

INDUSTRIAL RELATIONS IN QUEENSLAND UNDER AN LNP GOVERNMENT

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The Liberal National Party ('LNP') won 78 out of a possible 89 seats in Queensland's 2012 state election. Facing a budget blowout, the new Government soon used its control of the state's unicameral parliament to implement a contentious public sector reform agenda. The LNP's amendments to Queensland's employment laws struck at the very heart of many of the accepted 'ground rules' of industrial relations. Perhaps most significantly, the Government used its parliamentary majority to remove job security commitments given to public servants, paving the way for the loss of thousands of jobs. This paper sets out the key industrial relations reforms adopted by the LNP. The authors discuss the Government's rationale for the changes, and the reaction from Queensland's trade union movement. The article concludes with some general observations about the changes adopted during the LNP's term of Government; a period which will undoubtedly be remembered as a controversial part of Queensland's industrial relations history.

I A SNAPSHOT OF INDUSTRIAL RELATIONS IN QUEENSLAND IN 2012

A comprehensive examination of Queensland's industrial relations system can be found in Bowden et al.¹ However, for the purposes of this paper it is important to note the following three key characteristics of the industrial relations landscape inherited by the Liberal National Party ('LNP') in March 2012; a system dominated by the public sector, a focus on collective bargaining and the arbitration of bargaining disputes.

A A System Dominated by the Public Sector

Commencing in 2006, Queensland has progressively lost large parts of its industrial relations powers to the Commonwealth. This shift was a direct consequence of the Howard-era Work Choices agenda, which saw the federal Government taking over state industrial relations responsibility for the majority of the private sector via the corporations power in the Commonwealth Constitution.² For Queensland, the transfer of powers was completed by 1 January 2010 when the Bligh Labor Government passed legislation referring its remaining private sector industrial relations jurisdiction to the Commonwealth.³ Consequently, when rising in Parliament

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¹ Bradley Bowden et al, *Work and Strife in Paradise: The History of Labour Relations in Queensland 1859 to 2009* (The Federation Press, 2009).

² *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). For a general discussion of the Work Choices changes and the subsequent High Court challenge see: Andrew Stewart and George Williams, *Work Choices: What the High Court Said* (The Federation Press, 2007).

³ *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld). These changes ensured that Queensland private sector employers (and employees) who were not trading corporations would also be covered by the federal industrial relations system.

on 17 May 2012 to introduce the LNP's first tranche of labour law changes, the new Attorney-General Jarred Bleijie was able to advise the house that the Queensland's industrial relations coverage had been reduced to 'approximately 245 000 workers, the majority of whom are employed in the state public sector and local Government'.⁴

B *A Focus on Collective Bargaining*

The cornerstone of Queensland's labour legislation has long been an acceptance that the 'negotiation of agreements by employers and unions of employees, rather than variations of awards through a Tribunal, was at the core of industrial relations'.⁵ In keeping with the trend federally, Queensland had progressively moved away from a centralised wage fixation model, to one which supported the setting of wages and conditions of employment at an enterprise level. Importantly, the Queensland legislation specifically provides that agreements, once made, bind all parties and can be enforced in the Queensland Industrial Relations Commission ('QIRC').⁶

C *Arbitration of Bargaining Disputes*

The ability of an industrial Tribunal to arbitrate bargaining deadlocks is a matter which still attracts debate in contemporary Australian industrial relations.⁷ On one end of the continuum, the federal *Fair Work Act 2009* (Cth) (*Fair Work Act*) provides very limited opportunity for the Fair Work Commission to arbitrate an unsuccessful enterprise bargain. By contrast, the Queensland *Industrial Relations Act 1999* (Qld) (*IR Act*) is somewhat unique in that it mandates an 'end-to-end' process for the management of enterprise bargaining matters. Where bargaining has failed, the legislation provides the Commission with specific conciliation powers to help the parties make an agreement.⁸ In the event the assistance of the Commission does not result in agreement during the conciliation period, the matter must be determined by arbitration.⁹

II PRE-ELECTION COMMITMENTS

In the lead up to the 2012 elections the main public sector union, Together Queensland Industrial Union of Employees ('Together'), attempted to obtain a number of guarantees from both major parties on behalf of its members. Together was particularly concerned to clarify the parties' respective positions on the all-important issue of public service job security. As a result, the union asked Labor and LNP the following question: 'Will you continue the long-standing commitment that there will be no forced retrenchments of public sector workers?' Together received the following responses to its question:

⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 17 May 2012, 92 (Jarred Bleijie, Attorney-General). Queensland's local Government sector was excluded from the referral and remained in the state industrial relations system.

⁵ Bowden et al, above n 1, 125.

⁶ *Industrial Relations Act 1999* (Qld) ss 166, 167.

⁷ See Anthony Forsyth and Andrew Stewart, 'Of "Kamikazes" and "Madmen": The Fallout from the Qantas Industrial Dispute' (2012) 20 *Melbourne University Law Review* 36, for a discussion of the arbitration of bargaining disputes in the federal jurisdiction.

⁸ *Industrial Relations Act 1999* (Qld) s 148.

⁹ *Ibid* s 149(4). Despite a number of changes, the *IR Act* continues to support the arbitration of unsuccessful enterprise bargaining negotiations.

ALP: ‘Yes. Labor is committed to all existing job security provisions including “no forced redundancy.”’ LNP: ‘Under the LNP Government there will be no forced retrenchments in our first term...’¹⁰

The LNP would win office in March 2012 and its pre-election commitment to no forced retrenchments would soon be put to the test.

III A COMMISSION OF AUDIT

A *Interim Commission of Audit Report*

In another pre-election commitment, the LNP had promised to establish an independent Commission of Audit (‘COA’) into the state’s finances if it won Government. Five days after it came to power the Government announced the audit would be led by the former federal Treasurer, Peter Costello. The COA presented the Government with an interim report on 15 June 2012.¹¹ The report painted a bleak picture of Queensland’s financial position. It predicted state debt of \$64 billion in 2011-12, that could rise to \$100 billion by 2018-19 unless urgent remedial action was taken.¹² The report highlighted the growth in (public service) employee expenses as a significant contributor to increased Government expenditure.¹³ In a reference to the previous Government’s stewardship of the state’s economy, the report said the deterioration in Queensland’s finances was a direct result of the state ‘living beyond its means’.¹⁴ Finally, the report urged the Government to immediately commence a process of fiscal repair which, it predicted, would require ‘several years of sustained effort’.¹⁵

B *The Government’s Response*

The Government outlined its response to the COA interim report in parliament on 11 July 2012.¹⁶ Promising to ‘make decisions that are in the long-term interests of Queenslanders’¹⁷ the Treasurer, Tim Nicholls, identified four principles that would underpin the LNP’s fiscal strategy for its first term of Government. Relevantly, principles 1 and 2 committed the Government to ‘stabilise’ and ‘reduce’ state debt, and maintaining a ‘general Government sector fiscal balance in 2014-15’.¹⁸ The Treasurer warned that the LNP would not let the state’s finances get out of control and would ‘act in accordance with the independent Commission of Audit’s recommendations to get Queensland’s finances on track.’¹⁹

¹⁰ Together Queensland, Industrial Union of Employees, ‘Queensland Politicians Respond to our Questions’, undated union pamphlet authorised by Alex Scott, Together Secretary.

¹¹ Queensland, Queensland Commission of Audit, *Queensland Commission of Audit Interim Report June 2012* (2012).

¹² *Ibid* 17.

¹³ *Ibid* 102. The report indicated that employee expenses (both growth in employee numbers and growth in wages) had increased by an average 8.7 per cent per annum over the period 2000-01 to 2010-11.

¹⁴ *Ibid* 29.

¹⁵ *Ibid* 185.

¹⁶ Queensland, *Parliamentary Debates*, Legislative Assembly, 11 July 2012, 1120 (Tim Nicholls, Treasurer).

¹⁷ *Ibid* 1121-1122.

¹⁸ *Ibid* 1121.

¹⁹ *Ibid* 1122.

IV THE FIRST CHANGE TO THE *IR ACT*

On 6 June 2012, just days before the COA interim report was released, the Queensland Parliament passed the *Industrial Relations ('Fair Work Act Harmonisation') and Other Legislation Amendment Act 2012 ('FW Harmonisation No. 1')*. This legislation would be the first of four significant amendments made to the *IR Act* during the LNP's term of Government. As discussed below *FW Harmonisation Act No. 1* introduced the following key industrial relations changes: new considerations when determining wage outcomes; briefings to the QIRC; Protected Action Ballot Orders; direct balloting of employees and the ability to terminate industrial action.

A *New Considerations When Determining Wage Outcomes*

As discussed previously, the existing Queensland *IR Act* gives express powers to the QIRC to arbitrate in the event the parties to enterprise bargaining negotiations are unable to reach agreement. The law has historically given the QIRC relatively wide scope to determine an appropriate outcome, including the quantum of any wage increases, on behalf of the negotiating parties.²⁰ In a significant change, *FW Harmonisation No. 1* expanded the list of matters that the QIRC is required to consider when arbitrating a bargaining dispute.²¹ Specifically, the Tribunal would now also be required to have regard to 'Queensland's financial position and fiscal strategy' and 'the financial position of the relevant public sector entity'²² as part of its deliberations. The Attorney-General explained the rationale behind the changes as follows:

In order to ensure responsible financial management and return the state's budget to surplus, the Queensland Government believes that it is important and in the interests of all Queenslanders that the Queensland Industrial Relations Commission is required to consider the state's financial position and fiscal strategy when determining wage outcomes for the Public Service.²³

It seems likely the changes to section 149 reflected the new Government's lack of faith in its ability to reach agreement with public sector unions on replacement enterprise bargaining agreements. By amending the legislation, the Government was attempting to ensure that, when the QIRC was inevitably called on to adjudicate on an appropriate wage outcome for public servants, the Tribunal would be required to give due regard to the state's (parlous) financial situation.

²⁰ Historically, the QIRC has shown its willingness to grant wage increases that exceed those preferred by the Government. For example, the Tribunal awarded Queensland's police officers a significant pay rise in August 2011 after enterprise bargaining negotiations broke down (*Queensland Police Service AND Queensland Police Union of Employees and the Queensland Police Commissioned Officers' Union of Employees* [2011] QIRComm 139 (11 August 2011)).

²¹ Prior to the *FW Harmonisation No. 1* changes, s 149(5) of the *IR Act* required the Tribunal to consider: the merits of the case; the likely effects of the commission's decision on parties; the public interest (including the objects of the Act and likely effects of the decision on the community and economy); and the extent to which the parties have negotiated in good faith.

²² *Industrial Relations ('Fair Work Act Harmonisation') and Other Legislation Amendment Act 2012* (Qld) s 149(5)(c)(ii).

²³ Queensland, *Parliamentary Debates*, Legislative Assembly, 17 May 2012, 92 (Jarred Bleijie, Attorney-General).

B *Briefing to QIRC*

FW Harmonisation No. 1 introduced an unusual new section 339AA(1): The treasury chief executive may, at any time, give the members of the commission a briefing about the State's financial position and fiscal strategy, and related matters.

A briefing under this section was in fact provided by the then-Under Treasurer, Helen Gluer, to the QIRC on 20 July 2012. In a presentation to all members of the Commission, Ms Gluer outlined the financial difficulties facing the State and the measures proposed by the Government to address the situation. A number of Queensland unions attended the briefing and, in a sometimes feisty affair, attempted to contradict a number of the Under Treasurer's statements. Queensland Council of Unions ('QCU') President, John Battams, was reported in the press as saying the union movement believed the Government was 'trying to place undue influence on the commission'.²⁴

C *Protected Action Ballot Orders ('PABOs')*

The *FW Harmonisation No. 1* introduced a new requirement for unions to hold a ballot of members before industrial action could be protected under the law. Previously, for industrial action to be protected, it simply had to be authorised by an appropriate union official with three days' notice provided to the employer and the industrial registrar.²⁵ Following the changes, protected industrial action can only be taken after the QIRC grants an order authorising a ballot; fifty per cent or more of employees on the roll actually vote and fifty per cent or more of those who vote approve the proposed industrial action in the ballot; and three days' notice is provided to all negotiating parties before the action commences.²⁶ While the changes largely mirror provisions in the *Fair Work Act*,²⁷ the Queensland legislation differs in that the ballot can only be undertaken by the Electoral Commission Queensland and balloting must be by post.²⁸

Unions were particularly critical of the requirement for a postal ballot. When making its representations to the parliamentary committee scrutinising the Bill, the Queensland Teachers Union highlighted the logistical difficulties in conducting a postal ballot of its 42 000 members who are dispersed across the state.²⁹ Despite the LNP-dominated committee recommending the Bill be amended to allow alternative ballot methods, the Government did not adopt the recommendation into the legislation.³⁰

D *Direct Balloting of Employees*

FW Harmonisation No. 1 introduced the ability for an employer to directly ballot its employees if it is unable to reach agreement with union(s). Historically, public sector enterprise agreements in Queensland are made between the relevant Government agency and the representative union. While, once again, the changes were based on similar provisions in the

²⁴ Nathan Paull, 'Qld Industrial Umpire Faces Interference', *Brisbane Times* (online), 20 July 2012 <<http://www.brisbanetimes.com.au/queensland/qld-industrial-umpire-faces-interference-20120720-22f0j.html>>.

²⁵ *Industrial Act 1999* (Qld) ss 175, 177, before amendment.

²⁶ *Ibid* s 176.

²⁷ *Fair Work Act 2009* (Cth) s 437.

²⁸ *Industrial Act 1999* (Qld) schedule 4, ss 13, 14.

²⁹ Finance and Administration Committee, Queensland, Examination of Bill Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill (June 2012), Report No. 14, 12-13.

³⁰ *Ibid* 13.

Fair Work Act,³¹ the LNP was sending a clear signal to Queensland's public sector unions that it was prepared to break with convention and deal directly with employees.

E *The Big Red Button*

Finally, the amendments introduced an ability for the Attorney-General to make a declaration terminating industrial action if he or she is satisfied that the action is threatening the safety and welfare of the community or is threatening to damage the economy.³² The power is modelled on a similar provision at section 431 of the *Fair Work Act*. While the ability to terminate strike action was not used by the LNP during the term of its Government, it was probably the most controversial of the *FW Harmonisation No. 1* changes and was viewed with particular suspicion by the union movement. A number of unions argued that the adoption of this power in Queensland was ill-advised because the Government, which was also the employer, would have unilateral power to intervene in industrial disputes.³³

The LNP Government had made its first foray into the industrial relations arena, but more was to follow. In its next move, the Government would tackle the contentious issue of public servant job security.

V EMPLOYMENT SECURITY

The *State Government Departments Certified Agreement 2009*,³⁴ colloquially known as the 'Core', is the largest Queensland public service enterprise agreement covering approximately 50 000 public servants. Any wage outcomes arrived at for the Core traditionally establishes a general benchmark for other public sector bargains. The existing Core nominally expired on 31 July 2012 and negotiations for a replacement agreement commenced shortly after the LNP took office. These negotiations soon encountered difficulties, with a key area of difference being the preservation of job security commitments in any new agreement.

Historically, public servant tenure during the Beattie and Bligh Governments³⁵ was underpinned by two policies: the *Employment Security Policy* and the *Policy on the Contracting-Out of Government Services*. The former policy essentially guaranteed that there would be no forced retrenchments of public servants, whereas the latter policy ensured that Government services could only be contracted out in very limited circumstances.³⁶ These guarantees were further entrenched by the willingness of successive Labor Governments to agree to union demands to include strong commitments to employment security in enterprise bargaining agreements.³⁷ The job security guarantees were binding on the Government, as the employer, and enforceable in the QIRC. This represented a significant obstacle to the LNP which, notwithstanding its pre-

³¹ *Fair Work Act 2009* (Cth) s 181.

³² *Industrial Relations Act 1999* (Qld) s 181B.

³³ Finance and Administration Committee, above n 29, 14-15.

³⁴ *State Government Departments Certified Agreement 2009* CA/2010/6.

³⁵ The Beattie Government was in power from June 1998 until September 2007. The Bligh Government was in power from September 2007 until March 2012.

³⁶ Tenure for Queensland public servants is discussed by Linda Colley in Bowden et al, above n 1, 176, 176. She argues that the Beattie Government's motive for increasing public servant tenure was '...political and industrial rather than the career service ideal of independence'.

³⁷ *State Government Departments Certified Agreement 2009* (CA/2010/6) ('Core Agreement'), appendices 21 and 22. In addition, clause 7.3(6) of the body of the Core Agreement contains the following express assurance: 'Permanent public sector employees will not be forced into unemployment as a result of organisational change or changes in departmental priorities.'

election assurances, had started making noises about the urgent need to reduce the number of public servants. The impetus for action in this regard gathered steam following the preliminary findings of the COA which had highlighted the unsustainable growth in public sector wage expenses and the urgent need for fiscal repair.

VI BLACK FRIDAY

The job security commitments to public servants did not extend to employees on temporary contracts. As a result, the Government was able to announce its intention to drastically reduce the numbers of workers on fixed term contracts effective from Friday 29 June 2012. On what was dubbed 'Black Friday' by the press, some 3000 temporary public servants were let go.³⁸

On the same day, the Treasurer, Tim Nicholls, penned an article in the *Brisbane Times* explaining the rationale behind the reduction in temporary numbers.³⁹ Mr Nicholls argued that the State's coffers were empty because of the previous Australian Labor Party ('ALP') Government's failure to manage its finances. The Treasurer said the new Government had no option but to reduce the size of the public service in order to preserve as many existing jobs as possible. In what was undoubtedly a reference to the stalled Core negotiations, Mr Nicholls said public servants had been offered 'fair and reasonable' pay increases during recent enterprise bargaining negotiations and unions had an obligation to 'make wage claims that are fair and reasonable'.⁴⁰

Together sought an urgent injunction from the QIRC seeking to prevent the Government from proceeding with the terminations, but a Full Bench rejected the union's application finding that the 'balance of convenience' did not favour the granting of an injunction.⁴¹ The QIRC also rejected a later application by the union seeking to compel the Government to consult over the terminations.⁴²

Next, the Government would set its sights on reducing the number of tenured public servants.

VII THE DIRECTIVE POWER IS USED TO REMOVE TENURE

A *Public Service Directives*

Queensland's public service legislation allows for rulings (commonly referred to as directives) to be made about the terms and conditions of employment of public servants. Directives can be made by either the Minister responsible for public sector industrial relations or the Public

³⁸ The Government did not release the precise number of temporary employee reductions, but the press reported the numbers to be in the region of 3000: *Courier Mail, 3000 Queensland Public Servant Sackings Tipped For Friday, Campbell Newman Says Cuts Next Week* (29 June 2012) <<http://www.couriermail.com.au/news/queensland-public-servant-sackings-tipped-for-friday-campbell-newman/story-e6freon6-1226411342956>>; *Brisbane Times, 'Black' Friday for Public Servants* (29 June 2012) <<http://www.brisbanetimes.com.au/queensland/black-friday-for-public-servants-20120628-2167b.html>>.

³⁹ Tim Nicholls, *Why Some Public Servants Must Go* (29 June 2012) *Brisbane Times* <<http://www.brisbanetimes.com.au/federal-politics/why-some-public-servants-must-go-20120629-2177p.html>>.

⁴⁰ *Ibid.*

⁴¹ *Together Queensland, Industrial Union of Employees AND State of Queensland* [2012] QIRComm 95 (28 May 2012).

⁴² *Together Queensland, Industrial Union of Employees AND State of Queensland* [2012] QIRComm 117 (14 June 2012).

Service Commission Chief Executive.⁴³ Traditionally, Ministerial directives have been used to provide entitlements that are more beneficial to public servants; for instance *Directive No. 19/99 Locality Allowances*⁴⁴ sets out additional payments to be made to public servants as compensation for working in rural and regional areas. On the other hand, Public Service Commission Chief Executive directives are the accepted vehicle for establishing sector-wide policy on matters such as recruitment and performance management.

Directives have one particularly interesting attribute; if there is a conflict between a directive and a certified agreement or an award, the directive will prevail. The *Public Service Act 2008* (Qld) (*PS Act*) provides that a directive made by the Public Service Commission Chief Executive automatically prevails over a provision in an industrial instrument to the extent of any inconsistency.⁴⁵ Similarly, a directive made by the Minister can prevail over a provision in an industrial instrument if the directive expressly says it does.⁴⁶

It is important to note that while it is *technically* possible for directives to oust provisions in industrial agreements and awards, historically they have not been used to disturb conditions which have already been agreed between negotiating parties.

B The Two New Directives

On 31 July 2012, the then Public Service Commission Chief Executive, Dr Brett Heyward, issued two new directives: *Directive 08/12: Industrial Instruments: Employment Security and Contracting Provisions*⁴⁷ and *Directive 07/12: Protection of Personal Employee Information*.⁴⁸ Directive 08/12 provided that:

Where there are provisions for Employment Security or Contracting Out in an industrial instrument, the Employment Security or Contracting Out provisions contained in the industrial instrument do not apply.⁴⁹

Directive 08/12 listed examples of clauses within industrial instruments that are ‘employment security’ provisions. Relevantly, Part 7 of the Core (which provides that employees cannot be forcibly retrenched) is identified as being such a provision.⁵⁰

Directive 07/12 provided that, where an industrial instrument authorised the release of personal information, the information could only be released if the relevant employee provided their express consent for the release.⁵¹

⁴³ *Public Service Act 2008* (Qld) ss 53, 54.

⁴⁴ Queensland Government Gazette, 2 July 1999, No. 70, 1165.

⁴⁵ *Public Service Act 2008* (Qld) s 52(2). In this context, ‘inconsistency’ means the same (or similar) subject matter is provided for differently in the directive and the industrial instrument.

⁴⁶ *Ibid* s 52(3).

⁴⁷ Queensland Government Gazette, Extraordinary, 31 July 2012, No. 68, 935.

⁴⁸ Queensland Government Gazette, Extraordinary, 31 July 2012, No. 67, 937.

⁴⁹ Queensland Government Gazette, Extraordinary, 31 July 2012, No. 68, 935.

⁵⁰ *Ibid*.

⁵¹ Queensland Government Gazette, Extraordinary, 31 July 2012, No. 67, 937. Many public sector certified agreements contained provisions obliging agencies to release information about employees to unions. See for example *State Government Departments Certified Agreement 2009* (CA/2010/6) (‘Core Agreement’). Cl 12(5) of the Core Agreement says: ‘Agencies are to provide relevant unions with complete lists of new starters (consisting of name, job title and work location) to the workplace on a quarterly basis, unless agreed between the relevant agency and union to be on a more regular basis’.

C *The Effect of the New Directives*

The issuing of the directives was certainly a bold move by Dr Heyward. Because a directive made by the Public Service Commission Chief Executive prevails over an inconsistent provision in an industrial instrument, the net effect of Directive 08/12 was to erase all of the enforceable commitments to job security contained within public sector certified agreements. With the stroke of a pen, the Government had removed the remaining obstacle to reducing the numbers of permanent public servants. The effect of Directive 07/12, while not as dramatic, was to void any obligation on behalf of the Government to provide public sector unions with information about employees, unless the relevant employee gives their prior written consent.

D *The Legal Challenge to the Directives*

Queensland public sector unions wasted little time in challenging the new directives. On 16 August 2012, Together sought a declaration from the QIRC that the directives could not override established industrial instruments in the manner contemplated.⁵² At the same time, Together lodged an application for review in the Supreme Court of Queensland arguing that Dr Heyward had acted ultra vires in making the directives. Similar Supreme Court challenges were made by a number of other Queensland unions.⁵³ However, before these challenges could be dealt with by the courts, the Government would attempt to remove any uncertainty by using its parliamentary majority to legislate on the issue of job security.

VIII THE SECOND CHANGE TO THE *IR ACT*

A *The Initial Bill*

On 31 July 2012, the Premier tabled the Public Service and Other Legislation Amendment Bill 2012 ('PSOLA') in parliament. While primarily a public service bill, PSOLA also foreshadowed two changes to the *IR Act*. In the first instance, the right of a party to access legal representation in matters before the QIRC was to be expanded.⁵⁴ This relaxation of the rules on legal representation was criticised by the union movement – the QIRC has traditionally been a laypersons' Tribunal and unions' worried greater access to legal representation would create an unfair imbalance in the system.⁵⁵ The second change to the *IR Act* transferred responsibility for the administration of the QIRC from the president to the vice president.⁵⁶

⁵² *Together Queensland Industrial Union of Employees, Alexander Patrick Scott AND State of Queensland and Others* (Unreported, QIRComm, 16 August 2012). Together later withdrew its QIRC application, presumably because it had lodged similar proceedings in the Queensland Supreme Court (discussed below).

⁵³ *Together Queensland Industrial Union of Employees, Alexander Patrick Scott AND State of Queensland and Others* (Unreported, QIRComm, 16 August 2012). *Queensland Teachers Union of Employees AND Others AND State of Queensland* (Unreported, QIRComm, 2012; and *The Australian Workers' Union of Employees, Queensland AND The Commission Chief Executive of the Public Service Commission* (Unreported, QIRComm, 6 June 2013). These matters were never considered by the Supreme Court because of the subsequent proceedings in the Court of Appeal (discussed below).

⁵⁴ For a table contrasting the old and new rules on legal representation see Finance and Administration Committee, Queensland, Examination of Bill Public Service and Other Legislation Amendment Bill (August 2012), Report No 18, 8.

⁵⁵ *Ibid* 8-11.

⁵⁶ The changes were made to assist in 'streamlining the administrative arrangements' of the Commission. Queensland, *Parliamentary Debates*, Legislative Assembly, 31 July 2012, 1291 (Campbell Newman, Premier).

Consistent with parliamentary standing orders, PSOLA was referred to the Finance and Administration Committee for scrutiny. After public hearings, the Committee recommended the legislation be passed.⁵⁷ However, when debate was resumed on 23 August 2012, the Government would introduce a raft of controversial changes which would challenge the accepted rules of engagement of industrial relations in Queensland.

B *The Late Amendments*

The last minute amendments introduced a new Chapter 15, Part 2 ‘Particular provisions of industrial instruments’ into the *IR Act*. In essence, the changes gave legislative effect to the work done by Dr Heyward’s directives by:

- introducing sections 691C(1)(a) and (b) which provided that a clause in a public sector industrial instrument which deals with ‘contracting’ and ‘employment security’ is of no effect;⁵⁸ and
- introducing new section 691E which restricts the release of an employee’s personal information unless the employee provides prior consent.

Chapter 15, Part 2 also extended the scope of Directives 07/12 and 08/12 by:

- introducing new section 691C(c) which provides that an ‘organisational change’ provision in an industrial instrument is invalid.⁵⁹ The effect of this change was to remove many commitments within public sector agreements which required employers to consult unions about organisational change;⁶⁰ and
- introducing new section 691D which alters the way in which the termination, change and redundancy (TCR) provisions operate within Queensland awards.⁶¹

Section 691D(2) sets out three principles that are to be read in conjunction with TCR provisions. The alteration to the TCR commitments was specifically aimed at ensuring that an employer is only required to consult over organisational change *after* they have made the decision to implement the change ie the consultation is only about the *implementation* of the decision.

⁵⁷ Finance and Administration Committee, Queensland, Examination of Bill Public Service and Other Legislation Amendment Bill (August 2012), Report No. 18, vii.

⁵⁸ *Industrial Relations Act 1999* (Qld) s 691C(2) defines a contracting provision as any clause that ‘directly or indirectly requires, restricts or prohibits the contracting out, or in, of services’, and an employment security provision as ‘any provision about job security or maximising permanent employment, including a provision that applies to all or part of a Government policy about employment security’. The legislation also provides examples of provisions from industrial instruments that constitute contracting or employment security provisions Clause 7.3 of the Core Agreement is identified as an employment security provision.

⁵⁹ *Industrial Relations Act 1999* (Qld). The amendments did not positively define ‘organisational change’, however s 691C(2) lists examples of organisational change provisions from existing certified agreements. It is also worth noting that the definitions provided in the Act were not exhaustive. Presumably this was done because the wording of the targeted provisions would necessarily vary between industrial instruments.

⁶⁰ See for example *State Government Departments Certified Agreement 2009* (CA/2010/6) cl 7.3 Organisational Change and Restructuring.

⁶¹ TCR provisions are standard clauses within all Queensland awards which set out the minimum requirements for an employer wishing to: *terminate* an employee (notice, statement of employment); introduce major organisational *change* (duty to notify employees/unions and to consult over the changes); and *redundancy* arrangements (consultation before termination, transmission of business provisions and severance pay).

Two further important amendments were moved by the Government to the *PS Act* during the debate process. The first change deleted subsection 23(3) of the *PS Act*.⁶² This provision had ensured that, when directives were applied to entities not usually bound by the Act, there could be no reduction in an employee's overall employment conditions.⁶³ The second change extended the Public Service Commission Chief Executive's rule-making power to include the ability to make rulings about remuneration and conditions of employment for public servants. Prior to the changes, only the Minister responsible for industrial relations could make rulings about substantive wages and conditions, and the Public Service Commission Chief Executive was limited to making directives over matters of policy (such as recruitment for the public service).⁶⁴

C *The Legal Challenge*

Because the changes to the *IR Act* were introduced during the debate on a Bill already tabled in Parliament, they were not scrutinised by the relevant parliamentary committee. The then leader of the opposition, Annastacia Palaszczuk, registered her strong opposition to the amendments, saying:

The Bill is ill conceived, rushed and has not had sufficient consultation to ensure it will work appropriately. We cannot in all conscience support a Bill that has not been adequately scrutinised by the committee system and had the required input from stakeholders who will be affected by these changes. And what do we see this afternoon? This afternoon we see the Attorney-General come into this chamber and produce a series of amendments—four to five pages of amendments—with no consultation. They were not raised at the committee...Are these amendments because there is current legal action afoot in the Supreme Court by the unions?⁶⁵

Despite Ms Palaszczuk's objections, the Bill (with the late changes) was passed.⁶⁶ Public sector unions responded with another court challenge when, on 31 August 2012, Together launched proceedings in the Queensland Supreme Court. The Australian Workers' Union ('AWU') filed its own application a week later. In essence, the unions challenged the constitutional validity of the Government's amendments.⁶⁷ They argued that the Government's attempt to use the parliament to override existing provisions in industrial instruments undermined the QIRC's institutional integrity and was a breach of the *Kable* principle. The *Kable* principle provides that a state parliament is not able to pass legislation that substantially impairs the institutional

⁶² *Public Service Act 2008* (Qld) s 23(3).

⁶³ While technically able to apply directives which reduced entitlements, the LNP did not use this provision during its term of Government.

⁶⁴ Despite this change, the traditional distinction between ministerial and public service directives was largely maintained during the LNP's term of Government.

⁶⁵ Queensland, *Parliamentary Debates*, Legislative Assembly Hansard, 23 August 2012, 1728 (Annastacia Palaszczuk). There is little doubt the introduction of section 691C was a direct response to the pending legal challenge to the directives. The Explanatory Notes to the Bill indicate the rationale for the changes was to 'provide legislative certainty to the Government's intentions regarding employment security, contracting out, and the disclosure of personal information provisions as described in the Public Service Commission Chief Executive Directives', Explanatory Notes, Public Service and Other Legislation Amendment Bill 2012 (Qld) 1.

⁶⁶ *Public Service and Other Legislation Amendment Act 2012* (Qld).

⁶⁷ *The Australian Workers' Union of Employees, Queensland v State of Queensland; State of Queensland v Together Queensland, Industrial Union of Employees & Anor* [2012] QCA 353. The unions' arguments were principally based on the validity of the laws with respect to the Australian Constitution, however a separate (and somewhat novel) argument was unsuccessfully run to the effect that the laws were repugnant to the Queensland Constitution.

integrity of a court and its judicial decisional independence.⁶⁸ The unions also challenged the changes brought about to the long-standing TCR provisions in awards, and the extension of the Public Service Commission Chief Executive's power to make directives.

D *The Court of Appeal's Decision*

Reflecting the importance of the matters to be decided, the proceedings were heard by the Queensland Court of Appeal in the first instance. In a unanimous decision, released on 14 December 2012, the Court (Holmes, Muir and White JJA) dismissed all of the arguments put forward by Together and the Australian Workers' Union.⁶⁹ Specifically, in relation to the contention that the amendments contravened the *Kable* principle, the Court said:

Sections 691C, D and E do not impinge in any way on the decision making independence or impartiality of the QIRC or the Court. The award making power and the power to certify are creatures of statute which the Parliament may revoke or vary from time to time. The Parliament may prescribe what may or may not be contained in awards. It did that in s 126 of the Act, prior to the enactment of the Amendment Act. Similarly, it may prescribe the requirements for certification and the procedures relating to applications for certification. It did that in ss 153, 154 and 155 prior to the enactment of the Amendment Act. As the respondent submitted, the effect of ss 691C, 691D and 691E is to attach new legal consequences to parts of existing instruments and to state the legal consequences of relevant provisions in future instruments.⁷⁰

The decision of the highest court in Queensland represented a significant win for the Newman Government. While it had already commenced (and in many cases completed) the bulk of public service redundancies by the time the decision was released, the outcome vindicated the legality of the Government's controversial use of parliament to override job security commitments. A subsequent application by the AWU for special leave to appeal the decision was rejected by the High Court.⁷¹

IX MOVING LABOUR DAY

On 21 August 2012 the Attorney-General introduced amendments to the *Holidays Act 1983* (Qld) which moved the Labour Day public holiday to the first Monday in October, and returned the Queen's Birthday public holiday to the second Monday in June.⁷² The Attorney-General explained the reason for moving Labour Day to its new date in October was to 'break up the concentration of public holidays that occur in the April-May period'⁷³ and the reversion of the Queen's Birthday to June would 'help tourism because this time is traditionally quieter for the

⁶⁸ See *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 531. For further analysis of the *Kable* principle see the judgement of French CJ in *South Australia v Totani* (2010) 242 CLR 1, [69].

⁶⁹ *The Australian Workers' Union of Employees, Queensland v State of Queensland; State of Queensland v Together Queensland, Industrial Union of Employees & Anor* [2012] QCA 353.

⁷⁰ *Ibid* [102]. On 12 December 2012 (2 days before the Court of Appeal decision) the High Court dismissed a similar challenge to the New South Wales Government's changes to that State's industrial laws: *The Public Service Association and Professional Officers' Association Amalgamated of NSW v Director of Public Employment* [2012] HCA 58.

⁷¹ *The Australian Workers' Union of Employees, Queensland v State of Queensland* [2013] HCA B3/2013.

⁷² *Holidays and Other Legislation Amendment Bill 2012*. In 2011, the previous ALP Government had moved the Queen's Birthday public holiday from the second Monday in June to the first Monday in October.

⁷³ Queensland, *Parliamentary Debates*, Legislative Assembly, 21 August 2012, 1532 (Hon. Jarrod Bleijie, Attorney-General).

Queensland tourism industry'.⁷⁴ The trade union movement expressed their strong opposition to the change, arguing it smacked of 'pettiness and tit for tat'.⁷⁵ Speaking during the debate on the Bill in parliament, the Leader of the Opposition, Anastacia Palaszczuk, said the change was another example of the Newman Government's 'obsession with attacking working Queenslanders'.⁷⁶ The Bill was passed notwithstanding these objections and, in 2013, Queenslanders officially celebrated Labour Day in October.⁷⁷

X RIGHT SIZING THE PUBLIC SERVICE

A *The Budget*

The Government handed down its first budget on 11 September 2012.⁷⁸ The budget papers confirmed what had become Queensland's worst kept secret: significant numbers of public servants would lose their jobs. The Treasurer, Tim Nicholls explained the need for the cuts in his budget speech:

The previous Government, aided and abetted by some in the union movement, perpetrated a myth on not only the public service but also the people of Queensland. That myth was that the public sector could continue to grow at record levels and that there was no cost to doing so. That employing more in the public sector was some form of economic stimulus when, in fact, it simply served to increase the deficit and make the landing, when it happened, that much harder. Madam Speaker, if we had not acted now to have a right-sized public service the outcome would have been much higher taxes and charges on everyone. In fact, more increases to the cost of living. And even more job losses when the crunch finally came. There have and will be job losses in the public sector as we go about the job of fixing the Budget. We wish this wasn't the case. But with employee expenses making up nearly half of all Government expenditure it would be disingenuous to suggest otherwise.⁷⁹

Mr Nicholls confirmed in his speech that 14 000 full time equivalent public service positions would be lost.⁸⁰

B *The Redundancy Process*

The redundancy program was conducted under the umbrella of two directives: *Directive No. 04/12: Early retirement, redundancy and retrenchment*⁸¹ and *Directive No. 06/12: Employees requiring placement*.⁸² Essentially, the process outlined in the directives provided public servants in roles which were declared redundant with a choice: employees could choose to accept a redundancy package; or they could elect to seek an alternative placement within the public

⁷⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 21 August 2012, 1532 (Hon. Jarrod Bleijie, Attorney-General).

⁷⁵ Daniel Hurst, 'Labour Day to Be Pushed to October', *Brisbane Times* (online), 21 August 2012 <<http://www.brisbanetimes.com.au/queensland/labour-day-to-be-pushed-to-october-20120820-24i9c.html>>.

⁷⁶ Queensland, *Parliamentary Debates*, Legislative Assembly Hansard, 30 October 2012, 2191 (Anastacia Palaszczuk).

⁷⁷ *Holidays and Other Legislation Amendment Act (Qld) Part 2*.

⁷⁸ The budget was delayed by three months in order that the Government could finalise its savings measures.

⁷⁹ Queensland, *Parliamentary Debates*, Legislative Assembly, 11 September 2012, 1814, [8] (Tim Nicholls, Treasurer).

⁸⁰ *Ibid* 1814.

⁸¹ Queensland Government Gazette No. 42, 29 June 2012, 660.

⁸² Queensland Government Gazette No. 42, 29 June 2012, 669.

service.⁸³ If an employee decided to accept the offer of a redundancy, they would receive entitlements in line with directive 11/12.⁸⁴ This would include:

- Two weeks' pay for each year of service up to a maximum of 52 weeks;
- An incentive payment being the greater of 12 weeks' pay or \$6500;
- Any accrued annual and long service leave.⁸⁵

An employee could choose to decline the offer of a redundancy and elect to be considered for suitable alternative vacancies in the public sector. If no suitable role was able to be found for an employee after four months, the employee would be forcibly retrenched with the same package as outlined above, however *without* any incentive payment.

C *QIRC Intervention*

Public sector unions turned to the QIRC, with some success, in an attempt to frustrate the Government's right sizing agenda. On more than one occasion, the QIRC issued orders to halt an agency's attempts to reduce its staffing numbers. For example, in October 2012 QIRC Deputy President (DP) Adrian Bloomfield issued orders under section 230 of the *IR Act* temporarily restraining the Sunshine Coast Hospital and Health Service from implementing a proposed restructure of its services.⁸⁶ DP Bloomfield decided that, despite the legislative changes, an obligation remained on public service employers to consult on ways to avoid or minimise the effects of the announced changes.⁸⁷ The QIRC stepped in to halt similar proposed reform within the Department of Transport and Main Roads and QBuild.⁸⁸ However, the intervention of the QIRC was only a temporary setback to the Government and the redundancies identified in the budget proceeded as forecast.

D *Voluntary or Forced Redundancies?*

Considerable debate ensued about whether the reduction in public service numbers was achieved voluntarily, or if employees had been forced from their employment. The distinction was obviously important because forced terminations would constitute a breach of the LNP's pre-election commitments. The Government maintained that no public servant had been forced into unemployment because every employee was given the choice of a (generous) redundancy payment, or the chance to transfer to alternative employment. In support of this position, the Premier made the following statement to Parliament on 14 September 2012:

Despite all the hype and hysteria, not one permanent employee has been 'sacked' as a result of the budget process. That is right—not one permanent employee has been 'sacked' as a result of the budget process. It is simply not true to say that this Government has 'sacked' or 'cut'

⁸³ Employees in roles that had been made redundant were provided with two weeks to consider their decision as provided in Directive 04/12, Queensland Government Gazette No. 42, 29 June 2012, 660, clause 4.2.

⁸⁴ Queensland Government Gazette No. 5, 10 September 2012, 25.

⁸⁵ Queensland Government Gazette No. 5, 10 September 2012, 30-31.

⁸⁶ *Queensland Nurses' Union of Employees v Queensland Health (Sunshine Coast Hospital and Health Service)* [2012] QIRComm (22 October 2012).

⁸⁷ *Queensland Nurses' Union of Employees v Queensland Health (Sunshine Coast Hospital and Health Service)* [2012] QIRComm (22 October 2012) [10].

⁸⁸ Robyn Ironside, 'Queensland Industrial Relations Commission Blasts Newman Government On Sackings', *The Courier Mail*, 1 November 2012.

14 000 people. Public servants affected by decisions to cease programs and restructure departments have a choice to be redeployed or to take a generous voluntary redundancy package.⁸⁹

The opposition and the public sector unions argued that the structure of the redundancy program left public servants with little choice but to accept the offer of redundancy. Together General Secretary, Alex Scott said the Government was holding a 'financial gun' to the heads of workers and the 'the option is to get sacked now or get sacked later'.⁹⁰

A judgment on this issue falls within the realm of political commentary and is beyond the scope of this paper. However, it is undoubtedly fair to say that many public servants would have been profoundly shocked that their careers were coming to an end, particularly given the pre-election commitments given by the LNP. These employees may have felt they had little choice but to accept the offer of redundancy and the incentive payment. Other public servants may have been content to take the redundancy payment on offer, and move to alternative employment in the private sector or into retirement.⁹¹ In some instances, public servants would have registered for transfer opportunities and remained in employment, albeit in different roles, locations and potentially at lower classification levels. Finally, a small number would have left the service because suitable alternative employment could not be found for them.⁹²

XI THE THIRD CHANGE TO THE *IR ACT*

A *Context*

The Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013 (the 'Transparency Bill') was tabled on 30 April 2013 against the backdrop of a number of high-profile scandals involving various trade unions across Australia.⁹³ Tapping into a perceived disquiet amongst the Queensland community about a lack of transparency within industrial organisations, the Government's proposed legislation introduced changes that would affect the governance of industrial organisations. These changes would include increased disclosure requirements, the removal of union encouragement provisions from industrial instruments and new right of entry rules.

B *Disclosure and Political Expenditure Requirements*

The law introduced a new requirement on unions and employer organisations to keep various registers of disclosure. These registers require recording of, inter alia:

⁸⁹ Queensland, *Parliamentary Debates*, Legislative Assembly, 14 September 2012, 2040, [2] (Campbell Newman, Premier).

⁹⁰ Kym Agius, 'No Qld Public Servants Sacked: Newman', *The Courier Mail*, 14 September 2012.

⁹¹ There is anecdotal evidence that some retrenched employees have returned to employment within the public service following the mandatory period required under directive 11/12.

⁹² The Public Service Commission annual report for 2012/13 reported that more than 70 per cent of those employees seeking alternative placement were found appropriate positions, State of Queensland Public Service Commission (Qld), *Annual Report 2012/13*, 2013, 13.

⁹³ Simon Cullen, 'Police Arrest MP Craig Thomson on 150 Fraud Charges', *ABC News* (online), 31 January 2013 <<http://www.abc.net.au/news/2013-01-31/craig-thomson-arrested/4493722>>.

- The remuneration of the organisation's 10 highest paid officials which were to be published periodically on the organisation's website;⁹⁴
- A statement of interests of elected officials and their spouse;⁹⁵
- All gifts, hospitality and benefits given and received by officials and employees.⁹⁶

The Bill also introduced a requirement that industrial organisations conduct a ballot of its members before being allowed to expend money on 'political objects' of \$10 000 or greater.⁹⁷ This requirement in particular raised the ire of the union movement and a High Court challenge was quickly brought concerning the validity of the legislative change (discussed further below). The legislation increased the existing penalties for acting dishonestly or not acting in good faith in the best interests of the organisation to \$340 000 and/or five years imprisonment.⁹⁸ The amended law also specified penalties for a failure to meet the new disclosure requirements.⁹⁹

C *Union Encouragement*

Section 691C, which had been introduced in the first tranche of legislative amendments and rendered certain provisions in industrial instruments of no effect, was expanded to include 'union encouragement' provisions.¹⁰⁰ These provisions, common across most public sector agreements, committed agencies to supporting union membership by inter alia: providing unions with the opportunity to address new starters; recognising and supporting the role of union delegates in the workplace; and allowing union members to access paid time off for the purposes of industrial relations education leave. The net effect of the new provision was that any clause promoting or facilitating union membership (including provision for union fee deductions) was rendered invalid.

D *Policy Incorporation Provisions Invalid*

A further extension to s 691C was included to invalidate clauses in industrial instruments that incorporate departmental policies as part of the agreement. These provisions had become a relatively common part of some public sector certified agreements and, in the Government's view, unreasonably impinged on managerial prerogative.¹⁰¹

⁹⁴ *Industrial Relations Act 1999* (Qld) s 557K. A further amendment was introduced just prior to the Bill passing requiring the publishing of credit card and cab charge statements – however this obligation only applied to unions (s 557C).

⁹⁵ *Ibid* s 530D.

⁹⁶ *Ibid* s 557A.

⁹⁷ *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013* (Qld). The requirement that expenditure on political advertising (as well as funding to a third party to campaign on behalf of the industrial organisation) would require the prior approval of members was undoubtedly the most controversial of all the amendments. While a ballot was only necessary if the expenditure was greater than \$10 000, trade unions saw these changes as a direct interference in their internal democratic processes.

⁹⁸ *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013* (Qld) s 21.

⁹⁹ *Ibid* ss 530A(2), 530A(5), 530D(1), 530E(2), 557A(1), 557B(1), 557BA(2), 557BB(2), 557C(1), 557(D), 557E(2), 557O(1), 557Q, 557Y(1), 557Z(1).

¹⁰⁰ *Industrial Relations Act 1999* (Qld) s 691C(2).

¹⁰¹ Explanatory Notes, *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013* (Qld) 2.

E *New Right of Entry Rules*

The *IR Act* was amended to change union right of entry procedures to be more closely aligned with those found in the *Fair Work Act* and ‘to ensure that right of entry does not cause undue interference, harassment or disruption to the employer’s business’.¹⁰² For example, the changes now required an authorised industrial officer to provide the employer with at least 24 hours written notice of the proposed day and time of entry,¹⁰³ and allow an employer to respond to any notice of proposed entry and to designate a particular part of the workplace, or a particular route to be used to access the identified part of the workplace.¹⁰⁴

F *The High Court Challenge and Subsequent Amendments*

As mentioned above,¹⁰⁵ a number of Queensland unions launched a High Court challenge to the requirement that a ballot of the union’s members be held prior to any political expenditure exceeding \$10 000. In essence, unions argued that the laws were invalid because they breached the implied freedom of communication on political matters in the Commonwealth *Constitution*.¹⁰⁶ However, before the Queensland case could be heard, the High Court handed down its decision in relation to a union challenge to similar laws adopted by the New South Wales (NSW) Parliament. In a decision with direct relevance to Queensland, the High Court ruled that the NSW laws were invalid because they impermissibly burdened the implied freedom of communication on Governmental and political matters guaranteed by the Constitution.¹⁰⁷ On 4 June 2014, the Newman Government conceded defeat when it moved amendments to the *IR Act* that removed the requirement for an expenditure ballot for political purposes.¹⁰⁸

G *Disclosure ETU-Style*

The Queensland branch of the Electrical Trades Union (‘ETU’) adopted an interesting approach to the Government’s new disclosure requirements. Instead of making the disclosure requirements available on the ETU website¹⁰⁹ the union published them on a website specifically established for that purpose.¹¹⁰ In May 2014, the ETU was prosecuted for failing to publish its financial disclosure documents on the union’s website. Magistrate Bernadette Callaghan found the union not guilty because the legislation did not expressly require the publication of the material on the union’s ‘official’ website.¹¹¹ An appeal against the decision to the Industrial Court was subsequently withdrawn.

¹⁰² Ibid 3.

¹⁰³ *Industrial Relations Act 1999* (Qld) s 372A. Prior to the amendment the legislation did not require a relevant officer to give an employer notice before visiting the employer’s premises.

¹⁰⁴ Ibid s 372B.

¹⁰⁵ See Part XI (B) above.

¹⁰⁶ *Australian Capital Television Pty Ltd & NSW v Commonwealth* (1992) 177 CLR 106.

¹⁰⁷ *Unions NSW & Ors v State of New South Wales* [2013] HCA 58 (18 December 2013).

¹⁰⁸ The changes were made in the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014* (Qld).

¹⁰⁹ Electrical Trades Union, Queensland and Northern Territory, *Homepage*, (2014) <www.etu.org.au>.

¹¹⁰ Electrical Trades Union, Queensland and Northern Territory, *Oppose These Fascist Laws* <www.opposethese-fascistlaws.com>.

¹¹¹ *Jason Gibbons v the Electrical Trades Union of Employees Queensland* (Unreported, Magistrates Court of Queensland, Magistrate Bernadette Callaghan, 8 July 2014).

XII THE ALP INTRODUCES ITS OWN LEGISLATION

On 2 May 2013 the Leader of the ALP Opposition, Anastasia Palaszczuk introduced the Restoring Fairness for Government Workers Bill 2013 into Parliament. Ms Palaszczuk's amendments sought to reinstate the provisions in public sector certified agreements (job security, contracting out and organisational change) which had been invalidated by the *Public Service and Other Legislation Amendment Act 2012*. In her Explanatory Speech, Ms Palaszczuk said, 'The Bill seeks to restore agreed industrial conditions in enterprise bargaining agreements. There is no fairness in a legislative framework that allows for agreed industrial conditions to be overridden at the stroke of a pen.'¹¹²

The Speaker of the Parliament ruled that Ms Palaszczuk's Bill breached parliamentary standing orders because it proposed to deal with the same issues contained within a previous Bill.¹¹³

XIII THE DIRECTIVE POWER IS USED AGAIN

A *No Movement in the Core*

As canvassed earlier,¹¹⁴ negotiations for a new Core Agreement had stalled by mid-2012. In September 2012, no doubt frustrated with the lack of progress, the Government used its new power to conduct a direct ballot of employees. Employees were offered a 2.35 per cent per annum wage increase backdated to 1 September 2012. However, in a blow to the Government, 70 per cent of those balloted rejected the Government's offer and, with no hope left in a negotiated outcome, the matter was placed in the hands of the QIRC for arbitration. Queensland public servants hoping for a speedy outcome to their enterprise bargaining negotiations would be disappointed, as what followed can only be described as a form of industrial 'trench warfare'. Over the next 2 years:

- the Public Service Commission would conduct a survey of employees gauging support for a 2.2 per cent wage increase effective 1 July 2013;¹¹⁵
- the QIRC, Industrial Court and Supreme Court would be called on to determine whether employees could be provided with an interim wage increase;¹¹⁶
- the Industrial Registrar would be asked by the PSC to conduct a new ballot of employees;¹¹⁷

¹¹² Queensland, *Parliamentary Debates*, Legislative Assembly, 2 May 2013, 1462, [7] (Anastacia Palaszczuk, Leader of the Opposition).

¹¹³ *Ibid* 1512.

¹¹⁴ See above Part VI.

¹¹⁵ Together Queensland, *Timeline of Events: Core Public Service Wages and Conditions*, Together Queensland, 1 <https://d3n8a8pro7vhmx.cloudfront.net/togetherqueensland/pages/93/attachments/original/1434330979/timeline_june_2015.pdf?1434330979>. Fifty-four per cent of employees voted 'no'.

¹¹⁶ Ultimately, the Supreme Court of Queensland ruled in June 2014 that the legislation does allow for an interim wage increase to be made, but that in doing so, the QIRC must give regard to those factors provided in the legislation, including the requirement to give regard to the fiscal strategy of the Government, *Chief Executive of the Public Service Commission v The President of the Industrial Court of Queensland & Anor* [2014] QSC 122. No interim increase was awarded in the first instance by the QIRC, *Ibid* [5].

¹¹⁷ The application was rejected, *Chief Executive, Public Service Commission AND Together Queensland, Industrial Union of Employees and Others (D/2013/127)*, *Together Queensland, Industrial Union of Employees AND Chief Executive, Public Service Commission and Others* [2013] QIRComm (6 August 2013).

- the Government and Together would clash over material placed on the Together website contrasting the Government's offer with a recent politician pay rise;¹¹⁸
- Together would conduct its own ballot of members;¹¹⁹ and
- Together would file proceedings in the QIRC alleging bias on the part of members of the QIRC full bench allocated to arbitrate the Core.¹²⁰

The behavior of the parties during this period prompted QIRC Commissioner Glenys Fisher to describe the negotiations as 'tortuous' and the relationship between the Government and Together as 'strained and difficult'.¹²¹

B A New Directive

On 10 December 2013, Premier Newman announced a new directive had been issued to provide the employees covered by the Core with an annual 2.2 per cent wage increase for three years, commencing 1 December 2013.¹²² Justifying the move, the Premier said Together was to blame for the failed negotiations and the Government believed it was time to give public servants a pay rise they deserved.¹²³ In a media release on 10 December 2013, Together State Secretary Alex Scott responded to the Premier's announcement by saying: 'The Government has used its new legislation to deliver a low wage outcome which they knew public servants had consistently rejected. The Government has sought to avoid any independent Tribunal determining the size of the pay increase or the extent of backdating.'¹²⁴ Mr Scott claimed the pay increase was ultimately the result of the union's 'Christmas card campaign' which had called for a wage increase for public servants before Christmas 2013.¹²⁵

The use of the directive power to grant a unilateral wage increase was an unusual step and undoubtedly reflected the Government's frustration at being unable to reach agreement with the union or its employees. Importantly, it also confirmed the Government's willingness to sidestep the traditional 'rules' of industrial relations (by ignoring the ongoing arbitration proceedings in the QIRC) in order to achieve its preferred outcome.

XIV WAGE OUTCOMES FOR AMBULANCE AND FIRE OFFICERS

As outlined earlier, the Government had amended the *IR Act* in 2012 so that the QIRC was required to consider the state's finances and its fiscal recovery plan when arbitrating unsuccessful enterprise bargaining negotiations. The effectiveness of these changes would be

¹¹⁸ Together Queensland, above n 115, 1.

¹¹⁹ Ibid 2; 87 per cent of members voted in favour of continuing with the arbitration proceedings.

¹²⁰ Whilst the union alleged bias against two senior members of the QIRC, proceedings were only brought with respect to Vice President Diane Linnane, the presiding member of the full bench. Vice President Diane Linnane declined to recuse herself from the proceedings, *Together Queensland, Industrial Union of Employees v Executive Director, Public Sector Employees Industrial Relations, Public Service Commission* [2014] QIRComm 211.

¹²¹ *Chief Executive, Public Service Commission AND Together Queensland, Industrial Union of Employees and Others (D/2013/127), Together Queensland, Industrial Union of Employees AND Chief Executive, Public Service Commission and Others* [2013] QIRComm (6 August 2013) 1.

¹²² Queensland Government Gazette, (13 December 2013) Vol. 364, No. 87.

¹²³ Premier (Queensland), 'Newman Government Gives Public Servants a Pay Rise' (Media Release, 10 December 2013).

¹²⁴ Together Queensland, 'Together Members Force Turn Around on Pay Increase' (Media Release, 10 December 2013).

¹²⁵ Ibid.

tested when bargaining broke down between the Queensland Ambulance Service ('QAS') and United Voice ('UV'), the union representing the state's 3500 paramedics.

A *The Ambulance Decision*

Following hearings between February and October 2013, the Full Bench of the QIRC handed down its decision on a new Ambulance determination on 28 May 2014.¹²⁶ The key matter for decision by the Full Bench was the quantum of any pay increase for QAS employees. QAS, on behalf of the Government, had argued for an increase of 2.2 per cent per annum, whereas UV had pressed for wage increases of 3.75 per cent per annum.¹²⁷ A minute from the Cabinet Budget Review Committee ('CBRC') was tendered as a key part of the Government's case on wages. Titled 'Fiscal Strategy Relevant to Public Sector Arbitration Proceedings' the minute confirmed the Government's fiscal strategy was premised on public sector wage rises being restricted to 2.2 per cent per annum.¹²⁸ The Government's reliance on the CBRC Minute was successful because, while the Full Bench accepted that it was not obliged to apply the Government's wages policy, it ultimately awarded paramedics a 2.2 per cent per annum wage increase on the basis that:

The CBRC Minute makes clear that were the Commission to award increases in excess of 2.2% per annum, then the QAS would be required to fund the additional costs from within its existing budget or otherwise reduce expenditure. Although the growth in operating revenues is expected to be higher than the wage increases sought by the QAS, we accept that other costs accompany wage increases and have to be accommodated in the QAS budget. It is also evident from the fiscal strategy established by the State Government that job losses in the QAS could result were the increases to be greater than those provided in its budget.¹²⁹

B *The Fire Decision*

On 23 December 2014 the QIRC released its second determination resolving unsuccessful wage negotiations for Queensland's firefighters.¹³⁰ After a lengthy consideration of the legislation and the relevant evidence (including the CBRC Minute), the Full Bench decided to award firefighters with a 2.2 per cent per annum wage increase.

C *Other Bargaining Outcomes*

With the notable exceptions of the the Core, Ambulance and Fire, the Government could claim some considerable success in concluding a range of public service certified agreements. The PSC Annual Report 2012-13 records the agency facilitating 19 new enterprise agreements for the reporting period, all of which 'comply with the applicable Government wages policy'.¹³¹

There is no doubt that employees (and unions) would have realised there was little to be gained from rejecting the Government's offer during negotiations and holding out for a better deal during an arbitration before the QIRC. While undoubtedly unpopular, the Government's

¹²⁶ *State of Queensland (Department of Community Safety – Queensland Ambulance Service) v United Voice, Industrial Union of Employees, Queensland (No. 2)* [2014] QIRC 093.

¹²⁷ The union had also argued for a 7.25 per cent for a particular cohort of paramedics, *Ibid* 9 [39].

¹²⁸ *Ibid* 16 [72].

¹²⁹ *Ibid* 16 [73].

¹³⁰ *State of Queensland (Department of Community Safety – Queensland Fire and Emergency services) v United Firefighter' Union of Australia, Union of Employees, Queensland and Queensland Fire and Rescue – Senior Officers Union of Employees (No, 2)* [2014] QIRC 224.

¹³¹ State of Queensland Public Service Commission (Qld), above n 92, 13.

bargaining strategy was successful in keeping public sector wages growth within the parameters of its fiscal strategy.

XV THE FOURTH CHANGE TO THE *IR ACT*

A *Background*

On 19 November 2013 the Queensland Parliament passed the *Industrial Relations (‘Fair Work Harmonisation No. 2’) and Other Legislation Amendment Act 2013 (‘FW Harmonisation No. 2’)*. In many respects, *FW Harmonisation No. 2* was the most ambitious and far-reaching of all of the LNP’s industrial relations changes.

Broadly, the objectives of the legislation were twofold. First, the law responded to the findings of the COA, particularly recommendation 130, which had endorsed changes to the *IR Act* to ensure it is ‘modern, flexible and relevant to the public sector environment.’¹³² Secondly, much of the impetus for the changes came from a strong push within Government to reform Queensland Health (‘QH’). In February 2013, the Government had released the *Blueprint for Better Healthcare in Queensland* (the ‘Blueprint’) which proposed significant structural and cultural improvements to Queensland’s health system.¹³³ The Blueprint supported the introduction of a ‘simplified employment and industrial relations environment’ which would target QH’s outdated employment framework including its complex system of awards and agreements.¹³⁴ The *FW Harmonisation No. 2* introduced changes in five major areas: the creation of Queensland Employment Standards, an award modernisation exercise, changes to certified agreement content, new enterprise bargaining arrangements and the introduction of individual contracts for high income earners.

B *Queensland Employment Standards (‘QES’)*

The QES, which establishes minimum employment conditions for all workers covered by the *IR Act*, is modeled on the Commonwealth National Employment Standards (‘NES’).¹³⁵ The introduction of the QES has been largely uncontroversial and appears to have had little practical effect on employee conditions.

C *Award Modernisation*

The changes introduced by *FW Harmonisation No. 2* to Queensland awards were more controversial. The legislation foreshadowed a process to ‘modernise and rationalise the existing Queensland awards’.¹³⁶ The legislation prescribes required content for modern awards, including mandated clauses relating to consultation, dispute resolution and individuality flexibility arrangements.¹³⁷ In addition, modern awards may not contain matters that are designated as non-allowable by law. Non-allowable content mirrors those matters which were declared to be

¹³² Queensland, Queensland Commission of Audit, *Queensland Commission of Audit Final Report – February June 2013*, vol 3, 402.

¹³³ State of Queensland (Queensland Health), *Blueprint for Better Healthcare in Queensland* (February 2013).

¹³⁴ *Ibid* 36. The Blueprint noted that QH had a ‘combination of nine awards and six enterprise agreements’ with ‘a possible 24 000 permutations of payments, which have to be processed each and every pay run’ [7].

¹³⁵ Explanatory Notes, *Industrial Relations (‘Fair Work Harmonisation No. 2’) and Other Legislation Amendment Bill 2013 (Qld)*, 1.

¹³⁶ Queensland, *Parliamentary Debates*, Legislative Assembly, 17 October 2013, 3422 (Hon. Jarred Bleijie, Attorney-General).

¹³⁷ *Industrial Relations Act 1999 (Qld)* Ch 2A (Modern Employment Conditions).

invalid under the Government's earlier changes to the *IR Act*, with the addition of new matters which may not be included in modern awards.¹³⁸

The award modernisation process commenced in February 2014 when the Attorney-General provided the QIRC with an award modernisation request.¹³⁹ The initial request set out a three-staged process for modernising awards according to priority industries and occupations, although the timeframes were later amended by the Attorney-General.¹⁴⁰ By the conclusion of the Newman Government's term in office, ten modern awards had been made by the Full Bench of the QIRC, most notably a new public service 'white collar' award, and a single award for local Government (excluding Brisbane City Council) which replaces 19 separate awards.

Despite warnings from the union movement that award modernisation would result in significant stripping of entitlements, the process overseen by the QIRC has largely been focused on reducing the number of awards operating in Queensland and consolidating entitlements. It is the case however, that many provisions previously in awards (for example provisions relating to union encouragement) have not been carried forward to the new modern awards because they are non-allowable content.¹⁴¹

D *Changes to Certified Agreement Content*

The third element in the new framework sought to place restrictions on enterprise bargaining so that negotiations are limited to matters about the employment relationship and productivity improvements.¹⁴² In keeping with similar requirements for modern awards, certified agreements have 'required content'¹⁴³ and 'non-allowable content'.¹⁴⁴ The clear intention behind these changes was to re-calibrate enterprise bargaining negotiations so that they are '...linked directly to the employment relationship and improvements in productivity and performance in the workplace'.¹⁴⁵ For example, the amendments now clearly state that a certified agreement must not include provisions which 'requires an employer to manage workloads in a particular way', or 'restricts the efficient delivery of services'.¹⁴⁶

¹³⁸ *Industrial Relations Act 1999* (Qld) s 71OK provided that a modern award may not contain provisions about: training arrangements; workload management; delivery of services; or workforce planning.

¹³⁹ *Ibid* s 140C (Minister may make an award modernisation request).

¹⁴⁰ Queensland Industrial Relations Commission, *Award Modernisation (pursuant to s 140C(1) of the Industrial Relations Act 1999)* <http://www.qirc.qld.gov.au/qirc/agreement_award/modern_awards/index.htm>. The original (undated) request, was published on the QIRC website in February 2014. The variation to the request published on 2 May 2014 extended the completion date for the process to 31 December 2015.

¹⁴¹ A number of these provisions were, in any event, previously rendered of no effect under the *IR Act*.

¹⁴² *Industrial Relations Act 1999* (Qld) s 71NE (Provisions about employment relationship).

¹⁴³ *Industrial Relations Act 1999* (Qld) pt 3, div 2.

¹⁴⁴ *Industrial Relations Act 1999* (Qld) pt 3, div 4.

¹⁴⁵ Queensland, *Parliamentary Debates*, Legislative Assembly, 17 October 2013, 3423 (Hon. Jarred Bleijie, Attorney-General).

¹⁴⁶ *Industrial Relations Act 1999* (Qld) s 71OL(1)(d) and (f).

E *New Bargaining Arrangements*

The fourth element of the changes introduced new ‘streamlined bargaining arrangements’ and revised rules around the taking of protected industrial action.¹⁴⁷ In short, the changes introduced specific time periods for conciliation and arbitration of bargaining disputes¹⁴⁸ and expressly prevents the QIRC from making an interim wage increase before it hands down its arbitration determination.¹⁴⁹ The QIRC can now also only provide for a wage increase which has retrospective effect to the day the arbitration commenced.¹⁵⁰ The amendments place significant more focus on the Commission dealing with conciliation and, if necessary, arbitration of bargaining disputes in a timely manner. Under the revised arrangements, the conciliation and arbitration process (including the release of the Commission’s determination) should ordinarily be concluded within 90 days. The difficulties faced with renegotiating the Core were likely the impetus for many of these changes.

F *Individual Contracts for High Income Employees*

The final, and most controversial component of the new framework concerned the introduction of individual employment contracts for high income public servants. These amendments were introduced as a direct result of the desire to reform the employment arrangements for senior medical officers engaged by Queensland Health. Historically, senior medical staff were employed in the same manner as public servants, that is under an award and a collective certified agreement negotiated between Queensland Health and representative unions. A strong impetus existed within Government to move these employees onto employment contracts which would have a clear focus on individual performance and service delivery. Momentum for change had gathered steam following a report from the Queensland Auditor-General which highlighted potential irregularities in the right of private practice arrangements available to senior doctors.¹⁵¹ Under the legislative amendments, certain provisions of the *IR Act* are now excluded from operating to employees engaged in a ‘high income position’ – essentially an employee whose annual remuneration is above \$129 300.¹⁵² These provisions include access to unfair dismissal,¹⁵³ award provisions,¹⁵⁴ certified agreements,¹⁵⁵ and the QIRC’s general disputes jurisdiction.¹⁵⁶ While the provisions have the potential to apply to a range of public servants in high income positions, they were initially only extended to senior medical officers.¹⁵⁷

¹⁴⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 17 October 2013, 3423 (Hon. Jarred Bleijie, Attorney-General).

¹⁴⁸ For example, the QIRC is required to arbitrate a bargaining dispute within 90 days, *Industrial Relations Act 1999* (Qld) s 149.

¹⁴⁹ *Industrial Relations Act 1999* (Qld) s 149C(1).

¹⁵⁰ *Ibid* s 149A(4)(a).

¹⁵¹ Queensland Audit Office, *Right Of Private Practice: Senior Medical Officer Conduct*, Report 13, 2013-14. Private practice arrangements allow senior medical officers employed by Queensland Health to treat private patients and derive additional financial benefit.

¹⁵² *Industrial Relations Act 1999* (Qld) ss 190, 191.

¹⁵³ *Ibid* s 194(2)(a). This excluded s 73(1)(a) from applying to employees in a High Income Position.

¹⁵⁴ *Ibid* s 194(2)(b). This excluded chapters 5 and 5A from applying to employees in a High Income Position.

¹⁵⁵ *Ibid* s 194(2)(b). This excluded chapter 6 from applying to employees in a High Income Position.

¹⁵⁶ *Ibid* s 194(2)(b). This excluded chapter 7 from applying to employees in a High Income Position

¹⁵⁷ *Ibid* s 190(b)(iii).

The attempt to move medical officers off their collective industrial arrangements and on to individual contracts faced stiff opposition from doctors and their various representatives.¹⁵⁸ After extensive negotiations taking place over a number of months, including a number of mass meetings of doctors at the Pineapple Hotel in Brisbane, the Government made a number of concessions which enabled it to reach agreement on the introduction of the contracts. These concessions were reflected in the passing of the *Hospital and Health Boards Amendment Act 2014* (Qld) on 3 April 2014 which, amongst other matters, ensured the Queensland Health director-general cannot unilaterally change doctors' contracts unless the change is beneficial to the employee, and also provides doctors with access to the QIRC should they wish to challenge the fairness of a termination of their employment.¹⁵⁹

XVI CONCLUSION

The LNP swept to power in Queensland after almost fifteen years in opposition. Campbell Newman, the new Premier, was a former Brisbane City Lord Mayor and army officer with a 'can do' reputation for getting things done. Fortified with a Commission of Audit report which declared Queensland's finances to be in dire straits, the LNP would use its parliamentary majority to embark on a period of controversial public sector and industrial relations reform.

During the Newman Government's term the state's key industrial relations legislation was amended on at least four significant occasions. A number of these changes were modelled on similar provisions in the federal *Fair Work Act*,¹⁶⁰ and were presented under the guise of 'harmonising' with the Commonwealth's approach to industrial relations.

However, many of the LNP's changes would depart from the accepted conventions of industrial relations by intruding into matters that are traditionally the domain of the employer, employees and their representatives. Most controversially, the Government passed legislation invalidating job security commitments enshrined in existing public sector collective bargaining agreements arguing the change was necessary to address a pressing budgetary problem.¹⁶¹ While this legislation was ultimately upheld in the courts,¹⁶² it challenged a key foundation of industrial relations which accepts that collective agreements, once made, are binding on the parties and enforceable in a competent court or tribunal.

In other amendments, Queensland's Industrial Tribunal would now be required to consider the state's finances when arbitrating bargaining disputes. These changes were ultimately successful in restricting wage increases for Ambulance and Fire Officers to 2.2 per cent per annum; a quantum consistent with the Government's fiscal strategy. Once again, the LNP argued that these reforms were necessary given mounting debt and the urgent need for fiscal repair, all of which had been confirmed by an independent Commission of Audit. Unions argued the

¹⁵⁸ Janelle Miles, Kelmeny Fraser, 'Queensland Doctors Threaten Mass Walkout of Public Hospital System', *Courier Mail* (online), 18 February 2014 <<http://www.couriermail.com.au/news/queensland/queensland-doctors-threaten-mass-walkout-of-public-hospital-sytem/story-fnihsrf2-1226829862474>>.

¹⁵⁹ Amendment of s 51C (Relationship between health employment directives and other instruments). However the change did not reinstate access to unfair dismissal where it was harsh, unjust or unreasonable.

¹⁶⁰ *Fair Work Act 2009* (Cth).

¹⁶¹ *Parliamentary Debates*, above n 79.

¹⁶² *The Australian Workers' Union of Employees, Queensland v State of Queensland; State of Queensland v Together Queensland, Industrial Union of Employees & Anor* [2012] QCA 353.

changes tipped the balance of power in favour of the Government and represented a dangerous intrusion into the independence of the industrial umpire.¹⁶³

The LNP's Transparency and Accountability laws¹⁶⁴ imposed new requirements on industrial organisations in relation to financial disclosure. Declaring 'sunlight is the best disinfectant'¹⁶⁵ the Attorney-General presented the laws against a backdrop of a number of high-profile scandals within the union movement. However, some parts of the legislation applied only to trade unions, casting doubt on the LNP's claim that the changes were even-handed and unbiased. In the end, the LNP was forced to back down from the centrepiece of its transparency reform – the requirement for a ballot of members authorising political expenditure – when similar provisions in New South Wales were declared unconstitutional by the High Court.¹⁶⁶

The Government also introduced broader structural reform of Queensland's industrial relations system through its *Fair Work Harmonisation* legislation. A key feature of these changes has been a process to modernise the State's award system so that it does not contain matters that are legislated as non-allowable content. The reform also ushered in individual 'high-income contracts' for senior medical officers employed by Queensland Health which was the catalyst for a very public stoush with the state's medical fraternity. Although the laws were eventually watered down by the Health Minister, individual contracts remain for the state's senior doctors.

There is no doubt that the LNP struggled to take the public service along with it on its journey of renewal. The significant loss of jobs, coming after the LNP had assured public servants they would have nothing to fear from an LNP Government, was compounded by a perception the Government had no qualms about using its parliamentary majority when it was unable to negotiate its preferred outcome. This lack of enthusiasm on the part of the public service was evidenced in the Government's inability to reach agreement in the largest public sector negotiation, the Core. After various attempts to reach agreement failed the Government ultimately provided a unilateral increase to employees; yet another indication that it was prepared to depart from the accepted industrial relations rules of engagement.

For students of Queensland's industrial relations history there is no doubt that the period from March 2012 to January 2015 will be remembered for the LNP's willingness to rely on the parliament to push through its public sector industrial relations reform agenda. A controversial time, with the recent return to an ALP-run Government in Queensland, it remains to be seen how much of the LNP's reforms will be a permanent part of Queensland's industrial relations landscape going forward.

Authors' note:

On 7 May 2015, the new Palaszczuk ALP Government introduced the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 (the 'Fairness Bill') into the Queensland Parliament. After vigorous debate, the Fairness Bill was passed a few minutes before midnight on 4 June 2015.

¹⁶³ Paull, above n 24.

¹⁶⁴ Explanatory Notes, Industrial Relations ('Fair Work Harmonisation No. 2') and Other Legislation Amendment Bill 2013 (Qld) 1.

¹⁶⁵ Queensland, *Parliamentary Debates*, Legislative Assembly, 30 April 2013, 1303 (Hon. Jarred Bleijie, Attorney-General).

¹⁶⁶ *Unions NSW & Ors v State of New South Wales* [2013] HCA 58 (18 December 2013).

The amendments ‘wind back’ a number of industrial relations changes made by the LNP Government during its term of Government. These changes include:

- *Reversing the provisions that were rendered of ‘no effect’ in industrial instruments. This has the effect of reinstating commitments in certified agreements and awards regarding job security, contracting in and out of services, union encouragement and organisational change;*
- *Removing the requirement for the Queensland Industrial Relations Commission to consider the State’s financial position and fiscal strategy when arbitrating a failed enterprise negotiation;*
- *Rescinding the arrangements underpinning High Income Guarantee Contracts and specifically restoring the ability for medical specialists to collectively negotiate enterprise agreements;*
- *Reinstating the right of entry rules that existed prior to the 2012 changes; and*
- *Reprioritising the review of modern awards.*

The Palaszczuk Government has also committed to conducting a more fulsome review of the State’s industrial laws, with a report due to be released before the end of 2015.¹⁶⁷

¹⁶⁷ Queensland Treasury, Queensland Government, *Industrial Relations Legislative Reform*, <<https://www.treasury.qld.gov.au/fair-safe-work/industrial-relations-legislative-reform/index.php>>.