

# **The Australian HR Institute**

## **Submission to the Queensland Parliament Education, Employment and Training Committee**

**on the**

## **Industrial Relations and Other Legislation Amendment Bill 2022**

**July 2022**

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## **Introduction:**

### The Australian HR Institute

The Australian HR Institute (AHRI) is the professional body for Human Resources in Australia, with approximately 20,000 members from Australia and across the globe.

AHRI sets industry standards for HR practice through both the AHRI Practising Certification program and industry accreditation of HR qualifications at Australian universities.

Professional membership with AHRI ensures that HR practitioners:

- Adhere to a robust professional code of conduct that is supported by governance requirements and disciplinary procedures
- Are effectively supported in their continuing professional development to ensure currency of skills and knowledge is maintained.

AHRI provides a wide range of learning and development opportunities in HR, people management, and business skills. AHRI's globally benchmarked Australian HR Capability Framework (AHRCF) underpins all AHRI's professional development products, events, and programs, and combines what HR practitioners should know, what they are expected to do, and what their peers expect them to be in terms of behaviours and capabilities.

AHRI conducts independent research and liaise with both Australian and international partners on matters of interest to Australian employees and workplaces.

### AHRI Membership in Queensland

There are around 3,000 Queensland AHRI members, around 30% of whom are employed within the Queensland public sector. Members are located throughout the State, from Brisbane, through to regional and remote locations.

AHRI does not speak for employers or employees – its members have a responsibility to serve both groups fairly and objectively. It is this unique position that provides HR practitioners with a valuable perspective to be able to meaningfully contribute to the changes to the Queensland Industrial Relations system, as they see they daily application from both sides of the debate.

AHRI members are usually those within departments or agencies making IR decisions, and advising on the implementation of the regulatory framework. They have a clear view of what works in practice, and their role is often being extended to educate and influence management, provide informed direction, and actively partner with the department or agency to ensure compliance with the IR system. At the most senior level of membership, AHRI Fellow and Fellow Certified members are those within the organisation who are driving strategic management of employee relationships, managing the changing in legislation and employment law, directing bargaining negotiations, and driving the strategy for employee

relations, dispute resolution and mediation. Therefore, AHRI members are critical in the successful implementation of changed legislation within the workplace.

## **Summary of Position:**

AHRI supports the Industrial Relations and Other Legislation Amendment Bill, as the Bill:

1. Provides greater protections for employees under the Queensland Industrial Relations system by implementing recommendations from the national Respect@Work report to prevent sexual harassment and gender-based harassment in the workplace;
2. Brings gender equality to the forefront of industrial bargaining processes ensuring greater transparency for agreements made between employers and employees under the Queensland Industrial Relations system, and increased equality for all workers;
3. Demands an increased level of transparency, accountability, and good governance by ensuring that organisations seeking to represent employee and employer interests under the *Industrial Relations Act 2016* (Qld) (Queensland IR Act) have standing before the Queensland Industrial Relations Commission (QIRC) and are registered organisations;
4. Provides clarity, certainty and consistency with federal Fair Work legislation around annual leave and personal/carer's leave entitlements;
5. Encourages and demonstrates inclusion and diversity by removing gendered language surrounding parental leave, increases the opportunities for workplace flexibility for those employees with family responsibilities, and brings parental leave entitlements under the Queensland IR Act in line with the federal Fair Work Act entitlements;
6. Provides a safety net of protections for independent courier drivers where those workers may otherwise face exploitation in their terms of engagement.

## **Strengthening Protections against Workplace Sexual Harassment**

The implementation of the national Respect@Work recommendations into the Bill ensures consistency for employees covered by the Queensland IR Act in line with employees covered by the federal *Fair Work Act 2009* (Cth) (FW Act) legislation.

As employers have a fundamental duty to ensure work health and safety, legislative provisions which provide employers with certainty to act can help to improve organisational culture, as it may assist in creating a safer space for employees to raise concerns and have confidence those matters can be dealt with. Creating a positive obligation to stop sexual harassment in the workplace is the correct approach if organisations are to make genuine efforts to address this issue.

Particularly in light of recent high-profile cases before the courts regarding sexual and gender-based harassment in the Australian parliament, Queensland taking a stand to ensure a safe and harassment-free public sector is an important step in setting a high workplace standard for all employers, and assists to attract and retain employees in public sector employment.

On the other side, the proposed provision (consistent with the FW Act) that sexual or gender-based harassment will constitute misconduct provides a level of protection to alleged perpetrators. As the employer is required to prove that the employee has engaged in such conduct before termination for serious misconduct can occur, this requires a thorough investigation process be undertaken. This means employers must provide procedural fairness and natural justice to the accused employee, and be able to demonstrate sufficient evidence of the employee having engaged in such conduct in order to be able to substantiate their termination decision.

Including sexual and gender-based harassment as a ground for termination also provides employers with an additional mitigation opportunity in defending unfair dismissal claims brought under the IR Queensland IR Act, where the termination has been as the result of proven sexual or gender-based harassment. This is a positive step for employers and mirrors the provisions of the FW Act so that Queensland is in line with the federal system.

AHRI considers that the changes proposed by the Bill ensure contemporary and consistent definitions nationally, providing more equal standards between Queensland employees and those employed under the Fair Work system. The changes also assist by providing clarity and confidence for employees and employers to act when dealing with sexual or gender-based harassment in the workplace.

### **Gender Pay Equality**

The changes proposed by the Bill bring gender pay equality to the forefront of the bargaining process. The amendments, which require the employer to have information available regarding the distribution of employees by gender, and the projected impacts and major factors if there are differences in pay, creates greater transparency in the organisation. This will also support clarity and transparency in formulating responses to the gender pay gap within organisations, as the outcomes of actions can then be objectively measured.

AHRI considers that these amendments will be a solid first step in improving gender equality in the workplace and supports these amendments. AHRI will be consulting with members more broadly about the idea of mandatory gender pay equity narratives in the workplace, and the action plans within the organisation to accompany such reporting.

### **Support Effective Primary Representation to Employers and Employees by Registered Industrial Organisations**

In December 2020, the Australian Bureau of Statistics released data which showed that employee trade union membership had fallen from 40% to 14% since 1992. In recent years, there has been a marked increase in the number of “non-unions” seeking to represent employee interests.

Although there is limited data available on the movement numbers, anecdotal evidence appears to indicate that employees are moving away from the traditional trade unions in preference of cheaper membership fees, better customer service, and actual or perceived

better representation of their interests and rights by organisations which are not politically-motivated.

It is well documented that the trade union movement is struggling for relevance in contemporary workplaces in Australia, and this has been impacted further through the rise of non-registered employee associations. From a HR perspective, however, there is a balancing act between employees having access to such organisations and understanding the restrictions which they may face when seeking representation before industrial tribunals, such as the QIRC. Simultaneously, there is concern for employers when the power or industrial rights of the non-registered employee organisations is not clear, and employers are unsure whether they are required to engage with these organisations or treat their activities as recognised industrial action.

AHRI supports the amendments proposed by the Bill for organisations seeking to represent employees or employers under the Queensland IR Act to be appropriately registered. This amendment brings clarity for employees and employers and allows for consistency with the federal Fair Work system.

As there are strict requirements for registered organisations to be transparent, accountable, and demonstrate good governance under the Queensland IR Act, these measures ensure that members are aware of the operations of the organisation they are members of and hold the organisation to a high standard of accountability. As noted in the explanatory notes to the Bill, incorporated associations (such as the non-unions) do not have the same level of scrutiny, reporting or prudential standards as registered organisations.

The increasing prevalence of organisations which seek to represent employee interests (and to a lesser extent, those seeking to represent employer interests) but which are not registered organisations, has the potential for employees to be ill-informed about the extent of the capabilities of that organisation. As noted above, this also creates issues for employers being unaware of whether they are required to engage with such organisations. It is this clarity of knowing who an employer is dealing with and that the employee/employer organisation has met certain standards is of critical importance, as it sets a level of professional expectation, and provides a proven benchmark of practice and operation.

While employee freedom of association must be protected, HR also needs to be able to inform employees about the employer's involvement with employee organisations, and on the other hand, inform the employer about any risks the employee organisation may pose through their involvement (such as industrial action).

Introducing clarity into the Queensland IR Act by requiring employee and employer organisations to be registered and to have standing under the Queensland IR Act provides greater certainty for all parties. It also ensures that those parties who have standing before the Queensland Industrial Relations Commission are all held to the same standards and level of accountability.

While AHRI supports the move to a requirement for employee organisations to be registered to have standing under the Queensland IR Act, it equally supports a clear pathway for

current organisations to become registered, and to have the right to appeal decisions about their registration. This is critical to an open and fair approach to employee representation. It is unclear as to whether there is any benefit in limiting the number of employee representative organisations, particularly if employees do not feel that their views are appropriately represented by registered organisations, however, ensuring there are strict registration requirements will assist in ensuring the integrity of the organisation. The only reservation AHRI holds in support of these amendments is that while there is freedom of association, true choice is somewhat stymied where employees can be a member of an association that does not have standing under the Queensland IR Act, can pay to be a member of that association, but then cannot be represented by that association when required. From an employee perspective, this may mean employees are then only left with the option to join organisations which they believe do not align with their values, do not best represent their interests, but are the only option for cost-effective representation.

In the context of that reservation, AHRI does not view this an open or fair system for employee representation. Particularly against the backdrop of a worsening climate of employment relations in Australia's workplaces, which is reflected by a rising number of industrial disputes, it also does little to help employers work collectively and collaboratively with their employees and their preferred representatives to create a harmonious and inclusive workplace.

As outlined in the explanatory notes to the Bill, under the Fair work system, unregistered organisations can seek leave to appear before Fair Work Commission. AHRI recommends that an approach similar to this be considered so that there is a true freedom of association for employees, but representation before the QIRC is decided against a series of criteria assessed by the QIRC on a case-by-case basis. Having this approach would mean that employees can receive fair and effective representation, employers understand the role of the employee organisation, and good relationships can be forged to create collaborative workplace relations.

## **Ensure that Employees Covered by the IR Act Have Access to Prevailing Employment Standards**

### Leave Entitlements

The proposed amendments provide consistency with the Fair Work legislation and bring clarity to the Queensland IR Act. These amendments bring the Queensland IR Act in line with contemporary practice, particularly so that:

1. Employees do not have public holidays deducted from their leave balances.
2. Evidence for absences is able to be obtained from relevant health practitioners, which has a significant impact for employees and employers in regional, rural and remote areas and particularly for Aboriginal and Torres Strait Islanders.

### 3. Parental leave entitlements reflect family arrangements in contemporary society.

The changes to medical evidence mean that employers are more likely to be able to confirm employee absences, and employees can access medical evidence if they do need to be absent for more than two days, feeling that they can take the time off without otherwise being unable to comply.

In the current environment, and for employee health and wellbeing, allowing employees to take the time to be absent and recover from illness or unwellness rather than rushing back to work in order to comply with medical evidence requirements is imperative to driving a wellbeing culture in the workplace. Conversely, making it easier for employees to comply so that employers can confirm absences, allows employers to be able to ensure that leave is taken for correct purposes and manage employee absences appropriately. Importantly, employers only seek confirmation of the employee's absence, not the diagnosis, and that employee wellbeing is being appropriately managed.

In terms of parental leave, the changes bring the Queensland IR Act into line with the entitlement of employees covered by the Fair Work Act. Having this consistency across employment is reassuring for employees and will likely assist in attracting more workers to the Queensland public service.

The parental leave amendments remove gendered language and provide the opportunity for parents to take the time to be with their children. These changes support opportunity for parents to be with their children during the early stages, and the flexibility for parents to take the leave as it is needed to fit with their family arrangements.

These types of arrangements provide for more productive and engaged workplaces, as employees can balance their work and family commitments. These changes are also imperative in providing employees who experience stillbirth the chance to have the time to heal and not have their leave terminated.

Lastly, the removal of gendered language assists in increasing diversity and inclusion in the workplace.

#### Award Changes

AHRI supports the amendments proposed by the Bill for the following reasons:

1. Expedited bargaining processes ensure that agreement is reached on terms and conditions of employment in an efficient and effective way. This is of benefit to both employers and employees and creates more dynamic and fast-moving bargaining opportunities.
2. Providing the QIRC with the ability to consider whether to apply the State Wage Case to Award pay rates means that:



- (a) If a Certified Agreement is paying less than the Award, there is the option for pay rates to be increased, which is in the employees' favour;
  - (b) The entire terms of a Certified Agreement can be considered before the wage rates are increased, allowing for other benefits that have been negotiated to be given weight before pay rates are automatically increased. This means that the organisation is not stuck with providing additional benefits and then ongoing pay increases as well; and
  - (c) It provides an opportunity for better negotiating initiatives, as employees and organisations can find terms and conditions that work for them outside of solely relying on minimum pay or pay increases.
3. There is greater consistency in the terms between employees employed under the Queensland IR Act and those employed under the federal Fair Work system.

### **Introduce a Jurisdiction to Provide for Minimum Entitlements and Conditions for Independent Courier Drivers**

AHRI supports the introduction of a jurisdiction to provide minimum entitlements and conditions for independent courier drivers. Currently there are minimal protections in place for independent drivers, and the changes proposed by the Bill will assist in ensuring that independent drivers are not exploited and have minimum terms and conditions.

From a HR perspective, the ability for principal contractors to negotiate with multiple independent couriers to have collective agreement on terms and conditions assists in administratively managing the workforce.

As these amendments can have an impact on a range of workplaces, negotiating minimum terms and conditions ensures that the business is acting in an ethical way.

#### **AHRI Submission:**

This Submission was prepared on behalf of AHRI by a Working Group consisting of the following people:

- Gerwyn Davies, Research and Advocacy, AHRI
- Rod Francisco FCPHR, AHRI Queensland State Council President, Manager People and Culture (Human Resources) at Mackay Regional Council
- Lisa Mannering CPHR, AHRI Queensland State Council Secretary, Employment Lawyer & HR Consultant at Langtree Legal
- Colleen McAleese MAHRI, AHRI Queensland ER/IR Network Convenor, Senior Manager HR – Client Partnering at The University of Queensland
- Alison Hucks FCPHR, AHRI Queensland State Councillor, Principal at ahr - Alison Hucks Resources

AHRI thanks the Working Group for its assistance with the preparation of this Submission.

Signed by:

A handwritten signature in black ink, appearing to read 'S. McCann-Bartlett', written in a cursive style.

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