

Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013.

Policy objectives and the reasons for them

The objectives of the Bill are to:

- Improve the financial accountability and transparency of industrial organisations and their office holders and provide a proper deterrent for officers abusing their position;
- Support the employee's choice whether or not to join an industrial organisation;
- Re-establish managerial prerogative regarding departmental policies;
- Clarify the definition of a contracting provision in section 691C of the *Industrial Relations Act 1999* (IR Act) to remove ambiguity;
- Improve procedural arrangements for union right of entry into an employer's premises;
- Further facilitate the efficient recovery of public monies overpaid to employees of the Department of Health and of Hospital and Health Services (health employers);
- Designate a senior appeals officer with the responsibility for developing practice directions for the management of appeals dealt with under the *Public Service Act 2008* (PS Act); and
- Clarify the definition of a worker under the *Workers' Compensation and Rehabilitation Act 2003* (the WCR Act).

Improve the accountability and transparency of industrial organisations

Industrial organisations occupy a unique and privileged position in the industrial relations system. The officials of industrial organisations are elected by members of the organisation who deserve to have confidence in the stewardship and financial

management of their organisation and its leadership. Concerns about the governance and financial accountability of industrial organisations have increasingly become a focus of community concern. In particular, the Health Service Union scandal highlighted concerns about alleged financial mismanagement, improper use of funds, improper use of position to gain personal advantage and a general failure by some officers to exercise powers or discharge their duties in good faith, for proper purpose and in the best interests of the organisation.

In order to reassure members of industrial organisations that their rights and interests are protected, the Bill introduces changes to strengthen the accountability and transparency of industrial organisations registered in Queensland. These changes include more stringent financial reporting obligations; requirements for public disclosures by maintaining up-to-date registers; the balloting of members to approve expenditure on political objects of \$10,000 or greater in a financial year; mandatory governance and financial accountability training for officers of industrial organisations; a strengthened audit and complaint investigation process; and an increased penalty for dishonesty. These changes will apply similar levels of accountability and transparency demanded of elected public officials and local government officials in Queensland to elected officials of industrial organisations.

Support of an employee's choice to join or not join an industrial organisation

Freedom of association gives an individual worker the right to choose to join or not join an industrial organisation however many industrial instruments currently require the Queensland Government to actively encourage union membership and provide preferential treatment to union members. These instruments also place a requirement on the Queensland Government to make Queensland government resources available to unions for this purpose. The Queensland Government recognises an individual's right to freedom of association and the Bill will give effect to this right by making changes to ensure that provisions in industrial instruments or policies and procedures that give preferential treatment to industrial organisations have no effect.

Re-establishing managerial prerogative

A number of State Government certified agreements contain provisions that incorporate certain departmental policies as part of the agreement or award. This means that the terms of the policies, once incorporated into the relevant industrial instrument, cannot be amended without union agreement. This arrangement unreasonably fetters the ability of the chief executive of a department or the Queensland Public Service Commissioner to exercise management prerogative to amend the incorporated policies to promote improved productivity and service delivery outcomes. The Bill will re-establish managerial prerogative within government entities.

Contracting out

The Bill will clarify the definition of a *contracting provision* in section 691C of the IR Act to remove ambiguity.

Right of entry

Union Right of entry provisions as they apply in the Queensland industrial relations system are now out of step with national workplace relations laws. It is in this context that the Bill provides for improvements to the right of entry provisions to be more

consistent with certain procedural requirements of the *Fair Work Act 2009* (FW Act) (Cth) and to ensure that right of entry does not cause undue interference, harassment or disruption to an employer's business.

Recovery of overpaid wages

Section 396A of the IR Act currently allows for the recovery of overpayments made to health employees. The proposed amendment clarifies the meaning of the "amount that would otherwise be paid to a health employee" used in the existing section 396A(5).

The new section 396C will enable recovery of an overpayment that has not yet been repaid from a health employee's final payment upon that employee ceasing to be a health employee. Section 396D clarifies that a health employee ceases employment when the employee's contract of employment ends and they are paid an amount for accrued leave entitlements. It further clarifies that this can apply even if the health employee subsequently commences a new employment contract with a health employer.

An employer may not be able to recover an overpayment made to an employee despite that employee having given their verbal consent for the repayment. The amendment of s391(1)(c) will enable an employer, including a health employer, to commence recovery of an overpayment based on the employee's consent regardless of whether that consent has been given in writing by the employee. Where the employee's consent has not been confirmed in writing by the employee, the employer must provide to the employee a written acknowledgement of the employee's consent before any deduction occurs.

Senior Appeals Officer – Public Service Act 2008

The Bill will create a senior appeals officer to improve the management of appeals dealt with under the PSA. The senior appeals officer will have the responsibility for developing practice directions to ensure uniformity in the management of such appeals. The vice president of the Queensland Industrial Relations Commission (QIRC) will be the senior appeals officer.

Definition of 'worker' in the Workers' Compensation and Rehabilitation Act 2003

Finally, the current definition of 'worker' in the WCR Act is considered to be unworkable; it creates uncertainty and adds to the regulatory burden on employers who have to interpret the definition i.e. who is a worker and who is a contractor. The Bill amends the definition of worker by aligning it with the tests used by the Australian Taxation Office (ATO) to determine whether a person is a worker for workers' compensation purposes.

Achievement of policy objectives

The Bill achieves its policy objectives by:

- Amending the existing duties which apply in Chapter 12 of the IR Act to apply to all officers of industrial organisations and introduce a new duty to act in good faith and for a proper purpose;

- Requiring industrial organisations to make public disclosures by way of maintaining up-to-date and publicly available disclosure registers. The registers are:
 - Register of the remuneration of the organisation's highly paid officials and employees;
 - Register of material personal interests declarations of elected officials and their relatives;
 - Register of gifts and benefits (received and given by officials and employees); and
 - Register of political objects funding (\$10,000 or greater) and the outcome of the expenditure ballot.
- Requiring that expenditure greater than \$10,000 on political objects (public advertising and related political activities as well as funding to a third party to campaign on behalf of the industrial organisation) be approved by a ballot of members. Balloting will occur through the Electoral Commission Queensland at the expense of the organisation. A successful ballot will require 50% of the members to vote and then 50% + 1 of the responses to be in support the proposal;
- Amending the existing annual reporting and filing obligations of industrial organisations to include financial disclosure statements detailing all expenditure directed to political objects as well as all procurement and contract related expenditures greater than \$5000;
- Requiring that all information provided in an organisation's annual financial disclosure statement and maintained in the registers be subject to scrutiny by a registered company auditor and be made publicly available on the organisation's website. If the organisation does not have a website arrangements will be made to publish on the QIRC website. Material personal interest declarations by relatives of elected officials will be maintained and filed with the QIRC but not published. The register of remuneration will be required to be updated twice yearly;
- Requiring that all industrial organisations have financial management policies (including in relation to credit card issuance and use, contracting activities and gifts and donations) and that officers of industrial organisations undertake governance and financial accountability training;
- Introducing new increased penalties of up to \$340,010 or five years imprisonment for dishonesty;
- Rendering union preferential and encouragement and policy incorporation provisions in an industrial instrument covering employees of government entities to be of no effect;
- Clarifying the definition of a *contracting provision* in section 691C of the IR Act to remove ambiguity;

- Amending existing right of entry provisions to be consistent with certain procedural requirements contained in the FW Act and additional requirements around the provision of entry notices;
- Enabling health employers to recover overpayments from final payments of health employees who cease employment. Further, it enables employers including a Health employer to recover overpayments based on a verbal consent that is confirmed by the employer to the employee in writing;
- Creating a single appeals officer for the management of appeals by stating that the vice president of the Queensland Industrial Relations Commission (QIRC) is also the senior appeals officer. The senior appeals officer will have the responsibility for developing practice directions to ensure consistency in the management of appeals dealt with under the PS Act; and
- Amending the WCR Act so that a worker is a person who works under a contract and the person is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cth). Business can be assured of the workers' compensation status of individuals engaged to perform work for them. Compliance with the ATO regulatory requirements will serve the dual purpose of also ensuring regulatory understanding and compliance for workers' compensation purposes.

Alternative ways of achieving policy objectives

Industrial Relations Act 1999

As the matters to be addressed in the amendments are contained in the IR Act, it is not possible to achieve the required outcomes except by amendment of that legislation.

Public Service Act 2008

As the matters to be addressed in the amendment are contained in the PS Act, it is not possible to achieve the required outcomes except by amendment of that legislation.

Workers' Compensation and Rehabilitation Act 2003

As the matters being addressed in the amendments are contained in the WCR Act, it is not possible to achieve the required outcomes except by amendment of that legislation.

Estimated cost for government implementation

Industrial Relations Act 1999

Additional costs will be incurred by government for the oversight and administration of new filing and reporting arrangements. Costs of audits and investigations, where they occur, will also be borne by the State.

Public Service Act 2008

The Government will not incur any additional cost in the implementation of the amendment to designate a senior appeals officer under the *Public Service Act 2008*.

Workers' Compensation and Rehabilitation Act 2003

The Government will not incur any additional cost in the implementation of the amendment to the definition of *worker* under the *Workers' Compensation and Rehabilitation Act 2003*.

Consistency with fundamental legislative principles

Industrial Relations Act 1999

The Office of Queensland Parliamentary Counsel (OQPC) has raised four issues regarding fundamental legislative principles in the amendments to the IR Act.

First, the amendments include obligations for officers of industrial organisations and persons related to them to disclose to the organisation 'material personal interests', which are to be recorded in a register. The particulars to be recorded in the register are to be prescribed by regulation. The organisation will be required to publish up to date registers of officers' interests on the internet. Access to the registers of related persons' interests will be limited to officers of the organisation, the Registrar and a person otherwise entitled by law to access the register. These changes have been raised as a potential breach of *Legislative Standards Act 1992*, s4(2)(a)—whether legislation has sufficient regard to the rights and liberties of individuals. The provisions of the Bill balance the competing interests of an individual's right to privacy and guarding against conflicts of interest.

Second, the amendments include transitional provisions to require an industrial organisation to prepare and publish to the public, within a period of 1 month from commencement, a statement of various financial matters for the financial year commencing 1 July 2012. This information is to include a register of interests for officers of unions that relates to any personal interests held during that financial year. This obligation will include disclosing interests they no longer hold if the interest was disposed of during the period. This obligation could be onerous for industrial organisations and officers to compile within the required period. The transitional provision imposes an obligation that relates to disclosing matters that occurred in the past during a period in which the organisation was not required to specifically record or disclose these matters. This issue has been raised as a potential breach of *Legislative Standards Act 1992*, s4(3)(g)—adversely affects rights and liberties, or imposes obligations, retrospectively. As the matters required for disclosure will be those that are routinely kept individuals and by industrial organisations the disclosure of this information is not considered onerous. The retrospective disclosure of these matters is necessary to serve the public interest of members of industrial organisations.

Third, the Bill requires that industrial organisations ballot members prior to significant expenditure on public advertising and related political activities and also to require industrial organisations to identify political party affiliations in political advertising material. The proposal is that balloting would need to be conducted through the Electoral Commission Queensland at the expense of the industrial organisation. The proposal raises the issue of whether the legislation has sufficient regard to the rights and liberties of individuals and whether there is a breach of the implied doctrine of freedom of political communication and association. The public interest in the transparency and accountability of industrial organisations is seen to override this concern.

Fourth, the provision for a transitional regulation-making power in relation to particular amendments has been raised as a potential breach of *Legislative Standards Act 1992*, s4(4)—whether legislation has sufficient regard to the institution of Parliament. The usual fundamental legislative principles’ protections have been included (i.e. sun-setting of any transitional regulation and the head of power itself) and an attempt has been made to limit the scope of the regulation-making power. Given the complexity of the subject matter and the time available for the policy development and drafting of this Bill, OQPC agrees that the provision is appropriate to manage the risk of issues arising after commencement.

In relation to the amendments regarding recovery of overpayments from health employees, particularly the recovery from final payments, while not regarded as a breach of the fundamental legislative principles, consideration has been given to any potential impact on the rights and liberties of an individual. It is considered that these are likely to be limited and would, in any event, be outweighed by the public interest in recovering outstanding monies.

Public Service Act 2008

The amendments to the PSA are consistent with fundamental legislative principles.

Workers’ Compensation and Rehabilitation Act 2003

The amendments to the WCR are consistent with fundamental legislative principles.

Consultation

Industrial Relations Act 1999

There has been no public consultation on the changes to the accountability and transparency of industrial organisations as proposed in the Bill. Consultation on the amendments to the obligations of industrial organisations was undertaken with the Registrar of the QIRC. Consultation on the amendments to union encouragement provisions and right of entry provisions was undertaken with the Queensland Public Service Commission Chief Executive and Queensland Health. Consultation on amendments to facilitate the recovery of overpayments to health employees was undertaken with Queensland Health.

Public Service Act 2008

Consultation on the amendments to the PS Act was undertaken with the Vice President of the QIRC and the Chief Executive of the Queensland Public Service Commission.

Workers' Compensation and Rehabilitation Act 2003

There has been no specific consultation with external stakeholders and the community on the amendment of the definition of *worker* under the WCR Act. However employer associations and employers have advocated that the current definition of *worker* is not satisfactory. The amendment is in response to these concerns.

Consistency with legislation of other jurisdictions

Industrial Relations Act 1999

Industrial organisations

The amendments to improve the transparency and accountability of industrial organisations have been broadly modelled on provisions in the *Fair Work (Registered Organisations) Amendment Act 2012* (FWRO Act) (Cth). Those amendments require industrial organisations to disclose the remuneration of the highest paid officials in an industrial organisation, develop and implement policies about financial expenditure and accountability within the organisation, disclose pecuniary and financial interests including Board fees and require officials to undertake training about their governance and accounting obligations. The IR Act does not currently contain these provisions. The Bill provides for greater transparency and disclosure on the financial management of industrial organisations so that members can better scrutinise the activities and expenditure of the organisation and its officers.

Encouragement provisions

The Bill removes the encouragement provisions and brings the IR Act in line with other state and federal industrial relations legislation. Currently the IR Act provides that encouragement provisions are permitted in industrial instruments. By removing this provision, the Bill preserves the right of freedom of association.

Right of Entry

The amendments to the right of entry provision are based on aspects of the FW Act which includes a requirement that permit holders are required to provide notice before entering an employer's premises. Currently the IR Act does not call for an authorised industrial officer to give an employer notice before visiting the employer's premises.

Recovery of wages

The amendments to the Bill concerning the recovery of overpaid wages are intended to strengthen the State's capacity to recover overpayments made to health employees following the implementation of the Queensland Health Payroll system.

Public Service Act 2008

Amendments to the PS Act for the effective management of appeals are consistent with legislation of other jurisdictions.

Workers' Compensation and Rehabilitation Act 2003

The Bill amends the WCR Act to bring the meaning of *worker* in line with the meaning used by the ATO. This is achieved by amending the Act so that a worker is a person who works under a contract (including a contract of service or at piecework rates), and the person is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cth).

Notes on provisions

Part 1 Preliminary

Clause 1 states the short title of the Act is the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013*.

Clause 2 indicates that Part 3 of the Bill is to commence on assent. The other Parts of the Bill will commence on a day to be fixed by proclamation.

Part 2 Amendment of Industrial Relations Act 1999

Clause 3 provides that Part 2 of Bill amends the *Industrial Relations Act 1999* (the IR Act).

Clause 4 removes section 110 – Encouragement provisions permitted.

Clause 5 amends section 319(2)(b) to remove the reference to section 110.

Clause 6 amends Section 351 to provide for an inspector to investigate complaints referred under part 15A.

Clause 7 amends section 365(1) to provide an additional circumstance where an industrial officer's authorisation may be revoked.

Clause 8 amends section 366 which requires an employer to keep the time and wages record required to be kept under the section at a workplace. If the time and wages record is not kept at a workplace, it must be able to be accessed from a workplace of the employer.

Clause 9 has the same effect as the amendment made in clause 7 of this Bill, however applies to section 367.

Clause 10 provides two new definitions to be inserted into the division.

Clause 11 amends section 372 which deals with the right of entry into workplaces by authorised industrial officers to exercise a power under section 373.

Clause 12 inserts a new section 372A and section 372B.

Section 372A introduces a requirement for authorised industrial officers who propose to enter an employer's workplace under section 372(1) to provide an entry notice.

The notice must be given to the employer or employer's representative during the employer's business hours and at least 24 hours, but not more than 14 days, before the proposed day and time of the entry.

Section 372B provides that if an employer or employer's representative receives an entry notice from an authorised industrial officer, the employer or employer's representative may provide the authorised industrial officer an *employer notice*. The *employer notice* deals with the location where the records are to be inspected.

Clause 13 amends section 373 which provides the things that an authorised industrial officer may inspect if they have entered a workplace under section 372.

The amendment introduces a new subsection 2AA which provides that an authorised industrial officer may only inspect the time and wages record of an employee if the officer's organisation is entitled to represent the industrial interests of the employee, and the employee, or class of employee, was identified in the entry notice. A new provision is introduced which allows the employer to give the authorised industrial officer who has entered a workplace directions to take, or not take, stated action if the employer is satisfied the direction is reasonably necessary to discharge the employer's duties under the *Work Health and Safety Act 2011*.

Clause 14 creates a new definition section for division 3 (section 390A).

Clause 15 amends section 391(1)(c) of the IR Act and provides that if an employee's consent authorising a deduction to be made from the employee's wages under section 391 is not written, the employer must give the employee written acknowledgement of the consent before making the deduction. This requirement would be satisfied if the employer sends an acknowledgement of the employee's consent via email to an employee's work or personal email address. The employer is not required to confirm whether an employee has received that email or other written confirmation prior to commencing deductions.

Clause 16 defines "amount that would otherwise be paid to a health employee" in section 396A(5). It clarifies that it includes all amounts payable to a health employee in relation to employment (i.e. both wages and any other amounts payable to the employee) and any other amounts paid to the employee on the particular occasion, prior to any deduction being made. An example of the types of deductions referred to which includes deductions such as income tax, superannuation contributions paid by the employee or a deduction made with the consent of the employee is provided.

Clause 17 clarifies that a health employer may deduct from the employee's final payment an amount up to the amount of the transition loan that has not been repaid.

Clause 18 provides a new section 396C and section 396D. Section 396C enables a health employer to recover an overpayment amount that has not been repaid from a health employee's final payment when the employee ceases to be a health employee. A health employer may deduct the full value of the outstanding overpayment or an amount up to the total of the final payment, where the final payment is less than the overpayment amount.

Section 396D clarifies that, for the purposes of sections 396B and 396C, an employee ceases employment when the employee's contract of employment ends and the employee is paid an amount for leave not taken. Further, it clarifies that where a health employee is paid out leave entitlements and begins new employment with a health employer as a casual, a health employer can recover the overpayment from the previous termination payment. It further clarifies that this applies even if the health employee subsequently commences a new casual employment contract with a health employer. For example in a situation where an employee is engaged on a 6 month temporary contract and the contract ends and the employee receives a cash payment for untaken leave accrued during the temporary contract. The employee is then immediately engaged as a casual employee. For the purposes of this section, the employee has ceased employment at the conclusion of the temporary contract. The health employer is entitled to recover an overpayment from the final payment received upon the end of the temporary contract.

Clause 19 amends the heading of Chapter 12, part 9, division 3.

Clause 20 amends section 526 which provides for the application of division 3. The division now applies to any officer of an organisation in the performance of the officer's functions or the exercise of the officer's powers.

Clause 21 amends section 527 about an officer's duty to act honestly. The expanded duty now requires an officer of an industrial organisation, in performance of the officer's functions or the exercise of the officer's powers, to act honestly and in good faith in the best interests of the organisation and for a proper purpose. To provide a realistic deterrent to breaching this section, the penalty is increased and a potential prison term introduced. The new penalty is 3091 penalty units or five years imprisonment, or both.

Clause 22 increases the penalty to provide a realistic deterrent for breaching this section.

Clause 23 increases the penalties to provide a realistic deterrent for breaching this section.

Clause 24 amends a heading.

Clause 25 inserts, at Chapter 12 part 11, a new division 1 heading - Members and officers registers.

Clause 26 inserts a new division 2 – Register of interests of officers. This division establishes new arrangements for creating, maintaining, publishing and making

available for inspection registers of interests of officers. Section 550D provides that an officer take reasonable steps, to the extent to which the particulars mentioned in the section are known to the officer, or can be reasonably ascertained by the officer and notify the organisation. Under section 550B the organisation is expected to prepare the register based on the particulars provided by the officer.

Clause 27 replaces the heading at chapter 12, part 12.

Clause 28 inserts Definitions for part 12.

Clause 29 inserts new sections in Chapter 12, part 12.

Division 1A relates to financial policies and training. Section 553A provides that an industrial organisation must have policies about a number of specified matters related to the financial management of industrial organisations. The policies are to comply with the requirements prescribed under a regulation for a policy about the matter. This section provides examples of what constitutes ‘entertainment and hospitality’ and provides clarification on what constitutes ‘contracting activities’ for the purposes of this section. Section 553B provides that an industrial organisation must ensure that an officer who holds a financial management position completes approved financial management training within three months of assuming the role and every two years while holding the office. This section also provides that the Registrar of the QIRC is to publish information about approved financial management training on the QIRC website.

Division 1B provides the requirements for spending for political purposes. Section 553C sets out when an organisation spends money for a political purpose.

Subdivision 2 sets out the authorisation requirements for particular spending for political purposes. Section 553D provides that an industrial organisation must ballot members to authorise spending for political purposes of \$10,000 or more for the same political purpose in a financial year (an expenditure ballot).

Subdivision 3 sets out the requirements for the conduct of an expenditure ballot.

Subdivision 4 sets out the offences related to the conduct of an expenditure ballot.

Clause 30 inserts new division 2A and 2B in Chapter 12, part 12. Division 2A relates to financial registers. Section 557A provides that an industrial organisation must keep a register of gifts, hospitality and other benefits, given and received for each financial year and sets out the particulars of the register. Section 557B provides that an industrial organisation must keep a register of political spending for each financial year and sets out the particulars of the register. Section 557C provides that an industrial organisation must keep a register of loans, grants and donations for each financial year and sets out the particulars of the register. Section 557D provides for the publication of the financial registers. Section 557E provides for the up-dating of the registers. Section 557F provides that each register required to be kept by an industrial organisation is kept for seven years. Section 557G provides that a person may request that a copy of a register that is required to be kept by the organisation be made available for inspection free of charge.

Division 2B relates to financial disclosure statements. Section 557H provides definitions for Division 2B. This division applies to the period of one year commencing on 1 July 2012. Section 557I provides who is considered to be an official, highly paid official or board member official of an industrial organisation.

Subdivision 2 sets out the requirements for the initial financial disclosure statement. Section 557J provides that within one month of the commencement of the Bill an industrial organisation must prepare an initial financial disclosure statement to the extent to which the particulars mentioned in the sections are known to, or can be reasonably ascertained by, the organisation. This subdivision provides the detail of the information to be included in the initial financial disclosure statement and that an organisation must publish the initial financial disclosure statement in the approved way.

Subdivision 3 sets out the requirements for the annual financial disclosure statement.

Subdivision 4 sets out the requirements for the mid-year financial disclosure statement.

Subdivision 5 sets out other general matters in relation to financial disclosure statements. Section 557Z provides that each financial disclosure statement must be kept for a period of seven years and section 557ZA provides that a person may request that a copy of a financial statement that is required to be kept by the organisation be made available for inspection free of charge.

Clause 31 amends section 558 to require that a registered company auditor inspect and audit the financial disclosure statement and the mid-year financial disclosure statement.

Clause 32 amends section 560 to include the requirements for the audit report.

Clause 33 provides new definitions.

Clause 34 amends the definition of auditor for the section.

Clause 35 amends the title of Chapter 12, part 12, division 4 to become Presentation, filing and publication of audit reports and financial disclosure statements.

Clause 36 replaces section 565 to require an organisation to present its audit report and financial disclosure statement to a general meeting.

Clause 37 to Clause 40 make consequential amendments following the amendments made in Division 4.

Clause 41 inserts a new subdivision after Chapter 12 part 12 division 5 which deals with the compliance functions of the Registrar.

Clause 42 inserts a new Chapter 12 part 12 division 5 subdivision 2 heading—Investigations by registrar.

Clause 43 replaces section 571 which provides the grounds for the Registrar's investigation; introduces 571A which provides for notification from the registrar to the chief executive of particular matters; introduces 571B which provides the chief executive may discontinue the Registrar's investigation.

Clause 44 replaces the heading of section 572 which deals with the Registrar's investigative powers.

Clause 45 provides a new section which gives the Registrar power to obtain information from a third party for the purpose of conducting an investigation.

Clause 46 provides a new section for the Registrar to report on the results of investigation to the chief executive.

Clause 47 inserts a new Chapter 12 part 12 division 5 subdivision 3 heading - Examination and audits by registrar.

Clause 48 amends section 575 registrar's examinations and audits.

Clause 49 omits Chapter 12, part 12, division 6.

Clause 50 inserts new part 12A which deals with a new requirement that political party affiliations must be stated in the political advertising of industrial organisations.

Clause 51 omits division 6 from Chapter 12, Part 12.

Clause 52 to Clause 53 make consequential amendments to sections 590 and section 591 in relation to when an organisation may seek an exemption from the whole or part of part 12, divisions 2 to 3.

Clause 54 replaces section 592 – obligation to file copies of reports under other Act or law.

Clause 55 creates a new Chapter 12 part 15A – Complaints, investigations and appointment of administrator.

Division 1 deals with arrangements for the chief executive to receive complaints about an industrial organisation that has ceased to function effectively or an officer who has engaged in misconduct.

Division 2 deals with notices and reports received by the chief executive from the Registrar.

Division 3 applies where the chief executive refers a compliant to an inspector for investigation.

Division 4 deals with the appointment of an administrator in circumstances where the organisation or branch of the organisation is determined to have ceased to function effectively.

Clause 56 introduces a new clause 655A which details how a document is to be published on an industrial organisation's website or, if the organisation does not have a website, the obligation upon the organisation to supply the document to the Registrar, and the Registrar to publish the document on the QIRC website.

Clause 57 amends section 691C to include an encouragement provision and a policy incorporation provision in an industrial instrument covering persons employed by a government entity to be of no effect. The terms 'encouragement provision' and 'policy incorporation provision' are defined at 691C(2). The inclusion of a policy incorporation provision will allow policies formerly incorporated as part of an industrial instrument to be dealt with as policies, rather than as provisions of the relevant industrial instrument. The inclusion of an encouragement provision will release an employer from any real or perceived obligation to promote, encourage, resource or pay for any aspect of the activities of an industrial association.

The definition of 'contracting provision' is clarified. The amendment does not limit the previous definition of a contracting provision in this section.

Clause 58 introduces transitional provisions for the obligations in connection with the Register of interest, financial disclosure statement, financial policies and financial management training. Transitional provisions are also provided for the amendments to section 691C in cases where a certified agreement is being negotiated in accordance with Chapter 6 division 1 immediately prior to the commencement of Section 691C as amended by the amending Act.

Clause 59 amends schedule 5 (Dictionary) to define or clarify terms introduced by the amending Act.

Part 3 Amendment of Public Service Act 2008

Clause 60 provides that this part amends the *Public Service Act 2008*.

Clause 61 amends section 88AA (Definition for pt 5) to include the definition of vice president of the QIRC.

Clause 62 amends section 88A (Appeals officers) to require that the Governor in Council must appoint the vice president of the QIRC as well as one or more persons to be appeals officers.

Clause 63 inserts a new section 88B which provides that the vice president of the QIRC is also the senior appeals officer.

Clause 64 amends section 88C to provide for the appeals officer's functions.

Clause 65 amends section 203 (Appeals officer may decide procedures). This amendment requires an appeals officer to comply with a decision of the senior appeals officer made for the appeal under the new section 203A and any practice directions made under the new section 203B.

Clause 66 inserts two new sections, 203A and 203B.

The new section 203A (Senior appeals officer may decide procedures) provides for the senior appeals officer to decide the procedures to be followed in a particular appeal. This decision may be made on the senior appeals officer's own initiative or on the application of a party to the appeal.

The section provides that the senior appeals officer must comply with this part of the Act or any relevant procedural rules prescribed under a regulation.

The new section 203B (Practice directions) provides that the senior appeals officer may make practice directions about the practices and procedures to be followed in appeals. A practice direction must not be inconsistent with this part of the Act or any relevant procedural rules prescribed under a regulation.

The section clarifies that a practice direction is not subordinate legislation.

Clause 67 amends section 214A - Protection of appeals officials from liability.

Clause 68 inserts transition arrangements for practice directions etc. for appeals started before the commencement.

Clause 69 amends Schedule 4 (Dictionary).

Part 4 Amendment of Workers' Compensation and Rehabilitation Act 2003

Clause 70 provides that this part amends the *Workers Compensation and Rehabilitation Act 2003*.

Clause 71 amends section 11(1) to provide that a worker is a person who works under a contract and in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cth), schedule 1, part 2-5. This applies to a contract regardless of whether it is a contract of service or another kind of contract for example, a contract for piecework. This applies to a person for whom PAYG tax instalments are required to be withheld, or for whom they would be withheld if the withholding is not exempted, for example by tax free income thresholds.

Clause 72 amends section 30(1) to re-align this provision with the amended definition of *worker*.

Clause 73 amends section 66 (4) (b) by removing the words 'of service' for consistency with the amended definition of *worker*.

Clause 74 amends section 585 (3) for consistency with the amended definition of *worker* by replacing the words 'of service' with the words 'with a worker'.

Clause 75 provides a transitional provision to clarify that injury sustained by an individual before the 1 July 2013 will be treated in accordance with the provisions of Section 11 and 30 and Schedules 2 and 3 as they applied at the date of the injury.

Clause 76 amends Schedule 2 Part 1 by removing existing sections 1 and 2; and amends Schedule 2 part 2 by inserting the provision that a person is not a *worker* if a personal services business determination is in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cth), section 87-60.