability to include such provision in awards and restore employers and employees' ability to agree on including such content in certified agreements.

Amendment of s 71LC (Provisions that contravene s 71LA or 71LB of no effect)

Clause 7 amends section 71LC to remove the reference to section 71LB, which will be omitted by the Bill.

Omission of ch 2A, pt 3, div 2, subdiv 1 (Required content—all modern industrial instruments)

Clause 8 omits chapter 2A Part 3, Division 2, Subdivision 1 which contained sections 71M – 71MB as introduced into the IR Act by the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013.* The Bill ensures that certain provisions prescribed under regulation, known as 'required content' provisions, will no longer be considered mandatory content for industrial instruments.

Instead the relevant parties, including the Commission in relation to modern awards, shall be open to agree on the scope and the terms of provisions covering the subject matters of consultation for major organisational change, the process for preventing and settling disputes (about a matter arising under the industrial instrument or about the QES) and in relation to the use of industrial flexibility arrangements.

Insertion of new s71MCA (Dispute resolution procedure)

Clause 9 inserts new s71MCA containing a requirement for a modern award to provide a dispute resolution procedure that includes consultation at the workplace, involvement of relevant organisations in dispute resolution and any other matter prescribed by regulation. Section 71MCA is not based on omitted s71MA, which provided for a dispute resolution clause as prescribed by regulation, but broadly on requirements previously contained at section 127 of the IR Act, as repealed by the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013.*

Amendment of s71 (General matters)

Clause 10 amends section 71N (General matters) to omit the wording 'other than non-allowable provisions.' Given the removal of these provisions from the IR Act this reference is no longer necessary.

Amendment of s71NA (Provisions related to Queensland Employment Standards)

Clause 11 amends section 71NA to omit the reference to 'other than a non-allowable provision' as this reference is no longer necessary.

Amendment of s71NB (Other incidental provisions)

Clause 12 amends section 71NB to omit the reference to 'other than a non-allowable provision' as this reference is no longer necessary.

Insertion of s71NCA (Other requirements)

Clause 13 inserts a new section that specifies an overriding requirement on all modern industrial instruments. This section prohibits the inclusion in modern industrial instruments of provisions that discriminate against an employee or displace a provision of the QES. These are based on the requirements that were contained at sections 71OH and 71OI prior to this amending Bill.

Replacement of s71ND (General matters)

Clause 14 replaces existing s71ND which sets out 'general matters', permitted content for a modern award. The new s71ND is based on the provision it replaces, in that it expressly lists minimum wages and skills base classifications and career structures as 'permitted matters', but it also contains the following key changes. Firstly, the prohibition on 'non-allowable content' is removed. The removal of the 'non-allowable content' provisions from the IR Act make this reference unnecessary.

Secondly wording is inserted to make it clear that a modern award may include provisions required to provide 'fair and just employment conditions.' This wording is based on the wording that was historically contained at section 125 of the IR Act, prior to the enactment of the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013.* The legislative intent of removing 'non-allowable content' together with inserting the reference to 'fair and just employment conditions' at 'permitted matters' is to ensure the Commission has the same level of discretion for the determination of modern award content as it did for awards generally, prior to the *Industrial Relations (Fair Work Harmonisation No. 2) and Other Legislation Amendment Act 2013* legislative changes.

Amendment of s71NE (Provisions about employment relationship)

Clause 15 amends section 71NE to omit the reference to 'other than non-allowable provisions' as this reference is no longer necessary.

Omission of ch 2A, pt 3, div 4 (Non allowable content)

Clause 16 omits Chapter 2A, Part 3, Division 4 which set out at sections 71O to 71OL 'non allowable content' as it related to all modern industrial instruments as well as specifically to modern awards or certified agreements.

The omission of Part 3 will mean the following restrictions on industrial instruments content are removed:

- contracting provisions: being requiring, restricting or prohibiting the contracting out, or in, of services (section 71O);
- employment security provisions: relating to job security or maximising permanent employment (section 71OA);
- encouragement provisions: relating to membership of industrial associations (section 71OB);
- organisational change provisions - requiring an employer to notify, consult or involve an entity in decision-making about organisational change (section 71OC);
- policy incorporation provisions: ensuring no policy documents can be incorporated into the modern instruments (section 71OD);
- private practice provisions: relating to medical practitioners (section 71OE);
- resource allocation provisions: relating to allocation of funding to a program or a scheme not directly related to entitlements of, or benefits for, employees (section 71OF);
- right of entry provisions (section 71OG); and
- general matters (section 71OJ).

The requirement not to have discriminatory provisions (repealed section 71OH) and/or provisions displacing the QES (repealed section 71OI) are now contained at section 71NCA as detailed above. Section 71OK prohibited a modern award from containing provisions about training arrangements, workload management, delivery of services or workforce planning. Upon repeal provisions relating to these matters will be permitted in modern awards. The repeal of section 71OL will remove the following restrictions on the content of certified agreements:

- provisions inconsistent with the provisions for industrial action;
- provisions that set out types of engagements or classifications that are inconsistent with the relevant award;
- provisions that require or permit a contravention of the provisions in chapter 4 (freedom of association chapter);

- provisions that require an employer to manage workloads in a particular way;
- provisions that restrict access to training arrangements;
- provisions that restrict delivery of services; and
- provisions about unfair dismissal or a remedy arising from termination of employment relating to notice and redundancy pay other than the QES minimums.

It should be noted that the removal of the prohibition on including notice or redundancy pay provisions different to that of the QES will mean certified agreements may again contain more advantageous arrangements than those provided for in the QES. This is consistent with the QES providing a safety net. It does not operate to restrict increased entitlements being negotiated and agreed on by parties to a certified agreement.

Amendment of s 140CA (Variation of award modernisation request)

Clause 17 omits subclauses (3) and (4) of section 140CA. Subclause 140CA(3) only allowed a variation notice given by the Minister to extend the award modernisation process by a maximum of 2 years. Subclause 140CA(4) allowed the Minister to extend the date by which the Commission has to complete the award modernisation process only once. The deletion of these provisions is intended to ensure that a variation to an award modernisation request under 140CA can extend the time for completion more than once and by more than 2 years, if the Minister so chooses. This is to better ensure the Commission has appropriate time to undertake this exercise, having regard to the amended legislative framework and the restored flexibility around award content. For the avoidance of doubt, this will apply even though the award modernisation process was commenced prior to the Bill.

Amendment of s140D (Modern Award objectives)

Clause 18 amends the modern award objectives to omit section 140D(2)(h) from the list of matters the Commission must have regard to when exercising its powers in Chapter 5A in relation to modern awards. Section 140D(2)(h) required the Commission to have regard to 'the financial position considerations.' The definition of 'financial position considerations' at 140D(5) is also omitted by this clause and was defined to mean the State's financial position and fiscal strategy and the financial position of the public sector entity, where the employer is a public sector entity or in all other cases, the relevant employer or employers financial position.

Amendment of s149 (Arbitration if conciliation unsuccessful)

Clause 19 amends section 149(2)(c) to omit the reference to '*any issue the conciliating member considers relates, or may relate, to non-allowable content under chapter 2A, part 3, division 4, subdivisions 1 and 3*' as a content requirement for the written report a Commissioner prepares after unsuccessfully conciliating negotiations between parties to a proposed certified agreement. The requirement to include such information in a Commissioner's report is no longer required as Part 3 of Chapter 2A, which deemed certain content 'non-allowable,' is being removed by this Bill.

Amendment of s149C (Arbitration powers of full bench)

Clause 20 omits the reference in repealed section 149(C)(2) to the full bench of the Commission not being able to include a provision containing 'non-allowable content' in an arbitration determination. The removal of the 'non-allowable content' provisions from the IR Act make this reference unnecessary. The provision does not otherwise alter the Commission's powers in regard to the making of arbitrated determinations.

Amendment of s149D (Issues full bench must consider)

Clause 21 amends existing section 149D by omitting paragraphs 149D(2)(e), 149D(2)(f) and 149D(2)(g) and the corresponding definitions for 'high-income guarantee contract' and 'public sector entity' in section 149D(3). This removes these considerations from the scope of the "public interest" that the Commission must consider in determining a matter by arbitration.

Amendment of s156 (Certifying an agreement)

Clause 22 amends existing section 156 by omitting the reference to the repealed provisions dealing with 'required content' for all modern industrial instruments (repealed Chapter 2A, Part 3, Division 2, Subdivision 1) from paragraph 156(1)(d), and omitting 156(1AA) which stated that the Commission must refuse to certify an agreement if it included 'non-allowable' content. The removal of the 'non-allowable content' provisions from the IR Act make this reference irrelevant.

Amendment of s158 (Other options open to commission instead of refusing to certify agreement)

Clause 23 amends existing section 158 by omitting paragraphs 158(4) – (6). These paragraphs refer back to section 156(1AA) which is repealed by Clause 22 of this Bill. As a result the reference is irrelevant.

Omission of s176A (Claims including non-allowable content)

Clause 24 omits section 176A in its entirety. This provision prevented a protected action ballot from authorising industrial action if the claims included 'non-allowable content'. The removal of the 'non-allowable content' provisions from the IR Act make this section irrelevant.

Amendment of s 319 (Representation of parties)

Clause 25 amends section 319 to return the provisions of the IR Act to what they were prior to the amendments made by the *Public Service and other Legislation Amendment Act 2012.* The *Public Service and Other Legislation Amendment Act 2012* amended section 319 of the IR Act to allow any party to be legally represented in Commission proceedings relating to: arbitration of agreements, action on industrial disputes, declarations on industrial matters, injunctions and interpretations of industrial instruments.

It is proposed to reverse the amendments to section 319 (with the exception of referencing section 110 as this has since been repealed) by omitting and replacing section 319(2)(b) and (ba) and 319(3A) and inserting a new section 319(2)(b). The references at section 319(4) to (2)(ba)(ii) is also omitted and replaced with a reference to new subsection (2)(b)(iii). The effect is that legal representation is no longer an automatic right in these matters, thereby restoring the Commission as a layperson's tribunal as it was prior to the former Government's changes.

Omission of ch 8, pt 7 (Other matters)

Clause 26 deletes Chapter 9, Part 7 of the IR Act. Only one provision was contained in this repealed part: section 339AA which provided for the Treasury Chief Executive, at any time, to give the Commission a briefing about the State's financial position and fiscal strategy, and related matters. This provision was added to the IR Act by the *Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012* and related to the inclusion of sections 140D(5) and 3(p) (that is, the requirement for the Commission to consider the employer's and/or the State's financial position). This Bill is repealing all of these provisions.

Omission of 370A (Definitions for div 4)

Clause 27 amends section 370A to omit definitions that were inserted along with amendments to the right of entry provisions in existing sections 372A and 372B by the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013*. The Bill amends the provisions relating to right of entry to return them to what they were prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*

Replacement of s 372 (Right of entry – authorised industrial officer)

Clause 28 amends section 372 to return it to what it was prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*

Omission of a 372A (Notice of entry)

Clause 29 omits section 372A.

Omission of s 372B (Employer notice in response to entry notice)

Clause 30 omits section 372B.

Replacement of s 373 (Rights of authorised industrial officer after entering place)

Clause 31 replaces existing section 373 with the version of section 373 that existed prior to the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013.*

Omission of ch 15, pt 2 (Particular provisions of industrial instruments)

Clause 32 amends the IR Act by omitting Chapter 15, Part 2. The provisions in this part (from section 691A – 691E) specified those types of provisions in industrial instruments that were deemed of no effect by the *Public Service and Other Legislation Act 2012*. The prohibition on these types of provisions is being removed by this Bill.

Insertion of new Ch 20, pt 20 (Transitional provisions for Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015)

Clause 33 inserts a new Part 20 into the IR Act to contain the transitional provisions in connection with this Bill. Particularly this part will address how the Commission will deal with modern awards made prior to commencement of the Bill ('relevant modern awards') and pre-modernisation awards that were part way through the award modernisation process. Provision is also made for the small number of certified agreements that were made under the modern industrial instrument system introduced in 2013 and therefore subject to certain content restrictions. Such agreements may be given a new nominal expiry by reference from the date the Commission varies the relevant modern award under this Chapter 20.

New Part 20, Division 1 inserts section 839 that defines the terms 'amended Act', 'amending Act,' 'pre-amended Act,' 'pre-modernisation award,' 'relevant certified agreement,' 'relevant modern award,' and 'relevant pre-modernisation award' for the purposes of new Part 20 inserted by the Bill. A 'relevant modern award' is defined as being a modern award made by the Commission before commencement and a 'relevant certified agreement' means an agreement that is a modern industrial instrument and was certified by the Commission before commencement.

New Part 20, Division 2 inserts sections 840-847 addressing the review and variation of 'relevant modern awards' by the Commission.

New section 840 identifies the key purposes of Division 2. Division 2 is required because the Commission has already made a number of modern awards (defined as 'relevant modern awards') under the framework of the pre-amended legislation. Division 2 requires the Commission to review these awards to ensure the content of the awards is consistent with the amended legislation.

New section 841 identifies the circumstances when the Commission must review and vary relevant modern awards under Division 2. The Commission must review and vary the award as soon as possible, when the Minister gives the Commission a variation of award modernisation request under section 140CA, recommencing the process. The Commission is required to review and vary the award as soon as possible after it receives the request. In relation to how the process is undertaken, the Commission must carry it out in accordance with 140CC. Section 140CE and Chapter 5A, Part 3 do not apply for this purpose. While the Commission must have regard to any particular details contained in the award modernisation request, nothing in this new section 841 is intended to change the process used by the Commission to modernise awards under the pre-amended legislation. Subsection (4) makes it clear, that the award modernisation process (see section 140C), under which a relevant award was made, continues, but for the avoidance of doubt such award will be reviewed and varied by the Commission.

New section 842 sets out the requirements on the Commission for the review and variation of a relevant modern award. Firstly, it lists at subsection (1)(a) the provisions that must be removed from a relevant modern award, being, the provisions previously required to be included as a result of the operation of repealed sections 71M, 71MA and 71 MB. These dealt with the subject matters of consultation/major organisational changes, dispute resolution and

individual flexibility arrangements and their mandated form was prescribed by the IR Regulations.

The Commission must also remove any provision ancillary to these provisions. The example provided is clause 8.2 of the *Queensland Public Service Officers and Other Employees Award* that provides an "individual dispute resolution procedure" and was ancillary to the dispute resolution clause inserted by operation of section 71MA.

In regards to the variation of a relevant modern award, matters the Commission must insert into the relevant award, where such matters provided for in pre-modernised instrument include provisions about:

- union encouragement;
- union delegates;
- industrial relations education leave or trade union training leave;
- right of entry;
- prevention and settlement of disputes, including employee grievance procedures
- termination, change and redundancy.

These particular terms are used because they have specific meaning within the context of the pre-modernisation awards, forming the subject matter headings in the awards, and therefore do not require defining in the Bill. The Commission, in undertaking this exercise, may amend the provisions – this power is necessary not only because of the introduction of the QES and the modern award objectives (which did not apply to pre-modernised awards) but also because the Commission may need some degree of flexibility where there was more than one relevant pre-modernisation award. The Commission shall also have regard to the submissions of the parties when undertaking this exercise.

New section 843 give the Commission the power to consider other variations to the relevant modern award, where such a matter was not reflected (or adequately reflected) in the modern award but were contemplated by the pre-modernisation award or awards. The reference to 'pre modernisation award' is chosen expressly to limit the scope of such variations. It is not intended to be a revisiting of the award's terms in its entirety and new claims, not provided for in the pre-modernisation award should not be considered. It is anticipated that it will allow the Commission to re-consider, by reference to the amended Act, such issues as allowances, hours of work, spread of hours and pay classifications, where the relevant award has omitted these or provided for them in a different manner. The Commission will consider the submissions of the parties when reviewing the award in accordance with this provision.

New section 844 gives the Commission the power under the award modernisation process to increase the number of modern awards covering an industry or occupation (or common group of employees) where there was a significant reduction in the number of modern awards and the Commission considers it appropriate. The Commission must consider a submission made by a party covered by the relevant modern award about whether to increase the number of modern awards covering the industry or occupation. In relation to how the number of awards is achieved, subsection (4)(a) makes it clear that the relevant modern award's coverage is reduced (ie. to cover a particular cohort/s of employees within that industry and occupation). Subsection 4(b) then provides that any coverage which has been excised from that "parent" relevant modern award must be provided for in one or more additional modern awards (ie. to

cover the remaining cohort/s of employees in that industry or occupation). Subsection 5 makes clear that these additional modern awards are then taken to be (or deemed to be) "relevant modern awards" for all other purposes. This is to enable the Commission to then undertake the review and variation process under Division 2 but having regard to the new coverage arrangements.

New section 845 confirms that a variation to a relevant modern award under this Part comes into 'operation' the day on which the Commission makes a determination. Therefore it is not intended to have retrospective effect.

New section 846 sets out the circumstances under which the relevant modern award, as varied, applies to an employer or employee in circumstances where there is a relevant certified agreement in place, or in circumstances where there is no certified agreement in place.

For employees covered by a relevant certified agreement, the varied modern award starts to apply once the employees are covered by an agreement which is certified, or a determination which is made, after the varied relevant modern award starts to operate (i.e. once the parties have re-bargained for and certified a new agreement). Until such time as this occurs subsection 3 provides, for the sake of clarity, that the modern award as it stood pre-variation continues to apply.

For employees not covered by a certified agreement on the day the modern award is varied (the variation day), the varied modern award starts to apply on the variation day or a later day stated by the Commission.

For employees covered by a continuing agreement or determination, or a certified agreement which has not become a continuing agreement under the Act, the varied relevant modern awards will apply in the same way modern awards do that is, by reference to when a new certified agreement is made (i.e. it has prospective application only). The note refers to section 824 which governs this situation.

New section 847 effect is to bring certain certified agreements to an early (nominal) end. This clause will only apply to the situation where: (1) the Commission made a relevant modern award under the pre-amended legislation for a group of employees, and (2) the Commission also approved a new certified agreement for that group of employees. Because the relevant modern award will be reviewed and varied by the Commission, the legislation brings the new certified agreement to an early (nominal) end so that the parties are able to bargain for a new agreement under circumstances, if they elect to do so, where they are aware of the content of the reviewed modern award. The legislation provides that the new (nominal) expiry date of such an agreement is by reference to the date the modern award is varied by the Commission (i.e the variation date) and a period of 3 month from such time.

The following is an example of the effect of a nominal expiry date being reached. For this example, it is a four year certified agreement entered into on 30 December 2014, with a new nominal expiry date (by reference to the variation day) of 30 July 2015. Pay increases under the agreement are annually on 1 July. The new nominal expiry would mean the provisions providing a pay increase on 1 July 2014 and 1 July 2015 would be applicable/continue to operate. The pay increases of 1 July 2016 and 1 July 2017 would not be triggered, despite the

agreement continuing to operate in accordance with section 164(2)(a), as the agreement has reached its nominal expiry date.

To ensure bargaining for a new certified agreement does proceed, section 847(4) deems:

- the requirements of section 143, in relation to the commencement of a period of bargaining, to be have met and satisfied by the proposed parties; and
- the proposed parties to have 'begun negotiations for a proposed certified agreement' (despite any actions or inactions of parties).

Having regard to the ability of employers to direct ballot employees for an agreement under section 147A, a "proposed party" for this purpose is taken to also include any employee organisation that could have been bound by the relevant certified agreement in accordance with section 166(2).

In relation to the application section 147 (Peace obligation period to assist negotiations) to such agreements, new section 847 does not alter the meaning of 'peace obligation period' for this purpose. In practice, this means the peace obligation period will continue until at least 7 days after their new nominal expiry date. This is despite the "notice of intention" being taken to have given on 'variation day.' Therefore negotiations between the parties for a new agreement may benefit from a longer 'peace obligation period' than prescribed by the legislation as a minimum.

New section 848 makes it clear in light of the legislative intent around section 847 that such relevant certified agreements cannot have its nominal expiry date (either old or new) extended by application to the Commission under section 168 of the IR Act.

New section 849 creates an ability for a regulation to be made to vary a relevant certified agreement. This facility will allow the certified agreement to be varied to address matters not appropriately dealt with currently, such as organisational change. Such provisions will take effect from the date the regulation is notified or where the regulation states a later date, from that date. In practice, a regulation will continue to operate as long as the relevant certified agreement is in operation (i.e. until terminated or replaced) or until the regulation is repealed.

New section 850 creates a restriction on certification of agreements or the making of an arbitration determination under section 150, in certain instances where there is a relevant modern award. In such instances the Commission must refuse to certify such agreements until such time that the Commission has the opportunity to review and vary the awards.

New section 851 sets out, for the avoidance of doubt, what happens to incomplete award modernisation process (that is, a process of modernising a particular award or awards that commenced prior to the commencement of the Bill, but where no modern award was made). Such awards will not continue in the award modernisation process by reference to the pre-amended Act but instead shall be subject to the IR Act, as amended by the Bill. Any reference to the Full Bench for the making of a modern award (such as in the case of the "Blue Collar" Award) is ended. The effect being that it will revert to the Commission's conference process to be reconsidered a fresh.

New section 852 confirms that any existing individual flexibility agreements entered into or under the pre-amended Act (by way of an industrial instrument in place) continue to operate despite the repeal of section 71MB on commencement.

New section 853 is to address where an arbitration has been commenced (but no determination made) prior to the amended Act and where section 831 has application (i.e it will not be a modern instrument). Section 853(1) makes it clear that the content of such agreement, where determined by Commission or where agreement is reached by the parties and certified by the Commission, can include a provision mentioned in repealed chapter 15, part 2 (for example a contracting provision, an employment security provision and other subject matters contemplated by section 691C). The agreement however, if arbitrated, will be subject to section 149D, as amended by this Bill. This will mean that the reference to 'financial position considerations' in connection with the exercising of the Commission's powers will not apply.

New section 854 is to address where there is a relevant modern award or awards, reviewed and varied by the Commission and a proceeding was commenced (but not completed) for the making of a certified agreement, prior to the amending Act. Section 831 does not apply in such circumstances. Section 854 confirms that the amended Act will apply for the purposes of certification of the agreement or where an arbitrated determination is made. This will mean that the content restrictions in the pre-amended Act (non-allowable content, and certain required content) will not apply.

New section 855 confirms that amended section 319 (which contains the requirements for legal representation) will not apply to proceedings commenced but not finalised prior to the Bill commencing.

New section 856 makes it clear that the effect of repeal of Chapter 15, Part 2 (which operated to deem certain provisions of industrial instruments as having no effect or limited effect) will mean that the provision or such part of the provision will again operate, provided it is still in force on commencement.

New section 857 provides for a transitional regulation-making power in relation to this Bill to allow for a saving or transitional provision to be made by way of regulation subject to the requirements of this section. This power has a 'sunset' or 'automatic expiry' of 2 years after the date of commencement of the Bill.

Amendment of sch 4 (Provisions for protected action ballots)

Clause 34 amends the provision for protected action ballots to remove at Schedule 4, section 8(1)(d) and section 12A references to 'non-allowable content'.

Amendment of sch 5 (Dictionary)

Clause 35 amends Schedule 5 to omit the definitions for 'employer notice' 'entry notice' and 'non-allowable provisions, relevant industrial instruments and TCR provision' and inserts a definition of 'relevant industrial instrument.'

Part 3 Minor or technical amendments

Clause 36 provides a Schedule 1 that amends certain legislation listed in it.

The *Industrial Relations Act 1999* is further amended to make a number of minor omissions being the omissions of section 89(2), section 176(3A) and the heading at Chapter 15, Part 1 at clauses 1, 3 and 4 respectively.

Clause 3 amends section 140CE(1)(b) to insert after 'relates' the additional words "*on a stated day determined by the commission, having regard to section 824*" – this is to provide clarification around the Commission's powers to make a modern award and in particular the process of how a modern award is made and when it applies.

Industrial Relations Regulation 2011 is amended to omit 7A-7C, being certain required content for modern industrial instruments prescribed by regulation and Schedule 1AA.