

Education and Other Legislation Amendment Bill 2014

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice

Short title

The short title of the Bill is the Education and Other Legislation Amendment Bill 2014.

Policy objectives and the reasons for them

Changes relating to the Industrial Relations Act 1999

The amendments to be moved during consideration in detail include an amendment to the *Industrial Relations Act 1999* to clarify that a General Ruling of the full bench of the Queensland Industrial Relations Commission (QIRC) made under section 287 may apply to employees covered by an industrial instrument, which includes a modern award.

The amendment addresses a matter raised by the full bench of the QIRC in the 2014 State Wage Case about whether a State Wage Case General Ruling could apply beyond pre-modernisation awards. The amendment will ensure the maintenance of the minimum safety net wage for employees reliant upon pre-modernisation and modern awards through the State Wage Case general ruling.

Changes relating to the Property Occupations Act 2014

The policy objective of the amendment to the *Property Occupations Act 2014* is to address a minor drafting omission that has been identified in section 114 which, if not rectified, will result in statutory revocation rights for sole or exclusive agency appointments applying more broadly than intended.

The statutory revocation rights under section 114 are only intended to apply to appointments for the sale of residential property that are not commercial scale (as defined in Schedule 3 of the *Property Occupations Act*). However, the drafting of the current provision is not limited in this respect and may result in the statutory revocation rights applying to other types of appointments, including appointments relating to the sale of commercial property or the sale of a business. This was not the intention of the provision and is inconsistent with the current arrangements under the *Property Agents and Motor Dealers Act 2000*, which will be repealed by the *Property Occupations Act* when it commences.

If the amendment is not made to section 114 of the Property Occupations Act, the provision will not operate as intended, resulting in uncertainty and potentially adverse consequences for stakeholders.

Achievement of policy objectives

The amendment to the Industrial Relations Act will achieve its policy objective by clarifying that a General Ruling of the full bench of the QIRC can apply to employees bound by an industrial instrument, which includes a modern award.

The policy objective of addressing a minor drafting omission that has been identified in section 114 of the Property Occupations Act will be achieved by omitting section 114(4) and inserting a new subsection (4) that provides that subsections (5) and (6) of section 114 apply to an appointment, that has not been assigned, of a property agent for a sole or exclusive agency for the sale of residential property for a term of at least 60 days, other than a commercial scale appointment.

Alternative ways of achieving policy objectives

Legislative amendment is the only way to achieve the stated policy objectives.

Estimated cost for government implementation

There are no additional costs to Government as a consequence of these amendments.

Consistency with fundamental legislative principles

Legislation should not adversely affect rights and liberties, or impose obligations retrospectively - Legislative Standards Act 1992, sections 4(2)(a) and 4(3)(g)

The amendment to the Industrial Relations Act to clarify that a General Ruling of the full bench of the QIRC made under section 287 may apply to employees covered by an industrial instrument which includes pre-modernisation awards and modernised awards, is proposed to operate retrospectively from 1 December 2013. The amendment clarifies the operation of the legislation and does not operate to the disadvantage of any person.

The amendment to the Property Occupations Act is consistent with fundamental legislative principles.

Consultation

With respect to the amendment to the Industrial Relations Act, consultation has been undertaken with the Department of Justice and Attorney-General and the Public Service Commission who support the amendment being made.

Targeted consultation was undertaken with key stakeholders on the draft amendment to the Property Occupations Act. Stakeholders that were consulted support the amendment. Central

agencies within the Queensland Government were also consulted and did not raise any concerns with the amendment.

Consistency with legislation of other jurisdictions

The amendment to the Industrial Relations Act is specific to Queensland's industrial relations jurisdiction. The *Fair Work Act 2009 (Cwlth)* provides for the Fair Work Commission to set and vary minimum wages for national system employees through the national minimum wage order.

The amendment to the Property Occupations Act is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Amendment 1 **Clause 2 (Commencement)**

Amendment 1 is a minor and consequential amendment to correct the numbering of clause 2 (Commencement).

Amendment 2 **Clause 2 (Commencement)**

Amendment 2 amends clause 2 (Commencement) by inserting a new subsection 2 which clarifies that Part 7A is taken to have commenced on 1 December 2013.

Amendment 3 **After clause 139**

Amendment 3 inserts a new Part 7A after clause 139 to amend section 287 (General rulings) to clarify that the full bench may make a general ruling about an industrial matter for employees bound by an industrial instrument (as defined in Schedule 5 of the Act) to avoid a multiplication of inquiries into the same matter. The general ruling power operates for modern awards despite Chapter 5A of the Industrial Relations Act.

Amendment 4 **After clause 139**

Amendment 4 inserts new clause 139C which provides that Part 7B amends the Property Occupations Act.

Amendment 4 also inserts new clause 139D which omits subsection (4) of section 114 of the Property Occupations Act and inserts a new subclause that provides subsections (5) and (6) of section 114 apply to an appointment, that has not been assigned, of a property agent for a sole or exclusive agency for the sale of residential property for a term of at least 60 days, other than a commercial scale appointment.

Amendment 5 **Long title**

Amendment 5 amends the long title of the Bill to include reference to the amendment of the Industrial Relations Act and the Property Occupations Act.