

Summary of the *Five-year Review of Queensland's Industrial Relations Act 2016 – Final Report* Recommendations and the Queensland Government's Response

#	Recommendations	Legislative Amendments?	QLD Govt. position
WORKPLACE SEXUAL HARASSMENT			
1	That section 4 of the <i>Industrial Relations Act 2016</i> (IR Act), which provides how the main purpose of the Act is primarily achieved, be amended to expressly include sexual harassment so that section 4(i) states: preventing and eliminating sexual and sex-based harassment, discrimination, bullying and other unfair treatment in employment.	YES	ACCEPT
2	That sexual harassment be <u>defined</u> in the IR Act using the definition of sexual harassment as provided for in the <i>Anti-Discrimination Act 1991</i> .	YES	ACCEPT
3	That the definition of 'discrimination' in Schedule 5 be amended by removing subparagraphs (b) and (c).	YES	ACCEPT
4	That the definition of an 'industrial matter' within the IR Act be amended to specifically include sexual harassment and sex-based harassment, to facilitate access to orders (interlocutory orders or interim injunctions) and to form the basis of an industrial dispute for the QIRC to exercise its normal conciliation and arbitration powers for sexual harassment and sex-based harassment complaints.	YES	ACCEPT
5	That the IR Act be amended to specifically list sexual harassment as misconduct for the purposes of section 121.	YES	ACCEPT
6	That section 320 of the IR Act be amended to clarify that conduct includes conduct constituting sexual harassment or a finding of sexual harassment.	YES	ACCEPT
7	That a referral be made to the Queensland Industrial Relations Consultative Committee seeking that the Committee identify and advise on the development of guidance materials, educative tools, training packages and best practice case management processes which will assist the Queensland Industrial Relations Commission (QIRC) staff and members in understanding the nature, drivers and impacts of sexual harassment to inform their work.	NO	ACCEPT
REGISTERED ORGANISATIONS			
8	Recognising that the IR Act presently uses the term 'association' to describe a number of different entities, we recommend that for, clarity and consistency, the IR Act should: <ul style="list-style-type: none"> a. apply consistent definitions throughout; b. use, throughout the appropriate parts of the IR Act, the term 'registered organisation'; and distinguish between bodies representative of employees and employers. 	YES	ACCEPT

9	That the definition and description of what is currently referred to as an association of employees for the purposes of section 279 of the IR Act comprise the following elements: a. it is an unincorporated body; and b. it is formed or carried on with the principal purpose of the protection and promotion of members' interests in matter concerning their employment; and c. it is eligible to be registered under the IR Act; and it has been formed with the intention of becoming registered under the IR Act.	YES	ACCEPT
10	That consideration be given to replacing the term 'association' where used in the IR Act with a more appropriate term that clearly distinguishes from, and denotes a body that is not, a registered organisation.	YES	ACCEPT
11	The IR Act should also make clear (by a note or new subsection) that eligibility for general protections does not grant representation or any other rights in any other Part of the IR Act outside Chapter 8 Part 1 General Protections.	YES	ACCEPT
12	That Subdivision 10 of Division 4 of Chapter 11 (Orders about right to represent a group of employees, sections 478–483) of the IR Act should only apply to registered organisations, and all references there to an association or an organisation that is not registered should be removed.	YES	ACCEPT
13	That a new Subdivision 10A be created in the IR Act to follow it, enabling orders to be made preventing a group of people or an unregistered body from purporting to be able to represent employees under the IR Act when they do not have this capability, and that any association or unregistered body that has such an order made against it becomes ineligible to subsequently obtain registration under the IR Act for as long as such an order is in place. This should also be specified in section 607, which should further make clear that a body predominantly controlled by people associated with an ineligible body would itself be ineligible for registration.	YES	ACCEPT
14	That penalty provisions be included in the IR Act to ensure that an unregistered organisation does not misrepresent their status, for example by claiming that they are eligible to represent employees under the IR Act.	YES	ACCEPT
15	The definition of 'industrial activity' in section 290(b) of the IR Act be expanded to include activities that may be associated with nascent unionism, including discussing or disseminating information about the terms or conditions of employment (for example, rates of pay, regardless of what is specified in the employer's code of conduct).	YES	ACCEPT
MINIMUM EMPLOYMENT STANDARDS			
Annual Leave			
16	That the relevant industrial instruments be reviewed to explicitly specify which public holidays are affected by the compensation covered by subsection 31(3) of the IR Act with the review process supported by the Queensland Government.	NO	ACCEPT IN PRINCIPLE

17	Subsequently, subsection 31(3) of the IR Act be amended to ensure that its provisions only operate where the relevant public holidays are explicitly specified in the industrial instrument where compensation is said to have occurred. That is, the provision should require that instances of annual leave being inclusive of an entitlement to a public holiday only occur when that specific public holiday is identified in the award or agreement.	YES	ACCEPT IN PRINCIPLE
Personal and Compassionate Leave			
18	The IR Act provisions should be aligned with the provisions of the <i>Fair Work Act 2009</i> (FW Act) for the purposes of encouraging consistency across the industrial landscape in Queensland in respect of accessing public holidays while on approved personal leave/carers leave and providing evidentiary proof (if required) for the period of such leave.	YES	ACCEPT
Parental Leave			
19	That the flexibility of unpaid parental leave entitlements in the Queensland Employment Standards be advanced by amending the IR Act to: <ul style="list-style-type: none"> a. Allow a portion of the leave entitlement to be taken in separate blocks over a longer period, consistent with section 72A of the FW Act; and b. Specify that employees who have returned to work full-time following parental leave may still request part-time work during the period identified at section 75(2) of the IR Act. 	YES	ACCEPT
20	That the entitlement to unpaid parental leave is available in cases of stillbirth, consistent with section 77A of the FW Act.	YES	ACCEPT
21	That the definition of 'child' for adoption-related leave be amended to change the age limit from 5 to 16 years, consistent with section 68 of the FW Act.	YES	ACCEPT
22	That the evidentiary requirements for unpaid parental leave be amended to be consistent with requirements at sections 74(5) and (6) of the FW Act.	YES	ACCEPT
23	That the wording of Division 8 (Parental Leave) in the Queensland Employment Standards be reviewed to reflect current standards of language that avoid implying gendered divisions of parental care.	YES	ACCEPT
24	Unnecessary complications, through terminology such as 'short' and 'long' forms of leave, should be reduced or eliminated.	YES	ACCEPT
Queensland Minimum Wage / State Wage Case			
25	That section 459(2) of the IR Act be amended to allow the full bench to exercise a discretion to limit State Wage Case (SWC) increases from being flowed into parent awards whose rates exceeded those payable under a certified agreement or determination at the time of the SWC decision.	YES	ACCEPT

Apprentices			
26	That the percentages for competency-based progression for apprentices be aligned to the federal modern award and the value of the tool allowance be increased to a level to ensure it reflects current retail pricing. The final value of the tool allowance is a matter for determination by the relevant parties after which an application for revised and updated orders, should be made to the QIRC. Any applications made to the QIRC for this purpose should be supported by the Queensland Government.	NO	ACCEPT IN PRINCIPLE
Casual Loading			
27	That casual loading for employees covered by the IR Act be increased from the present rate of 23% to 25%, which aligns with the casual loading rate applicable to employees in the National Employment System. This should be achieved through a registered organisation or a state peak council making the relevant applications in the QIRC, with such applications supported by the Queensland Government.	NO	ACCEPT IN PRINCIPLE
JOB SECURITY			
Independent courier drivers			
28	That amendments to the IR Act be drafted, with a view to enactment following exemption referred to under recommendation 29, to include provisions to enable the regulation of terms and conditions of work for independent courier drivers by the QIRC, modelled on Chapter 6 of the <i>Industrial Relations Act 1996</i> (NSW), explicitly including independent courier drivers and riders within coverage of these provisions, and directing the QIRC to establish conditions that would, where appropriate, be comparable in value to those applying to equivalent award employees.	YES	ACCEPT
29	That, before enacting the above legislation, the Minister write to the federal counterpart, seeking exemption from those aspects of the <i>Independent Contractors Act 2006</i> (Cth) along similar lines to the exemption that already applies to Chapter 6 of the <i>Industrial Relations Act 1996</i> (NSW). The legislation should be being drafted while the letter is in transit.	NO	ACCEPT
ENTERPRISE BARGAINING			
Mediation by a single Commissioner			
30	That amendment be made to sections 177 and 180 of the IR Act to allow a single Commissioner of the QIRC to mediate or arbitrate one or more matters of disputation in bargaining negotiations, at the joint request of the parties.	YES	ACCEPT

Equal Remuneration			
31	That the Special Commissioner (Equity and Diversity) be supported to: <ul style="list-style-type: none"> a. develop a framework for the conduct of gender pay equality audits and action plans, and work with the Public Service Commission to assist Queensland public sector employers in conducting these audits as a priority and in developing gender equality action plans that respond to the audits; b. develop guidelines for a comprehensive database of employment statistics that would include data compiled from gender pay equality audits and other data needed to illustrate gender pay (in)equality across Queensland public sector agencies, and work with the Public Service Commission to ensure that this information is made available in a timely manner (at least six months prior to the end of an agreement) to bargaining parties to assist them in meeting the requirements of section 250(2) of the IR Act; c. develop model frameworks for gender pay equality audits and action plans, and for the wage-related data required for section 250(2) affidavits, for the guidance of other employers within the Queensland jurisdiction. 	NO	ACCEPT
32	That section 173 of the IR Act be amended to include the provision of information needed to meet the requirements of section 250(2) of the IR Act as an element of good faith bargaining provisions.	YES	ACCEPT
33	That the parties should monitor awards to ensure they are consistent with the Equal Remuneration Principle and, where this is not the case, make an application to review them.	NO	ACCEPT

WAGE RECOVERY

34	That a review of the enhanced wage recovery provisions, to enquire into the effectiveness of the process, be undertaken at a time after 1 March 2023, when potentially enough applications had been received for the review to draw useful conclusions.	NO	ACCEPT
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REDUNDANT AND SUPERFLUOUS

Appendix E

35	That the provisions of the IR Act outlined in Appendix E be examined with a view to: <ul style="list-style-type: none"> a. making the minor amendments specified in Part I; and b. considering the proposed deletions specified in Part II 	YES	ACCEPT
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Recovery of historical Queensland Health employees' overpayments (sections 947 to 952 (inclusive))

36	That sections 947 to 952 (inclusive) of the IR Act are removed on the basis that their inclusion in the Act is no longer warranted or necessary.	YES	ACCEPT
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37	That transitional arrangements be examined to ensure legacy historical overpayment agreements and transitional pay day loan agreements continued to be recognised following the removal of sections 947 to 952 (inclusive) of the IR Act.	YES	ACCEPT
Seal and Signatures as required under section 474 of the <i>Industrial Relations Act 2016</i>			
38	That section 474(2) of the IR Act be amended to remove the need to sign under seal and amend the signature requirement for the president and secretary to a duly authorised officer under the rules of the organisation.	YES	ACCEPT
Industrial cause – coverage of the QIRC			
39	That the definition of ‘industrial cause’ be extended to include any other matter by which statute gives jurisdiction to the QIRC.	YES	ACCEPT
Payment of unpaid wages if an employee’s whereabouts are unknown			
40	That section 375(2) of the IR Act be amended to require an employer to pay unclaimed wages direct to the Public Trustee instead of the nearest clerk of the Magistrates Court. It would be open to the Public Trustee to retain such amounts paid in a special account until the allotted two-year period.	YES	ACCEPT