INDUSTRIAL RELATIONS (FAIR WORK ACT HARMONISATION NO.2) AND OTHER LEGISLATION AMENDMENT BILL 2013

Explanatory Notes

Short title

The short title of the Bill is the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013.

Policy objectives and the reasons for them

An objective of the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 is to reform Queensland's industrial relations framework to ensure it continues to meet the needs of employers and employees operating within the State's industrial relations jurisdiction.

The Bill responds to the recommendations of the Queensland Commission of Audit (COA); and the Blueprint for better healthcare in Queensland. In particular the COA recommends:

- The *Industrial Relations Act 1999* be updated to ensure it is modern, flexible and relevant to the public sector (Recommendation 130);
- Awards continue to provide the basis for public sector wages and conditions; however only matters not covered by legislation or public service directives should be included. The number of awards that apply in the public sector should be significantly reduced (Recommendation 131); and
- Certified agreements only contain wages and conditions for specific groups of employees which are outside award conditions and which are linked to improvements in productivity and performance. All certified agreements are to be approved by the Public Service Commission (Recommendation 132).

The Bill provides an industrial relations framework in Queensland comprising of:

- comprehensive legislated core employment standards (Queensland Employment Standards) based upon existing *Industrial Relations Act 1999* minimum conditions and the National Employment Standards contained in the *Fair Work Act 2009*;
- an award modernisation process to make awards that provide a fair, minimum safety net of enforceable terms and conditions for the employment relationship between the employee and the employer;

- certified agreements which only contain wages and matters linked directly to the employment relationship and improvements in productivity and performance;
- streamlined arrangements for bargaining and taking protected industrial action. These arrangements include measures to reduce protracted disputation and disruption to service delivery; and the introduction of specified timeframes in which assisted conciliation and arbitration is to occur; and
- individual employment contracts for high income senior employees drawing on similar provisions in the *Fair Work Act 2009*.

The framework will create an industrial relations system in Queensland that focuses on the employment relationship; provides a fair safety-net of enforceable employment conditions; and promotes efficiency, innovation and productivity improvement in the workplace. The framework is considered essential to address inefficiencies in the negotiation of employment agreements and to provide a modern, flexible and responsive industrial relations system.

In addition to the reform of Queensland's industrial relations framework, the policy objectives of the Bill also include:

Changes to the Industrial Court of Queensland

Mr David Hall, President of the Industrial Court of Queensland, resigned his commission effective from 4 October 2013. It is proposed that the vacant position of president of the Court be filled by an existing Supreme Court judge appointed on a part-time basis. It is desirable that the arrangements for the administration of the Court be suited to the appointment of a Supreme Court judge on a part time basis.

Fixed term appointments in the Queensland Industrial Relations Commission

At present QIRC member appointments are only by tenure to the age of 70. It is desirable to provide the government with flexibility to resource the QIRC to meet short to medium term workload demands without the long term financial commitment of tenured appointments.

Applications for trading hours' orders to be heard by a single commissioner

Trading hours orders for non-exempt shops and trading hours orders for exhibitions and special displays are currently determined by a Full Bench of three Commissioners. It is desirable to provide more flexibility in the process for dealing with trading hours orders.

Deduction of industrial organisation subscription fees from wages

From 1 July 2013 the *Industrial Relations Act 1999* was amended to render to no effect a union encouragement provision in an industrial instrument that requires a public sector employer to facilitate a deduction of industrial association membership fees from an employee's wages. It is desirable to ensure clarity that an employer is not in breach of the *Anti-Discrimination Act 1991* in cases where an employer decides to stop payroll deductions for union subscription fees.

Clarifies the powers of an inspector under the Act

Following the amendment of the *Industrial Relations Act* 1999 in June 2013 with respect to matters under Chapter 12 (Industrial Organisations) doubt has been raised on the inspector's powers to investigate suspected breaches or to otherwise ensure compliance with the Act. The powers of an inspector under the Act will be clarified to make clear that an inspector can enter premises, interview persons and request and inspect records in relation to an investigation of suspected breaches of the Act or to otherwise ensure compliance with the Act.

Extinguishing obsolete certified agreements

There are over 4500 certified agreements remaining in the State's industrial relations jurisdiction despite the majority of these agreements applying to private sector organisations that have since transferred to the national workplace relations system as a consequence of changes in federal industrial relations law and the referral of the State's remaining private sector industrial relations jurisdiction to the Commonwealth. It is desirable to have a mechanism to extinguish those obsolete certified agreements.

Provisions governing the operation, composition, size and tenure of the Board of Trustees of the State Public Sector Superannuation Scheme

Discussions at industry and Commonwealth Government level continue to focus on the optimal structure for boards of superannuation funds. To provide flexibility for any changes that may result accordingly, there is a benefit in having the Board of Trustees of the State Public Sector Superannuation Scheme (QSuper Board) arrangements governed by a regulation instead of primary legislation and bring these arrangements in line with current industry best-practice. Therefore an objective of the Bill is to relocate the provisions governing the operation, composition, size and tenure of the QSuper Board to a regulation made under the *Superannuation (State Public Sector) Act 1990*.

Achievement of policy objectives

The policy objectives will be achieved through legislative amendments to the following primary legislation:

- *Industrial Relations Act 1999*
- *Health and Hospital Boards Act 2011*
- *Trading (Allowable Hours) Act 1990*
- *Superannuation (State Public Sector) Act 1990*

The amendments to the *Industrial Relations Act 1999* will reform the existing industrial relations framework in Queensland to better meet the needs of employers and employees operating within the State's industrial relations jurisdiction.

There are currently 83 state and local government awards operating in the Queensland industrial relations system. These awards have, over many years, been amended to contain extensive and complex provisions relating to a broad range of employment matters. The Bill will provide a process to modernise and rationalise existing State awards so they become a fair safety-net of minimum, enforceable terms and conditions for the employment relationship between the employee and the employer. The award modernisation process is similar to that undertaken federally as set out in Part XA of the repealed *Workplace Relations Act 1996*.

The Bill will also reduce the overall time it can take to produce an employment agreement by introducing specified timeframes in which assisted conciliation and arbitration are to occur.

Transitional arrangements are provided in the Bill to manage the processes for those certified agreements that have reached their nominal expiry date but are not in arbitration under section 149 of the *Industrial Relations Act 1999,* or will reach their nominal expiry date prior to the modernisation of the underpinning awards.

Arbitration proceedings that have commenced under section 149 of the *Industrial Relations Act 1999* at the time of the introduction of the Bill will continue however the Bill allows for two or more of the parties to reach, and make, a certified agreement under the pre-reform rules.

The Bill amends the *Hospitals and Health Boards Act 2011* to complement the changes in the state's industrial relations framework.

The Bill also amends the *Industrial Relations Act 1999* such that administrative responsibility for the Court will reside with the president; and some matters of the original jurisdiction of the Court will be transferred to the Industrial Magistrates' Court and the Queensland Industrial Relations Commission.

The Bill also amends the *Industrial Relations Act 1999* to allow the Governor-in-Council to make fixed-term appointments to the position of deputy president and commissioner.

The Bill also amends the *Industrial Relations Act 1999* to prohibit deductions of union subscription fees from an employee's wages.

The Bill amends the *Industrial Relations Act 1999* to make clear the powers of an inspector to enter premises, interview persons and request and inspect records with respect of ensuring compliance with the Act.

The Bill amends the *Industrial Relations Act 1999* to provide a mechanism to extinguish obsolete certified agreements in certain circumstances.

The amendment to the *Trading (Allowable Hours) Act 1990* will provide that applications for trading hours orders may be determined by a single member, with the determination of these trading hours orders by a Full Bench of three commissioners occurring only when the vice president considers it appropriate in the circumstances. Allowing trading hours orders to be determined by a single commissioner will enable more minor matters to be convened and heard more quickly, while the vice president would retain the right to decide if determination by a Full Bench of three commissioners is more appropriate, given the relative importance of a particular application.

The Bill will amend the *Superannuation (State Public Sector) Act 1990* to relocate the provisions governing the operation, composition, size and tenure of the QSuper Board of Trustees to the *Superannuation (State Public Sector) Regulation 2006*; and amend the *Superannuation (State Public Sector) Regulation 2006* to prescribe provisions governing the operation, composition, size and tenure of the QSuper Board.

Alternative ways of achieving policy objectives

Consideration has been given to alternative ways of achieving the policy objectives however, legislative amendments are found to be the only way to achieve the stated policy objectives. In particular, the amendments to the *Industrial Relations Act 1999* and the *Health and Hospital Boards Act 2011* are required to give effect to the revised arrangements for Queensland Employment Standards; award modernisation; modern awards; certified agreements and agreement-making; and individual employment contracts for high income senior employees.

Estimated cost for government implementation

Additional resourcing will be required for the Queensland Industrial Relations Commission in 2014 to undertake the award modernisation process. Administrative support to the Queensland Industrial Relations Commission in 2014 is anticipated to cost $425,000. This is a one-off cost to Government for the duration of the awards modernisation. Government will give consideration to adding additional members to the Queensland Industrial Relations Commission, either on tenure or for a fixed term, should additional resources be required. It should be noted that the appointment of a Supreme Court judge to the Industrial Court of Queensland on a part time arrangement following the resignation of President Hall will provide a savings to Government of $525,000 which can be used to offset the costs associated with the proposed arrangements in the Bill.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles have been raised by the Office of Queensland Parliamentary Council and are addressed below.

***Industrial Relations Act 1999* amendments**

Constitutionality—impairment of institutional integrity of courts. The Bill gives the Minister power to request the Queensland Industrial Relations Commission undertake an award modernisation process. The Minister's request may include directions as to the content of the modern award. As the Commission is required to comply with a Ministerial request, the ability of the Minister to give directions as to content raises a question as to whether this impairs or interferes with the Commission's institutional integrity.

The Minister's request is limited by the content provisions in Chapter 2 Part 3 of the Bill as the request may only deal with matters allowable in those provisions. Concerns with this potential breach are also ameliorated by the requirement that the request be published which provides transparency and greater accountability. Further, the provision is modelled on the approach adopted federally.

Legislative Standards Act 1992*, s 2(a)—rights and liberties of individuals.* The Bill potentially lessens the rights of individuals in the following instances: modern awards are not required to include provisions about flexible working arrangements for employees to meet family responsibilities; the Queensland Industrial Relations Commission will no longer have power to award wage increases or other benefits with retrospective effect; employees who accept a high-income guarantee contract will be excluded from certain protections and rights under the Act; and further limits are placed on the taking of protected industrial action. These changes potentially diminish the existing rights of employees under the Act.

These changes are necessary to build an industrial relations framework that focuses on the employment relationship, provides a fair safety-net of enforceable employment conditions, and promotes efficiency, innovation and productivity improvement in the workplace. In relation to flexible working arrangements, Clause 71MB of the Bill provides that a modern industrial instrument must include the provision prescribed under regulation enabling an employee to agree to a flexibility arrangement to meet the genuine needs of the employee and employer. The restriction on the Queensland Industrial Relations Commission to award increases or other benefits with retrospective effect helps ensures the efficient negotiation of terms and conditions of employment and provides for greater business certainty. Employees are free to accept, or not, a high-income guarantee contract and are restricted to those employees who are remunerated at or above the minimum threshold for high income senior officers. These employees are currently excluded from unfair dismissal provisions in the Act. The provisions related to the taking of protected industrial action are designed to ensure transparency and accountability with matters under negotiation and provide rigour around the Protected Action Ballot Order process. Together these provisions balance employees' rights and responsibilities with the greater public benefit of a fair and efficient industrial relations system.

Legislative Standards Act 1992, *s 4(3)(b)—consistency with the principles of natural justice*. The Bill provides that an employer may apply to the Queensland Industrial Relations Commission for an order reducing the amount of a redundancy payment the employer would otherwise be required to pay according to the statutory formula for redundancy payment calculations. The provision does not expressly provide for the employee's right to be heard on the application.

This potential breach is ameliorated because redundancy pay rights historically were not statutory rights, but rights obtained from industrial instruments. This measure simply re-introduces an element of that system that was in place less than 10 years ago.

Power to enter premises—*Legislative Standards Act 1992*, s 4(3)(e). The Bill gives inspectors power to enter the registered office of an associated entity without a warrant. Associated entities are only subject to a limited number of provisions under the Act and, for that reason it is unusual for inspectors to be given an entry power.

The public interest in the transparency and accountability of industrial organisations is seen to override this concern.

Legislative Standards Act 1992, s 4(4)(a)—delegation of legislative power. The Bill provides that modern awards must include a number of specific clauses, the wording of which is to be prescribed under a regulation. This may raise the issue of respect for the institution of Parliament, in particular, delegating legislative power only in appropriate cases and to appropriate persons.

These provisions are justified by the public benefit that will be achieved through the introduction of simple and modern terms of employment which are flexible to meet the needs of the employee and employer relationship and provide greater uniformity for Queenslanders.

Health and Hospital Board Act 2011 **amendments**

Legislative Standards Act 1992, s 2(a) — rights and liberties of individuals. The Bill gives the chief executive of Queensland Health power to issue a health employment directive that overrides a health service employee's contract. These directives may be issued without consultation with the impacted persons.

Health employment directives are relatively limited in their capacity to change terms and conditions of employment. They will not be able to undermine the minimum guaranteed standards in the *Industrial Relations Act 1999*, nor override other specific terms and conditions provided for in the *Hospital and Health Boards Act 2011* or other Acts or regulations. Directives will be able to provide more favourable terms and conditions for employees. The amendments do not preclude consultation and it will always be considered best practice to consult, but a stated requirement removes the flexibility needed to administer employment terms and conditions. The authority is also consistent with the authority for the Public Service Commissioner to issue rulings under the *Public Service Act 2008*.

Legislative Standards Act 1992, s 4(4)(a)—delegation of legislative power. The Bill allows classes of employees subject to particular employment arrangements to be prescribed under a regulation however minimum requirements must be met before an employee can be included within a prescribed class.

Minimum requirements must be met before the Governor in Council may prescribe a class of position as a senior health service position, namely that all the employees in the class must be remunerated at or above the minimum prescribed remuneration in the *Industrial Relations Act 1999* for high income senior positions. This is a strict

requirement and does not permit prescribing of class of employees that would normally not be considered 'senior'.

Superannuation legislation amendments

Legislative Standards Act 1992, s 4(4)(a)—delegation of legislative power. The Bill removes provisions relating to the appointment, removal and disqualification of trustees and the management of the QSuper Board from the Act and relocates those provisions to the regulation.

This change is necessary to give QSuper the flexibility to respond both to obligations imposed by the Australian Prudential Regulation Authority and changes in the Commonwealth superannuation legislation.

Consultation

Consultation has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Public Service Commission, Queensland Health, the Department of Local Government, Community Recovery and Resilience; and the Local Government Association Queensland. There has been no public consultation on the Bill.

Consistency with legislation of other jurisdictions

Many features contained in the proposed industrial relations framework are broadly consistent with provisions contained in the *Fair Work Act 2009*.

The Queensland Employment Standards are based on existing state and federal standards. In particular the Queensland Employment Standards preserves existing provisions in *Industrial Relations Act 1999* and aligns with the National Employment Standards, although the Queensland Employment Standards are more detailed than the NES. Both the Queensland Employment Standards and National Employment Standards include standards for annual leave; carers' leave; parental leave; long service leave and jury leave. Other matters provided for under the Queensland Employment Standards include adoption of a public holidays standard based on the NES, while retaining the definition of public holiday in the *Industrial Relations Act 1999*; inclusion of a notice of termination and redundancy standard based on certain provisions from both state and federal legislation and the Termination, Change and Redundancy Clause Statement of Policy of the Queensland Industrial Relations Commission; inclusion of standard dispute resolution; consultation; and flexibility clauses for modern awards and certified agreements.

Provisions for maximum weekly hours, requests for flexible working arrangements and elements of community service leave which are contained in the National Employment Standards are not included in the Queensland Employment Standards.

The proposed Queensland award modernisation process is similar to that set out in Part XA of the repealed *Workplace Relations Act 1996* which was used by the then Australian Industrial Relations Commission to undertake modernisation of federal award during 2008 and 2009.

Similar to the approach taken in the *Fair Work Act 2009,* the Bill sets out 'required, permitted and non-allowable' content of awards. Provisions that address the contracting in and out of services; employment security; and encouragement provisions, have been rendered of no effect in awards and agreements applying to government-entities as a consequence of previous amendments to the *Industrial Relations Act 1999*.

The *Fair Work Act 2009* deals broadly with the content of enterprise agreements but does not specify allowable and non-allowable matters. The Bill specifies allowable and non-allowable matters in certified agreements.

While many features of the current bargaining framework are unchanged, the *Industrial Relations Act 1999* will be amended to introduce time frames within which bargaining, assisted conciliation and arbitration will occur. These timeframes are not modelled on a process existing elsewhere although the Fair Work Commission has outlined a similar process for intractable disputes in limited circumstances.

The Bill adopts the *Fair Work Act 2009* 'high income threshold' of $129,300 for determining those employees eligible for consideration for an individual contract.

Notes on provisions

Part 1 Preliminary

Clause 1 states that the short title of the Act is the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012.*

Clause 2 provides that the majority of this Act commences on 1 December 2013, except the following provisions which commence on assent, including; sections 13(1); section 14; sections 43 to 55; section 59; section 64 to 72; section 75 (to the extent it inserts the new chapter 20, part 18 part heading, division 1, division 3, subdivision 1, division 4, division 5, heading, sections 833 and 834); section 76; part 2, divisions 3 and 4; and schedule 1, part 1.

Part 2 Amendments relating to industrial relations

Division 1 Amendment of Industrial Relations Act 1999

Clause 3 provides that Part 2, Division 1 amends the *Industrial Relations Act 1999.*

Clause 4 removes subsections 3(j) and 3(o) from the objects of the *Industrial Relations Act 1999* to reflect the reformed industrial relations framework for the Queensland jurisdiction.

Clause 5 changes the new Chapter 2 heading to 'Pre-modernisation employment conditions'.

Clause 6 inserts a new 'Part 1AA Preliminary' in Chapter 2. The new section 8AA clarifies that Chapter 2 applies only to an employee bound by a 'pre-modernisation industrial instrument' which is defined under section 71BA as an award, certified agreement or determination made under the *Industrial Relations Act 1999*.

Clause 7 inserts a new Chapter 2A (Modern employment conditions) and section 71B specifies that the Chapter applies to all employees not bound by a pre-modernisation industrial instrument upon commencement of this Part while section 71BA and 71BB sets out relevant definitions for the Chapter.

'Part 2 Queensland Employment Standards' specifies the meaning of Queensland Employment Standards at section 71C. Sections 71CA clarifies that Queensland Employment Standards have effect subject to provisions included in a modern industrial instrument and that Part 3 contains provisions about the content of modern industrial instruments. The provisions at Part 3 provide that a modern industrial instrument may only provide for a matter that is provided in the Queensland Employment Standards if the effect of the provision is no less favourable to an employee than the Queensland Employment Standard. Section 71CB clarifies that if a directive is inconsistent with a provision of the Queensland Employment Standards the directive is not taken to be inconsistent to the extent that the effect of the directive is more favourable to and employee than the Queensland Employment Standards.

Divisions 2 to 9 set out the minimum standards of employment for employees in the following matters: minimum wage; annual leave; personal leave (including sick leave, carer's leave, bereavement leave and cultural leave); parental leave; long service leave; public holidays; jury service leave and notice of termination and redundancy pay.

This clause also inserts Part 3 into Chapter 2A which provides for the content of 'modern industrial instruments', which are defined as including modern awards and certified agreements. This part includes specified terms that must be included in modern awards and certified agreements as well as those specific to each. Similarly, it provides for terms that are permitted to be included and terms which must not be included in all modern industrial instruments as well as those specific to each.

Further, this clause inserts relevant definitions used throughout Chapter 2A.

Clause 8 changes the new section 72 heading to 'Employees to whom this chapter does not apply' and inserts a new subsection (1A) which clarifies that unfair dismissal provisions do not apply to high-income senior employees.

This clause also inserts a new subsection (3A) which clarifies that the unfair dismissal provisions provided for in the *Industrial Relations Act 1999* do not apply to employees whose employment conditions are prescribed by Chapter 2A (Chapter 2A employees) as the same content of those provisions will apply to them under the new Chapter 2A.

Clause 9 clarifies that redundancy payment provisions provided for in the *Industrial Relations Act 1999* do not apply to Chapter 2A employees as those same provisions will apply to them under the new Chapter 2A.

Clause 10 changes the heading for Chapter 5 to 'Awards (pre-modernisation)'.

Clause 11 inserts a 'Part 1AA Application of ch 5' into Chapter 5 to clarify that Chapter 5 applies to pre-modernisation awards.

Clause 12 amends section 123 and relates to the intention to limit activity in regards to pre-modernisation awards prior to their modernisation. The note explains that such a pre-modernisation award may be repealed as a result of an award modernisation process carried out under part 8.

Clause 13 clarifies exemptions to persons bound by a pre-modernised award and limits applications for further exemptions to pre-modernisation awards, prior to their modernisation.

Clause 14 replaces Chapter 5, Parts 2 and 3 and inserts a new 'Part 2 Commission's powers', Section 125 (Repealing awards) which changes the Commission's powers in relation to pre-modernisation awards so that from the date of this Bill's introduction, the Commission may solely repeal an award.

Clause 15 clarifies that section 135 in Chapter 5 (which provides that an award prevails over a contract of service) does not apply to an employee engaged under a high-income guarantee contract.

Clause 16 inserts a new 'Part 8 Modernisation of awards' into Chapter 5.

This Part sets out the definition for a pre-modernisation award, as well as the object of modernising awards and the Commission's award modernisation function. This Part allows that the Minister may make an award modernisation request which may, among other things, state permitted matters. The Minister may vary an award modernisation request by written notice to the Commission and this must be published. This part sets out the procedure for carrying out and the deadline for completing an award modernisation process. The Commission is required to make one or more modern awards, and repeal relevant pre-modernisation awards in order to give effect to the outcome of the process.

Clause 17 inserts a new Chapter 5A setting out the modern awards objectives and relevant definitions. The new chapter provides details of the coverage and operation of modern awards, including when a modern award operates and the relationship with a modern award and a contract of service. Part 3 provides for the commission's powers in the making, varying and revoking of modern awards and the exercise of those powers. Part 4 details other technical matters about the format, publication and interpretation of the relevant instrument.

Clause 18 replaces the heading 'Division 1 - making agreements', with 'Division 1A – Preliminary' which provides a new section 140J which provides that chapter 6 applies to employees and employers who are covered by a modern award. This clause also provides a new section 140K provides definitions for chapter 6.

Clause 19 amends section 141 and provides a new heading and a definition for certified agreement.

Clause 20 replaces section 142. Section 142(2) means high-income senior employees under section 189 are not able to make new certified agreements.

Clause 21 inserts a new division 1 heading 'making agreements' and a new subdivision 1 heading 'negotiation'.

Clause 22 amends section 143(2) which refers to the written notice that must be given prior to the commencement of bargaining as the 'notice of intention'. Corresponding changes are made to sections 143(4) and 143(5).

Section 143(3) is amended to reduce the period following the giving of the notice of intention and the commencement of bargaining from 14 days to 7 days.

New section 143(3A) provides that if there is an existing certified agreement, the notice of intention cannot be given more than 60 days before the nominal expiry date of the agreement or determination. This section will also override any provision in an existing certified agreement or determination which requires the notice of intention to be given more than 60 days prior to nominal expiry.

The practical effect of sections 143(3) and 143(3A) is that bargaining for a replacement certified agreement will not commence more than 53 days prior to the nominal expiry of the existing certified agreement or determination.

Clause 23 amends section 144. This clause introduces a new section 144(2)(a) which reduces the period a relevant employee must have access to a proposed certified agreement from 14 days to 7 days. Sections 144(2)(c) and 144(3) are amended to require the relevant employee to also be a member of the relevant employee organisation before the organisation can represent the employee. Section 144(5) is deleted because the definitions are now found at the beginning of the division.

Clause 24 amends section 147A. Section 147A(5)(b)(ii) is a corresponding amendment to reflect the changes to section 142. Section 147A(6) is amended to incorporate the subject matter of the *Industrial Relations (Transitional) Regulation 2012*. Section 147A(7) and the omission at section 147A(10) clarify that an employee organisation mentioned in section 147A(1) may apply to be bound by an agreement made under this section. It is not intended that these changes will alter the practical application of section 147A insofar as an employee organisation wishes to be bound by an agreement. Section 147A(8) is amended to clarify that an arbitration under subdivision 3 may be heard by a full bench or a single commissioner.

Clause 25 inserts a new heading subdivision 2 'Conciliation'.

Clause 26 replaces section 148 (assistance in negotiation by conciliation) with a new section 148 (commission to help negotiation parties) and introduces new sections 148A (commission's conciliation powers) and 148B (commission cannot order wage increase).

Section 148(1) states, following the peace obligation period, the commission must help the negotiating parties make a new certified agreement if: (a) all of negotiating parties agree to ask the commission for help to negotiate a new agreement, or (b) one, or more, negotiating parties tells the commission that negotiations have broken down; and the commission considers further negotiations will not result in an agreement being made within a reasonable time. When the commission considers whether further negotiations are unlikely to result in an agreement being made, there is no requirement for an agreement to be made with all of the non-employer negotiating parties, or (c) one, or more, negotiating parties asks the commission for help to negotiate a new agreement and the commission considers that at least one negotiating party is organising, engaging or threatening relevant industrial action. Relevant industrial action is defined as section 148(3).

Section 148(2) sets out when the commission must start conciliating and end conciliating. Section 148(3)(a) sets out five circumstances (i-v) where industrial action will be regarded as relevant industrial action. Section 148(3)(b) makes it clear that an application for a Protected Action Ballot Order (PABO) does not constitute relevant industrial action.

Section 148A sets out the powers available to the commission when it tries to help the parties make a certified agreement.

Section 148B makes it clear that, when the commission helps the parties to make a certified agreement, the commission cannot order a wage increase.

Clause 27 inserts a new subdivision 3 'Arbitration'.

Clause 28 replaces section 149 and introduces new sections 149A, 149B, 149C, 149D and 149E.

Section 149 relates to arbitration if conciliation unsuccessful. Section 149(1) provides that where the conciliation has been unsuccessful, and the conciliation period ends, the matter must be arbitrated.

Section 149(2) requires the commissioner who conciliated the matter to prepare a written conciliation report which identifies: (a) agreed matters, (b) matters that remain at issue between the negotiating parties, and (c) any matters the commission considers are non-allowable matters (see chapter 2A, part 4, division 3).

Section 149(3) requires the conciliation report to be provided to the vice-president 14 days after the conciliation ends (see section 148(2)(b)). It is anticipated that after the conciliation period ends, the commission will spend this 14 day period with the parties identifying those things required at section 149(2) which will form the basis of the arbitration.

Section 149(4) provides that the matter must be determined by arbitration within the arbitration period.

Section 149(5) provides that the parties can still make a certified agreement, despite the matter being in arbitration. When that agreement is certified by the commission, the arbitration ends.

New section 149A (Arbitration period) provides that the arbitration period is 90 days after the vice-president receives the conciliating report. This section sets out where the vice-president may extend the 90 day period.

New section 149B (Full bench to determine matters by arbitration unless vice-president directs otherwise) provides that an arbitration should be conducted by a full bench, unless the vice-president directs that the arbitration should be conducted by a commissioner sitting alone.

New section 149C(1) (Arbitration powers of full bench) provides the powers of the commission when determining a matter by arbitration and provides the commission may not order a wage increase payable before the commission makes its arbitration determination (an interim wage increase). Section 149C(2) provides that an arbitration determination must include the provisions that must be included in a certified agreement (see chapter 2A, part 3, division 2) and must not include a provision that cannot be included in a certified agreement (see chapter 2A, part 3, division 4).

New section 149D (Issues full bench must consider) sets out those matters the commission must consider when determining a matter by arbitration.

New section 149E (Full bench must publish reasons) requires the commission to publish its reasons when it makes an arbitration determination.

Clause 29 amends section 150 and changes the section heading to 'Arbitration determinations'.

Section 150(1) provides that a determination may operate for up to 4 years. Section 150(2) is amended to reflect the changes made by section 150(2A).

A new section is inserted at section 150(2A). The effect of this section is that the determination cannot provide for a wage increase, or other benefit, before the day the arbitration commenced (see section 149A(4)(a)). In addition, the determination cannot provide for a wage increase or other benefit, which otherwise takes account of the period before the arbitration commenced.

Sections 150(3)(a) and (b)(ii), (4), (5), (6) and (7) are consequential amendments.

Clause 30 introduces a new subdivision 4 (Industrial action during conciliation and arbitration periods). New section 150A provides that industrial action taken during the conciliation period and the arbitration period is not protected industrial action. A new heading is provided at subdivision 5 (Other matters).

Clause 31 replaces section 155 (Right of employee organisation to be heard) with (entities that may be heard on application) and details when an application is made to the commission for certification of an agreement; which entities must be notified and when entities may be heard in relation to the certification.

Clause 32 amends section 156 to provide for the adoption of allowable and non-allowable matters for certified agreements, and related matters.

Clause 33 amends section 157(1)(a) to provide for consequential amendments.

Clause 34 inserts new subsections into section 158. These provisions allow the commission to take certain steps where an agreement is presented for certification with non-allowable matters (similar to the current powers of the commission in section 158). New section 158(5) clarifies that if the commission certifies an agreement with non-allowable content, then the non-allowable provisions have no effect but the other terms of the agreement are unaffected.

Clause 35 amends section 166 to clarify the circumstances where an employee organisation may be bound by a certified agreement.

Clause 36 amends section 168 to allow a certified agreement to be extended for up to 4 years.

Clause 37 amends section 176. Section 176(3A) is inserted to reference the new section 176A.

Clause 38 inserts a new section 176A (Claims including non-allowable content). This provides that industrial action is not protected industrial action for the employee organisation and its members, or the employees, if: a PABO has been made by the commission and, after the order was made, a new claim is made (or an existing claim has been varied) in the negotiations by the employee organisation, or the employees, which is a non-allowable matter. See section 12A of schedule 4 (Revocation of protected action ballot order on basis of claim relating to non-allowable content).

Clause 39 amends section 177A by omitting section 177A(4).

Clauses 40 and *41* are consequential amendments.

Clause 42 inserts a new Chapter 6A which provides arrangements for high-income senior employees.

Part 1 Preliminary, section 188 sets out relevant definitions used throughout Chapter 6A. Sections 189 – 193 further provide definitions of terms including 'high-income senior employee', 'high-income position', 'high income threshold', employee's 'remuneration' is for the purposes of a high-income position and 'high-income guarantee contract'.

Part 2 relates to high-income guarantee contracts and high-income positions. New section 194 of this Part provides that certain provisions (the 'excluded provisions') of the *Industrial Relations Act 1999* do not apply to an employee engaged under a high-income guarantee contract, from the beginning of the day (the 'contract day') the high-income guarantee contract takes effect.

Subclause (2) contains a definition of the excluded provisions.

Subclauses (3) and (4) provide that an industrial instrument that applied to the employee immediately before the contract day ceases to apply to the employee from the contract day and, where the industrial instrument is a pre-modernisation industrial instrument, the pre-modernisation industrial instrument can never apply to the employee again.

Subclause (5) contains a definition of the term 'contract day'.

New section 195 provides that the excluded provisions do not apply to an employee engaged in a high-income position and do not apply to an employee engaged in a position which becomes a high-income position.

Subclause (2) makes it clear that the excluded provision do not apply from the beginning of the day either the employee is engaged in the high-income position or the position in which the employee is engaged becomes a high-income position (the 'high-income position day').

Subclauses (3) and (4) provide that an industrial instrument that applied to the employee immediately before the high-income position day continues to apply to the employee until either a relevant directive is made about the employees employment (which substantially deals with the matters under the industrial instrument) or the commission orders that it no longer applies.

Subclause (5) provides that where a pre-modernisation industrial instrument no longer applies to an employee as a result of an event in subclause (4), the pre-modernisation industrial instrument can never apply to the employee again.

Subclause (6) makes it clear that a term of an industrial instrument that requires the parties to renegotiate a replacements industrial instrument is of no-effect from the high-income position day.

Subclauses (7) and (8) provide for the interaction between the industrial instrument and directives made under the *Public Service Act 2008*.

Subclause (9) provides for the interaction between a health employment directive under the *Hospital and Health Boards Act 2011* and rulings made under section 53 of the *Public Service Act 2008*.

Subclause (10) contains definitions of the terms 'high-income position day' and 'relevant directive'.

New section 196 provides that where a position or class of position ceases to be a high-income position and a modern industrial instrument applies to the position or class of position, any pre-modernisation industrial instrument that would have applied to the position or class of position no longer applies and can never apply again.

Part 3 sets out other matters for high-income employees.

New section 197 sets out that any conduct by a person to offer or not offer another person employment under a high-income guarantee contract or conduct by a person leading up to, or forming part of, the process of making a position a high-income position, does not constitute engagement in conduct for the purposes of section 105(2)(a)(c) or (d) of the *Industrial Relations Act 1999*.

New section 198 removes any doubt that section 135 does not prevent an employee and employer entering into a high-income-guarantee contract, where there is an award in force which would otherwise apply to the position the subject of the high-income guarantee contract.

New section 199 provides that the operation of section 691C(2) in respect of a private practice provision in an industrial instrument applying to a medical practitioner, does not constitute a termination of the medical practitioner's employment, affect other conditions of the employment or entitle the medical practitioner to a payment of money or compensation.

Section 691C(2) (as amended by the amending Act) provides that a private practice provision in an industrial instrument is of no effect.

New section 200 deals with terms ('private practice terms') in a medical practitioner's contract of employment that entitle the medical practitioner to a private practice arrangement (as defined) or require an employer to offer, negotiate, renegotiate provide or continue to provide a private practice arrangement (as defined).

Subclause (2) provides that private practice terms in force in contracts of employment before the end of 30 June 2014, are of no effect from the beginning of 1 July 2014.

Note: New private practice arrangements for medical practitioners will be effective from 1 July 2014.

Subclause (3) provides that the operation of subclause (2) does not constitute a termination of the medical practitioner's employment, affect other conditions of the employment or entitle the medical practitioner to a payment of money or compensation.

Subclause (4) contains definitions of the terms contract and private practice arrangement as used in the section.

New section 201 deals with a refusal by a medical practitioner of an offer of a high-income guarantee contract.

Subclause (2) provides that a medical practitioner is not entitled to any redundancy or severance payments (howsoever described) in relation to the termination of his or her employment if the medical practitioner has refused an offer of employment on a high-income guarantee contract made in accordance with a health employment directive that regulates the conditions on which a medical practitioner is to be offered employment and which recognises the continuous service of the medical practitioner.

Subclause (3) contains a definition of continuous service as the term is used in the section.

Clause 43 amends section 242D (Appointment of members on full-time or part-time basis). Subclause 1 omits section 242D(1)(a). This removes reference to a non-judicial appointment to the office of the president and renumbers section 242D(1)(b) and (c) as section 242D(1)(a) and (b).

Clause 44 amends section 242E (Functions of the president) to include managing the administration of the business of the court and the registry under section 242G as a function of the president.

Clause 45 amends section 242F (Functions of the vice-president) to omit managing the administration of the business of the court and the registry as mentioned under section 242G as a function of the vice-president.

Clause 46 amends section 242G (Administration of the court) to provide that managing the administration of the business of the court and the registry will now be the responsibility of the president and not the vice-president.

This clause also removes section 242G(2) to remove the reference to the vice-president having responsibility for deciding the member who constitutes the court for a proceeding.

Clause 47 amends section 243 (Appointment of president) to provide that only a Supreme Court judge may be appointed as president of the court and to allow for part-time appointment to the office of the president.

Clause 48 changes the heading of section 244 (When a Supreme Court judge is appointed as president) to 'Effect of appointment as president' to reflect that the

appointee must be a Supreme Court judge, renumbers the section and clarifies that the president may perform the functions of office of both president and Supreme Court judge.

Clause 49 amends section 245 (When president holds office) to remove references that apply to the appointment of non-judicial appointees.

Clause 50 amends section 246 (Acting president) to remove the reference to a non-judicial appointee, renumbers the section due to the removal of those reference and clarifies that the acting president may perform the functions of office of both president and a Supreme Court judge.

Clause 51 amends section 248 (Court's jurisdiction) to provide that the court may hear and decide an offence against this Act, unless the offence is one for which this Act makes other provision. This amendment reflects amendments made to the original jurisdiction of the Industrial Court provided for in

Clause 52 amends section 256 (Composition) to clarify that the president is a member of the commission but not a commissioner and that for Chapter 12, part 16 or for the hearing of an appeal, the full bench of the commission is constituted by the president and 2 or more commissioners.

Clause 53 amends section 258A (Appointment of other deputy presidents of the commission), to insert a new provision at section 258A(3) to allow for appointments for a fixed term and renumbers the section.

Clause 54 amends section 259 (Industrial Commissioners), this amendment inserts a new provision at section 259(3) to allow for situations where the person is appointed for a fixed term.

As a consequence of the insertion of the new provision section 259(3) to (7) is renumbered as section 259(4) to (8).

Clause 55 amends section 260 (When deputy president or industrial commissioner holds office) by inserting a new provision to allow for a fixed term appointment. As a consequence of the insertion of the new provision section 260(1)(c) to (e) is renumbered as section 260(1)(d) to (f).

Clause 56 amends section 273 (Commission's functions) to clarify that the Commission's functions with respect to providing fair wages and employment conditions must incorporate the Queensland Employment Standards.

Clause 57 amends section 287 (General rulings) to clarify when the full bench may make general rulings. In particular this amendment clarifies that general rulings may be made in relation to pre-modernisation industrial instruments.

This clause also excludes a review of a general employment condition under chapter 2 from matters the full bench may make general rulings about.

Clause 58 omits section 288 (Statement of policy) so that the full bench will no longer be able to make statements of policy.

Clause 59 amends section 292 (Magistrate's jurisdiction) to provide that the Magistrate has jurisdiction to hear and decide proceedings in relation to offences against matters unless the offence is one for which the *Industrial Relations Act 1999* makes other provision for an offence.

Clause 60 amends section 319 (Representation of parties) to remove the reference to section 149 and replaces it with a reference to chapter 6, division 1, subdivision 3 which establishes new provisions to deal with arbitration if conciliation is unsuccessful. The clause also inserts a new section 319(3A) which clarifies that with respect to section 319(2)(b)(ii), a reference to the commission includes the commission constituted by the full bench.

Clause 61 amends section 320 (Basis of decisions of the commission and magistrates) to delete the reference in subsection (5) to section 149 and replace it with a reference to the chapter 6, division 1, subdivision 3 which establishes new provisions to deal with arbitration if conciliation is unsuccessful. The clause also replaces the note to section 320(5), to clarify that for a determination made under chapter 6, division 1, subdivision 3, section 149D(1)(b)(iv) and (2) provide for the matters the full bench must consider in relation to the public interest. This amendment is made as a consequence of the amendment to section 149, which has been replaced with chapter 6, division 1, subdivision 3.

Clause 62 amends section 341 (Appeal from commission, magistrate or registrar) to delete the reference to section 149 under section 341(1) and replace it with a reference to chapter 6, division 1, subdivision 3 as this chapter establishes new provisions to deal with arbitration if conciliation is unsuccessful.

Clause 63 amends section 342 (Appeal from commission, magistrate or registrar) to delete the reference to section 149 under section 342(1) and replace it with a reference to chapter 6, division 1, subdivision 3 as this chapter establishes new provisions to deal with arbitration if conciliation is unsuccessful.

Clause 64 amends section 391 (Wages etc. to be paid without deduction) to clarify that this section is subject to the new section 391A which prohibits employers from facilitating deductions of industrial association membership subscriptions from an employee's wages.

Clause 65 inserts a new section 391A which prohibits employers from facilitating deductions of industrial association membership subscriptions from an employee's wages.

Clause 66 amends section 459 (Powers of court). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 67 amends section 462 (Interim orders). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 68 amends section 463 (Hearing application). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 69 amends section 464 (Effect of declaration). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 70 amends section 465 (Direction must be complied with). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 71 amends section 535 (Court may decide). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 72 amends section 536 (Deciding application). This amendment changes the reference to the court to the commission as jurisdiction for this matter has been transferred to the commission.

Clause 73 amends section 691B (Industrial instruments to which this part applies) to clarify that this part does not apply to a modern industrial instrument.

Clause 74 inserts section 691C(2) which outlines two additional provisions that will have no effect in industrial instruments. The first relates to private practice provisions. This will remove the requirement to offer private practice options to relevant senior medical officers. It is also to remove the need for unions to agree to vary the formulae for calculating option A benefits.

The second removes "resource allocation provisions" from industrial instrument. This is to ensure employers are able to allocate resources where required without being restricted by provisions in industrial instruments.

Clause 75 inserts a new Chapter 20 Part 18 'Transitional provisions for Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013'. This provides transitional powers for the amending Act.

Division 1 provides that employees' entitlements are carried over when they transfer from chapter 2 to chapter 2A.

Similarly, Division 2 provides that applications for leave made prior to the transfer from chapter 2 to chapter 2A are carried over, with some exemptions.

Division 3 provides transitional arrangements from pre-modernised awards to modern awards.

Division 4 sets out transitional provisions about certified agreements and determinations.

Section 825 provides that division 4 has effect from date of introduction.

Section 826 provides that certified agreements or determinations in force before the introduction day continue to operate.

Section 827 deals with continuing agreement. This section provides that a certified agreement or a determination which has reached its nominal expiry date, before the introduction day, is a continuing agreement. In addition, a certified agreement or determination becomes a continuing agreement if: the agreement of determination reaches its nominal expiry date, and the underpinning award(s) have not been modernised. However, an agreement or a determination is not a continuing agreement if it is subject to sections 831 or 832.

Section 827(4) has been included to deal with a number of Local Government certified agreements. These agreements have already reached their nominal expiry dates, but the parties have agreed to extend the agreements through an administrative 'rollover' process. Subsection 4 provides that in these circumstances, the nominal expiry date for these agreements is the expiry day identified through the administrative 'rollover'.

Section 828 provides for an extension of a continuing agreement. A continuing agreement which has nominally expired before the introduction day is extended for 1 year after the introduction, or an earlier period if prescribed in a regulation. For a certified agreement or determination which becomes a continuing agreement after the introduction day, the agreement is extended for 1 year after that day, or an earlier period if prescribed in a regulation.

Section 829 provides that certain actions cannot be taken in relation to a continuing agreement.

Section 830 provides a regulation may be issued which provides a wage increase to employees covered by a continuing agreement on a stated day. Section 830(2) provides that any wage increase made under a regulation will continue to apply to employees, notwithstanding the continuing agreement reaching its nominal expiry day. This provision does not mean that further wage increases will be paid; it simply means that any wage increases paid under the regulation will be retained when the continuing agreement nominally expires.

The reason for sections 827 – 830 is to deal with those situations where the parties are not able to negotiate for a replacement agreement under the new chapter 6 arrangements, because the underpinning awards are not yet modernised. The purpose of designating a new nominal expiry day for the continuing agreement is so the new rules on bargaining under chapter 6 can then commence (for example a section 143 notice can be given 60 days prior to the nominal expiry date of the continuing agreement).

Section 831 deals with those matters which have been referred section 149 arbitration prior to the introduction day.

Section 832 provides that if an application for certification has been made before the introduction day, the agreement may be certified under the introduction rules.

Division 5 provides for other transitional arrangements in relation to wage deductions for industrial association membership, continued protection from liability for ombudsman and officials of QWRO and regulation-making power.

Clause 76 amends schedule 2 (Appointments). Subclause (1) amends section 3(1)(b) by inserting a new subclause (iii) to clarify that a member appointed for a fixed term has no entitlement to the *Judges (Pensions and Long Leave) Act 1957*.

Subclause (2) amends section 4(3)(a) to delete the reference to a member holding appointment as ombudsman as this position no longer exists.

Subclause (3) amends section 4A(1) to delete the reference to a member holding appointment as ombudsman as this position no longer exists.

Clause 77 changes the schedule 3 heading to 'Minimum redundancy payment – under ch 3, pt 4, div 1AA'.

Clause 78 amends schedule 4 (Provisions for protected action ballots).

Subclause (1) inserts under section 4 (When application may be made) a new subclause to clarify that a reference to an existing certified agreement in this section includes a determination relating to an existing certified agreement.

Subclause (2) amends section 8(1) and sets out requirements that must be fulfilled for the Commission to make a protected action ballot order in relation to a proposed agreement. Subclause (1) imposes a further requirement that an applicant must satisfy the commission that any action will not relate to a non-allowable matter.

Subclause (3) inserts a new section 12A which makes provision for the Commission to revoke a protected action ballot order if it declares that a claim includes a non-allowable matter.

Clause 79 amends schedule 4A, part 3 by omitting section 6, as the interaction between awards and certified agreements is newly specified in the amending Act.

Clause 80 amends schedule 5 (Dictionary) to include new definitions.

Division 2 Amendment of Hospital and Health Boards Act 2011

Clause 81 specifies that this division amends the *Hospital and Health Boards Act 2011*. These amendments are to ensure the *Hospital and Health Boards Act 2011* aligns with the new provisions in the *Industrial Relations Act 1999*.

Clause 82 inserts an authority into section 10 to specify that the chief executive may issue health employment directives.

Clause 83 inserts the requirement for a Service to follow health employment directives into the list of functions of Services in section 19.

Clause 84 amends section 20 to state that Services will be able to appoint contracted senior health service employees, regardless of whether they have been prescribed as employer Services or not. A contracted senior health service employee is a senior health service employee appointed on contract under section 67.

Clause 85 amends section 45 to add to the chief executive's functions, the issuing of health employment directives.

Clause 86 amends section 46 to add the issuing of health employment directives to the powers which the chief executive may not delegate.

Clause 87 removes references in section 47 to employment matters being matters about which a health service directive may be made as these matters will now be dealt with through health employment directives.

Clause 88 inserts a new division about health employment directives.

New section 51A provides that the chief executive may develop and issue health employment directives. Without limiting the power, subsection 2 lists some of the matters that a health employment directive may be about. The new section also clarifies that a health employment directive may apply to the department, a specified service or services or all services, and may apply to all or a stated type of employee/s in the department and/or a service or all services.

New sections 51B and 51C specify the relationships between health employment directives and other laws, instruments and directives.

New section 51D requires health employment directives to be published in a manner that allows the directive to be accessed by the public. The internet is provided as an appropriate example of a method of publication.

New section 51E provides that health employment directives are binding on employees, the department and services to which the directives apply.

New section 51F requires the chief executive to complete a review of a health employment directive within three years of it being made and then three yearly after that. The section also requires any amended directive to be published.

Clause 88 makes consequential amendments to section 66 to add the *Industrial Relations Act 1999* into the matters that govern health service employee employment. These amendments ensure that the amendments being made to the *Industrial Relations Act 1999* apply to health service employees.

Health employment directives are also added in as instruments that govern employment.

Clause 89 also amends section 66 to add in the matters that govern senior health service employee employment.

Clause 90 amends section 67 to recognise senior health service employees and the way in which they may be appointed.

Services will be able to appoint contracted senior health service employees prior to being prescribed as employing Services. However the chief executive of the department will be the employing authority for non-contracted senior health service employees until the Service in which they are working is prescribed as an employing Service.

Senior health service employees will be able to be employed on fixed or indefinite term contracts, or on no contract.

Clause 91 makes a consequential amendment to section 68 to ensure that Services not prescribed may enter into contracts with contracted senior health service employees.

Clause 92 adds 'senior health service employees' to the division heading.

Clause 93 adds in a subdivision 1 heading.

Clause 94 inserts a new subdivision dealing with senior health service employees.

New section 74A defines 'senior health service employee' as a health service employee appointed at a prescribed classification level. The new section requires that a classification level may only be prescribed if the remuneration for all employees in that classification level is more than the high income threshold specified in the *Industrial Relations Act 1999*.

Before recommending a classification level to the Governor in Council for prescribing, the Minister may give regard to the role, responsibility and functions performed at the classification level.

New section 74B deals with contracted senior health service employees and specifies who the parties to the contract must be and the matters that must be included in the contract.

Clause 95 updates the exclusion of certain matters provision in section 75 to be consistent with the amendments to the *Industrial Relations Act 1999* and to include the same relevant matters for senior health service employees (who will also be high-income senior employees under the *Industrial Relations Act 1999* – see *clause 42*).

Clause 96 removes section 76. The chief executive will now be able to make a health employment directive about remuneration for health executives.

Clause 97 removes 'for a fixed term' from the section 78 to include contracted senior health service employees on indefinite term contracts in the transfer provisions.

Clause 98 amends section 79 to clarify that senior health service employees whose contract ends will not continue to be employed on a tenured basis.

Clause 99 amends section 80 to remove high income senior employees from the operation of the section. This is needed to ensure that where a health service employee becomes a high income senior employee on the same day that the relevant Service is prescribed, it is the matters that govern employment of high income senior employees that will apply, not the terms and condition immediately prior to prescribing the Service and becoming a high income senior employee.

Clause 100 inserts a new section 80AA to ensure that certain entitlements are retained for high income senior employees upon a Service being prescribed on the same day the employee becomes a high income senior employee.

Clause 101 amends section 80B to include employees to which section 80AA applies to ensure that matters and proceedings in progress at the time a Service is prescribed continue in the same manner for the employee.

Clause 102 inserts a new section 80C to ensure that matters and proceedings in progress immediately before an employee becomes a contracted senior health service employee continue in the same manner for the employee.

Clauses 103 and *104* make consequential amendments to transitional provisions and Schedule 2 – dictionary.

Division 3 Amendment of Trading (Allowable Hours) Act 1990

Clause 105 states that this division amends the *Trading (Allowable Hours) Act 1990*.

Clause 106 amends section 4 to omit the definition of 'commissioner' and insert two new definitions for 'full bench' and 'vice-president'. The clause also moves the Dictionary of definitions to a new Schedule 1 in line with modern drafting practices.

Clause 107 amends the heading to part 5 to replace the term 'exhibitions and special displays' with the new terminology of 'special exhibitions'.

Clause 108 amends section 21 to remove the requirement that trading hours in non-exempt shops are to be decided by a full bench of the industrial commission constituted by three or more commissioners (see section 256(2) of the *Industrial Relations Act 1999*). The proposed amendment will permit trading hours in non-exempt shops to be decided by the industrial commission which is constituted by a single commissioner (see section 256(3) of the *Industrial Relations Act 1999*).

The amendment also modifies the definition of 'public holiday' in section 21 to reflect modern drafting practice and the current structure of the *Holidays Act 1983*.

Clause 109 inserts a new section 22 which provides that approval for the holding of a special exhibition of goods (i.e. permission to trade under specified conditions outside the usual trading hours) may be given in an order made by the industrial commission (i.e. a single commissioner).

Clause 110 amends section 23 to modify a reference to proposed new section 22.

Clause 111 inserts a new section 23A to provide that the vice president may if appropriate refer the matter of an order under sections 21 or 22 to a full bench. This power does not limit the arrangements for referral of a matter to the full bench already existing in section 281 of the *Industrial Relations Act 1999*.

Clause 112 amends section 25 to provide that applications by parties for leave to appear in a trading hours matter that have been refused by the industrial registrar are to be referred to the industrial commission (i.e. a single commissioner).

Clause 113 amends section 27 to remove reference to a full bench and therefore permit summary dismissal of an application for a trading hours order by the industrial commission (i.e. a single commissioner).

Clause 114 inserts a new section 29 which provides that specials exhibitions orders must be complied with both by occupiers of an exhibit or display and the person who holds or organises the special exhibition.

Clause 115 inserts after section 49 a new Part 8, Division 3 Transitional provisions for Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013.

New section 50 provides definitions of terms used in division 3.

New section 51 provides that proceedings started before commencement of the new provisions must continue to be heard and decided by a full bench. Matters not started before the commencement of the new provisions may be reallocated by the vice president to an industrial commission constituted by a commissioner sitting alone.

New section 52 provides that special exhibition orders made before commencement of the new provisions is taken to be an order made under the new section 22.

Clause 116 inserts a new schedule 1 Dictionary.

Division 4 Minor and consequential amendments

Clause 117 notes that Schedule 1 amends the legislation it mentions i.e. the *Industrial Relations Act 1999*, the *Integrity Act 2009* and the *Public Service Act 2008*.

Part 3 Other amendments

Division 1 Amendment of Superannuation (State Public Sector) Act 1990

Clause 118 states that this division amends the *Superannuation (State Public Sector) Act 1990*.

Clause 119 amends section 2 of the *Superannuation (State Public Sector) Act 1990* to remove definitions that are no longer required following the omission of provisions governing the operation, composition, size and tenure of the QSuper Board from the Act. Also makes a technical amendment to the definition of *alternate trustee* to replace 'section 6C' with 'this Act'.

Clause 120 amends section 3 of the *Superannuation (State Public Sector) Act 1990* to replace '*Superannuation Industry (Supervision) Act 1993 (Cwlth)*' with 'SIS Act', as this term is defined under section 2 of the *Superannuation (State Public Sector) Act 1990*.

Clause 121 omits sections 5 to 6AA of the *Superannuation (State Public Sector) Act 1990 and* inserts new section 5 into the *Superannuation (State Public Sector) Act 1990* to provide that the QSuper Board consists of the trustees appointed by the Minister and that the Minister must appoint the number of trustees prescribed under a regulation, in the way prescribed under a regulation.

Clause 122 renumbers section 6B of the *Superannuation (State Public Sector) Act 1990* as section 6.

Clause 123 omits sections 6C to 6DAA of the *Superannuation (State Public Sector) Act 1990*.

Clause 124 renumbers sections 6DA to 6F of the *Superannuation (State Public Sector) Act 1990* as sections 6A to 6C.

Clause 125 omits sections 6G to 6J of the *Superannuation (State Public Sector) Act 1990*.

Clause 126 amends section 31 of the *Superannuation (State Public Sector) Act 1990* to provide that regulations may be made governing the operation, composition, size and tenure of the QSuper Board.

Clause 127 inserts a new division 5 in part 6 of the *Superannuation (State Public Sector) Act 1990* to provide that upon commencement the appointment of the trustees holding office immediately before the commencement ends and the office is vacated.

Division 2 Amendment of Superannuation (State Public Sector) Regulation 2006

Clause 128 states that this division amends the *Superannuation (State Public Sector) Regulation 2006*.

Clause 129 inserts a new heading 'Part 1 Preliminary' before section 1 of the *Superannuation (State Public Sector) Regulation 2006*.

Clause 130 inserts new section 2A in the *Superannuation (State Public Sector) Regulation 2006* to provide that new schedule 2 defines particular words used in the regulation.

Clause 131 inserts new 'Part 2 Board of Trustees' after section 2A of the *Superannuation (State Public Sector) Regulation 2006*. This includes section 2B provides that the Minister must appoint 4 employer trustees and 4 member representative trustees, who are nominated by the Queensland Police Union, Queensland Nurses' Union, Queensland Teachers' Union and Together Queensland. With the QSuper Board's written consent, the Minister may also appoint 1 other trustee as an independent director.

Section 2C provides that the Minister may appoint a trustee only if the person is eligible to be a trustee and gives written consent to the appointment; and that the appointment must be made by gazette notice. Section 2D provides who is eligible to be a trustee.

Section 2E provides that a trustee must be appointed for a stated term of not more than 3 years. Trustees may be reappointed for additional terms provided that the total term of appointment does not exceed 9 years.

Section 2F provides that the office of a trustee becomes vacant if the Minister revokes the trustee's appointment; the trustee resigns by signed notice given to the Minister or becomes a disqualified person. The Minister must not revoke the appointment of a member representative trustee other than on a request by the QSuper Board.

Section 2G provides that the QSuper Board may ask the Minister to revoke the trustee's appointment if the trustee is absent from 3 board meetings in a financial year without the QSuper Board's leave or reasonable excuse; the QSuper Board is satisfied that the trustee is unable to perform their functions because of physical or mental incapacity; or the QSuper Board is satisfied that if the trustee remains as a trustee, it is likely the QSuper Board will not meet the prudential standards under the SIS Act, part 3A.

Prior to asking the Minister to revoke a trustee's appointment, the QSuper Board must provide the trustee with the reasons for making the request and have regard to any submissions received by the trustee in response. The QSuper Board must obtain written approval of the entity that nominated a member entity trustee prior to asking the Minister to revoke the appointment, except where the board is satisfied that, if the trustee remains as a trustee, it is likely the board will not meet the prudential standards under the SIS Act, part 3A.

Section 2H provides that when the office of an employer trustee becomes vacant, the Minister must approve a replacement. When the office of a member representative becomes vacant, the entity that nominated the person must be asked to nominate another person for appointment to the office. Appointments to fill trustee vacancies must be made within 90 days or as soon as practicable after this period and must be for a term ending at the end of the original term.

Section 2I provides that the QSuper Board may appoint up to 2 alternate trustees that may attend board meetings and exercise the absent trustee's powers at the meetings; and if appointed the board must publish a policy about the role of alternate trustees.

Section 2J provides the board may only appoint alternate trustees if the alternate trustees are eligible for appointment and provide written consent. The term of appointment must be for a stated term of not more than 3 years and the office becomes vacant if the alternate trustee resigns or becomes a disqualified person.

Section 2K provides that the Minister may appoint 1 of the trustees as chairperson with their consent and subject to consultation with the QSuper Board. The term of appointment must be for a stated term of not more than 3 years and the office of chairperson becomes vacant if the person stops being a trustee, resigns the office.~~,~~, or the term of appointment ends.

Section 2L provides that the trustees may elect a deputy chairperson subject to the person's consent. The person elected must by an employer trustee if the chairperson is a member representative trustee; and a member representative trustee if the chairperson is an employer trustee. The office of deputy chairperson becomes vacant if the person stops being a trustee, resigns the office, no longer meets the election criteria, or the term of appointment ends.

Section 2M provides that the QSuper Board may conduct its business in the way it considers appropriate. Section 2N provides for the time and place of meetings of the QSuper Board.

Section 2O prescribes the conduct of meetings of the QSuper Board, including who presides over the meeting, the requirement for a resolution to be passed only if at least a quorum of trustees vote for it, providing that a trustee who abstains from a vote is taken to have voted for the negative and for the QSuper Board to hold meetings, or permit trustees to take part in meetings, by various means of communication (e.g. telephone, video link).

Section 2P provides that the trustees may make resolutions other than at meetings, provided that at least a quorum of trustees gives written agreement to the resolution. Additionally, this clause also inserts a new heading 'Part 3 Miscellaneous' after new section 2P.

Clause 132 amends section 3 of the *Superannuation (State Public Sector) Regulation 2006* to reflect the renaming of the 'schedule' of the regulation as 'schedule 1'.

Clause 133 omits section 5 of the *Superannuation (State Public Sector) Regulation 2006* which previously prescribed the size of the QSuper Board.

Clause 134 inserts new Part 4 in the *Superannuation (State Public Sector) Regulation 2006*, providing for a transitional section 7 that allows the Minister to appoint a person who was a trustee immediately before the commencement, even if this would cause the person to serve more than a total period of 9 years which provides flexibility if continuity of service on the QSuper Board is deemed necessary.

Clause 135 renumbers the schedule of the *Superannuation (State Public Sector) Regulation 2006* as schedule 1.

Clause 136 inserts new schedule 2 in the *Superannuation (State Public Sector) Regulation 2006* to define particular terms used in the regulation.

Schedule 1 Minor and consequential amendments

Part 1 Amendments commencing on assent

Industrial Relations Act 1999

Clause 1 amends section 164(2) to insert a new subsection (c) that provides that a certified agreement operates until it expires under subsection (3).

Clause 2 amends Section 164 to insert a new subsection (3) that provides that a certified agreement expires at the end of the day that is 3 years after the nominal expiry date for the agreement unless it is sooner replaced by another certified agreement or terminated.

Clause 3 omits section 259A that provides that a commissioner may be appointed as the ombudsman, as the position of the ombudsman no longer exists.

Clause 4 inserts a note in section 259AA(1) advising that the Chapter dealing with the appointment of the ombudsman was repealed by the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

Clause 5 inserts a note in section 264(4) advising that the Chapter dealing with the appointment of the ombudsman was repealed by the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

Clause 6 deletes the reference to 'an industrial commissioner' in section 264(5) and replaces it with a reference to a 'commissioner' as reference to 'industrial' is not necessary.

Clause 7 omits Chapter 8A that established the Queensland Workplace Rights Office as this Chapter is repealed.

Clause 8 deletes the definition of 'workplace' from section 353(4) which deals with entry to places.

Clause 9 amends section 353(4) to include a new definition of workplace which reinstates the provision deleted at 8 and includes a new subsection that concerns a place of business used or occupied by an organisation, a branch of an organisation or an associated entity of an organisation. The new definition includes a reference to 'a branch' of an organisation, which is defined at section 409.

This clause also amends section 353(4) to remove any doubt that the definition of a workplace includes a place of business used or occupied by an organisation, a branch of an organisation or an associated entity of an organisation.

Clauses 10 - 16 amend section 356, which deals with an inspector's power to require information. Subsection (1)(a) is amended to include that a person identified in the Act as one that the inspector may question is a 'relevant person'.

This section is further amended to include as 'relevant person' an officer of an organisation or a branch of an organisation; and a person who is at a place of business used or occupied by an associated entity of an organisation if that person is in control, or appears to the inspector to be in control, of the place.

Section 356(1)(a)(iii) is amended to remove any doubt that an inspector has the authority to interview an officer of an organisation with respect to matters under this Act. Section 356(1)(a)(iv) extends the power of an Inspector to question a person who is at a place of business used or occupied by an associated entity and who is in control or appears to be in control of the place.

Further amendments are made to this section to clarify that particular persons are 'relevant persons'.

Clause 17 amends section 662(4) to remove the ombudsman and an officer of QWRO from those identified as an 'official' as Chapter 8A that established the Queensland Workplace Rights Office is repealed.

Clause 18 amends section 663(6) to remove the ombudsman and an officer of QWRO from those identified as an 'official' as Chapter 8A that established the Queensland Workplace Rights Office is repealed.

Clause 19 amends section 702(3) to remove the ombudsman and an officer of QWRO from those identified as an 'official' as Chapter 8A that established the Queensland Workplace Rights Office is repealed.

Clause 20 amends schedule 5 to delete ombudsman and QWRO from the definitions as Chapter 8A that established the Queensland Workplace Rights Office is repealed.

Integrity Act 2009

Clause 1 omits the reference to the Queensland workplace rights ombudsman from Schedule 1, entry for *Industrial Relations Act 1999,* as Chapter 8A established that the Queensland Workplace Rights Office is repealed.

Public Service Act 2008

Clause 1 omits schedule 1, entry for Queensland Workplace Rights Office as Chapter 8A that established the Queensland Workplace Rights Office is repealed.

Part 2 Amendments commencing on 1 December 2013

Clause 1 provides that section 71GZH (Continuity of service) is to be inserted under section 72(2) and commences on 1 December 2013.

Clause 2 provides that the words 'under chapter 2 or 2A' are to be inserted at the end of section 73(2)(k) and commences on 1 December 2013.

Clause 3 provides that under section 73(2)(ka), the reference to section '(40)7' is replaced by '40(7), 71FE or 71FI' and commences on 1 December 2013.

Clause 4 provides that under section 160(6) the reference to 'including as reviewed by a general ruling of the full bench' be replaced by 'chapter 2A' and commences on 1 December 2013.

Clause 5 provides that under section 311A(2) the reference to 'or a statement of policy' is omitted and commences on 1 December 2013.

Clause 6 omits the reference to 'or a statement of policy' under section 311A(3) and commences on 1 December 2013.

Clause 7 inserts 'or 71HJ' after the reference to section 47 under sections 366(1)(d), 367(1)(d) and 665(1)(b) and commences on 1 December 2013.

Clause 8 inserts '2A' in section 692D(5) after the words 'chapter 2' and commences on 1 December 2013.