

Industrial Relations Amendment Bill 2009

Explanatory Notes

General Outline

The Bill amends the *Industrial Relations Act 1999*.

The primary purpose of the Bill is to clarify the roles of the president and the vice president of the Queensland Industrial Relations Commission to remove ongoing confusion about their respective roles and responsibilities with regard to the administration of the Commission. The Bill will also ensure that the head of the State tribunal has the authority to deal with matters of inter-jurisdictional cooperation and make arrangements about the utilisation of State tribunals with the head of the Commonwealth industrial relations tribunal.

Short Title

The short title of the Bill is the *Industrial Relations Amendment Bill 2009*.

Policy Objectives of the Legislation

The policy objectives of the Bill are to:

- (1) remove any impediments to the Queensland Industrial Relations Commission's (QIRC) ability to cooperate with the Australian Industrial Relations Commission (AIRC) and Fair Work Australia; and
- (2) strengthen the administration of the QIRC by removing some ongoing confusion associated with the president and vice president having various administrative responsibilities; and
- (3) ensure that the status and seniority of the president's position is appropriately acknowledged and the QIRC aligned with the administrative structure of industrial tribunals in most other jurisdictions; and

- (4) clarify the role of the president and vice president within the commission without interfering with the independence of the QIRC, or changing the nature of the QIRC's powers or fettering their use; and
- (5) insert a number of minor amendments to clarify the intention of provisions and correct drafting anomalies.

Reasons for the Legislation

The *Industrial Relations Act 1999* (IR Act) vests administrative responsibility for the QIRC in the vice president, including allocating work to commissioners, administering the commission and registry and generally ensuring the orderly and expeditious exercise of the QIRC's jurisdiction and powers. However, the IR Act establishes the president as the formal head of the QIRC. The president is responsible for the dual appointment of commissioners to hear joint state/federal matters and is also responsible for the approving of forms, tribunal rules and practices. This division of responsibility has created some difficulties with respect to the two roles and functions. For example, the president attends regular heads of tribunal meetings (involving State and Commonwealth tribunal heads), where a significant amount of the agenda is devoted to matters relating to the administration of commissions. The Queensland president has not been able to fully participate in these discussions because he does not have administrative responsibility for the QIRC.

The *Fair Work Bill 2008* (FW Bill) was introduced to the Commonwealth Parliament on 25 November 2008 and will be the basis for a new federal industrial relations system commencing on 1 July 2009. The FW Bill continues the current situation whereby the president of the Commonwealth tribunal may discuss matters of inter-jurisdictional cooperation only with the heads of State industrial tribunals.

One of the key institutions created by the *Fair Work Bill* is Fair Work Australia (FWA) which will replace the AIRC and other institutions. All current members of the AIRC will be reappointed to FWA. QIRC members could be utilised in the federal system by making greater use of the current system whereby they hold dual appointments to both the State commissions and the AIRC. The Commonwealth government has undertaken to discuss the utilisation of State institutions with the States over the ensuing months.

This is not consistent with the role of the president of the AIRC or the president of the tribunal arm of FWA. The amendments align the roles of

the president in the federal and Queensland industrial tribunals. This will facilitate the utilisation of the State tribunal in the new national industrial relations system.

Achieving the Objectives

The Bill will eliminate the problem in relation to inter-jurisdictional cooperation and arrangements by transferring the relevant responsibilities of the vice president to the president and ensuring that the president has direct responsibility for the court, commission and registry performing in a manner that is efficient and serves the needs of employers and employees. It will also align the administrative structure of the QIRC with that of most other jurisdictions but without interfering with the independence of the QIRC, or changing the nature of the QIRC's powers or fettering their use.

Cost for Government Implementation

There will be no increase in costs for government arising from this legislation.

Fundamental Legislative Principles

The Bill has been drafted in accordance with the fundamental legislative principles prescribed by the *Legislative Standards Act 1992*.

Consultation

There has been consultation with key stakeholders in the preparation of the Bill.

Notes On Clauses

Short title

Clause 1 sets out the short title of the Act as the *Industrial Relations Amendment Act 2009*.

Act amended

Clause 2 provides that the Bill amends the *Industrial Relations Act 1999*.

Amendment of s 75 (Conciliation before application heard)

Clause 3 amends section 75 by deleting ‘vice president’ and inserting ‘president’ in subsection (6) to reflect the new administrative arrangements for the QIRC. It provides that the president rather than the vice president may delegate the functions under the section.

Amendment of s 160 (When an agreement passes the no-disadvantage test)

Clause 4 amends section 160 by deleting ‘vice president’ and inserting ‘president’ in subsection (5) to reflect the new administrative arrangements for the QIRC. It provides that the president rather than the vice president may, if he/she considers exceptional circumstances exist, require the registrar to give the commission a report comparing the agreement with the employee’s entitlements or protections.

Amendment of s 209 (When does a QWA pass the no-disadvantage test)

Clause 5 amends section 209 by deleting ‘vice president’ and inserting ‘president’ in subsection (4) to reflect the new administrative arrangements for the QIRC.

Insertion of new section 246A (Functions of president)

Clause 6 inserts a new section 246A about the responsibility of the president for the court, commission and registry performing their functions in a manner that is efficient and adequately serves the needs of employees and employers.

Amendment of s 264 (Administrative responsibilities for the commission and registry)

Clause 7 amends section 264 by deleting ‘vice president’ and inserting ‘president’ in subsections (1), (2), (3), (6) and (7)(b). The changes transfer the responsibilities for the administration of the commission and registry from the vice president to the president.

Subsection (4) is deleted and new subsections (4) and (4A) inserted which provide that the president is to be assisted by the vice president in performing the responsibilities under subsections (1) and (2) and may delegate a power under subsection (3) to the vice president or, if the vice president is not available, to a deputy president.

Subsection (5) is also replaced by a new subsection (5) which provides that a commissioner must comply with a direction of the president, vice president or deputy president given for the performance of responsibilities under subsections (1) or (2).

These amendments reflect the new administrative arrangements for the QIRC.

Amendment of s 269 (President to consider efficiencies that may be achieved by using dual commissioners)

Clause 8 amends the heading of the section and the section by deleting 'vice president' and inserting 'president' to reflect the new administrative arrangements for the QIRC.

Amendment of s 270 (Reallocation of commission's work)

Clause 9 amends the section by deleting 'vice president' and inserting 'president' to reflect the new administrative arrangements for the QIRC.

Amendment of s 299 (Functions and powers of registrar)

Clause 10 amends section 299 (3) to make the registrar responsible to the president only in the performance of a function or power and reflects the new administrative arrangements for the QIRC.

Delete s 708(1A) (Approved forms)

Clause 11 deletes section 708(1A) to reflect the new administrative arrangements for the QIRC.

Insertion of new ch 20 pt 8 –

Part 8 Transitional provision for Industrial Relations Amendment Act 2009,

Section 757 (Delegations by vice president)

Clause 12 inserts a new part after section 756. The new section 757 ensures that any delegation made by the vice president before the commencement of the amendment Act is continued in force as if it were made by the president after the commencement.

Amendment of Schedule 2 (Appointments)

Clause 13 amends section 4(3)(c) by making the president responsible for the approval of leave taken under section 15 of the *Judges (Pensions and Long Leave) Act 1957* (JPLL Act) by a deputy president or commissioner and also amends section 4A(2) by making the president responsible for the approval of leave, other than leave under section 15 of the JPLL Act, taken by a deputy president or commissioner.

Schedule Minor amendments

section 2

Clauses in Bill	Explanation
1 Chapter 2, part 3, division 1, heading, ‘pt’ — <i>omit, insert—</i> ‘part’.	Clause 1, amends a heading in accordance with current legislative drafting practice.
2 Sections 50(1)(a) and 137(1)(a), ‘; or’— <i>omit, insert—</i> ‘;’.	Clause 2, makes a minor correction.

<p>3 Section 71(9), ‘subsections’— <i>omit, insert—</i> ‘subsection’.</p>	<p>Clause 3, makes a minor correction.</p>
<p>4 Section 72(2)(b), ‘subsection’— ‘subsections’.</p>	<p>Clause 4, makes a minor correction.</p>
<p>5 Section 73(2)(f)(ii), after ‘the’— <i>insert—</i> ‘repealed’.</p>	<p>Clause 5, makes a minor correction because the <i>Health Rights Commission Act 1991</i> has been repealed.</p>
<p>6 Section 75(3)(b), before ‘inform’- <i>insert -</i> ‘must’.</p>	<p>Clause 6, makes a minor correction.</p>
<p>7 Section 115(2)(b)(i), after ‘because’— <i>insert—</i> ‘of’.</p>	<p>Clause 7, makes a minor correction.</p>
<p>8 Section 143(2)(a), ‘and’— <i>omit.</i></p>	<p>Clause 8, makes a minor correction.</p>
<p>9 Section 203(2)(b), before ‘the’— <i>insert—</i> ‘give’.</p>	<p>Clause 9, makes a minor correction.</p>
<p>10 Section 273(3)— <i>omit.</i></p>	<p>Clause 10, makes a minor correction by removing a definition.</p>
<p>11 Section 403(1)(b)(ii), before ‘has’— <i>insert—</i> ‘the mortgagee’.</p>	<p>Clause 11, makes a minor correction.</p>
<p>12 Section 518(4)(a), after ‘extension’— <i>insert—</i> ‘is made’.</p>	<p>Clause 12, makes a minor correction.</p>

<p>13 Section 534(b), ‘, the person’ — <i>omit.</i></p>	<p>Clause 13, makes a minor correction.</p>
<p>14 Section 606(2)(b), before ‘an’— <i>insert—</i> ‘of’.</p>	<p>Clause 14, makes a minor correction.</p>
<p>15 Section 607(1), ‘a person’— <i>omit.</i></p>	<p>Clause 15, makes a minor correction.</p>
<p>16 Section 607(1)(a), before ‘was’— <i>insert—</i> ‘a person’.</p>	<p>Clause 16, makes a minor correction.</p>
<p>17 Section 641(3)(a), after ‘amendments’— ‘of’.</p>	<p>Clause 17, makes a minor correction.</p>
<p>18 Section 670(1)(b)(ii), second mention— <i>renumber</i> as section 670(1)(b)(iii).</p>	<p>Clause 18, makes a minor correction.</p>
<p>19 Schedule 5, definition <i>audit report</i>— <i>omit, insert—</i> ‘<i>audit report</i>, for chapter 12, see section 558(1)(b).’.</p>	<p>Clause 19, makes a minor correction.</p>
<p>20 Schedule 5, definitions <i>employee and employer</i>, ‘means’— <i>omit.</i></p>	<p>Clause 20, makes a correction to accord with current legislative drafting practice.</p>
<p>21 Schedule 5, definition <i>industrial action</i>, ‘means’— <i>omit.</i></p>	<p>Clause 21, makes a correction to accord with current legislative drafting practice.</p>

<p>22 Schedule 5, definition <i>industrial action</i>, paragraph (a), before ‘a’— insert— ‘<i>means</i>’.</p>	<p>Clause 22, makes a correction to accord with current legislative drafting practice.</p>
<p>23 Schedule 5, definition <i>industrial relations commission</i>— omit, insert— ‘<i>industrial relations commission</i> means the Queensland Industrial Relations Commission established under section 255.’</p>	<p>Clause 23, makes a minor correction.</p>
<p>24 Schedule 5— insert— ‘insert— ‘<i>registry</i> see section 294.’.</p>	<p>Clause 24, makes a minor correction by inserting a definition for ‘registry’.</p>