

Our ref: Industrial Law Committee

15 May 2013

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By Post and Email to: lacsc@parliament.qld.gov.au

Dear Research Director

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

Thank you for the opportunity for the Queensland Law Society to provide comments to the Inquiry into the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013* ('the Bill'). This submission has been prepared with the assistance of our Industrial Law Committee.

The Society has not conducted an exhaustive review of the Bill and it is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We wish to comment only on one substantive provision.

We observe, however, that all legislation (including controversial proposals) should respect fundamental legislative principles and departures from those principles are justified only in the most extraordinary circumstances.

Amendment of the Industrial Relations Act 1999

1. Clause 15- Amendment of s391 (Wages etc. to be paid without deduction)

The proposed amendment removes the requirement for obtaining the employee's consent in writing to a deduction from their wages (in relation to any deduction other than a deduction authorised by a relevant industrial instrument or Division 3 of Part 2, Chapter 11 of the *Industrial Relations Act 1999*).

The proposed amendment provides that if consent is not given in writing by an employee, the employer must give the employee written acknowledgement of the consent. The explanatory notes to the Bill set out that this requirement could be met by the sending of an email by the employer with the employer not being required to confirm that the employee had in fact received the acknowledgement before commencing deductions.

The policy reason for this proposed change is not clear from the legislation, explanatory notes or first reading speech. The Society is concerned with this proposed amendment on the basis that it has the capacity to result in unauthorised deductions with financial loss to the employee. Where an authorisation is in writing, there can be little doubt about the scope of the authorisation and the wording of the agreement is clearly set out (although it is conceded that general wording of an authorisation can create issues of the scope of the authorisation).

However, where consent is given verbally or by implication, there is scope for argument about whether consent was in fact given and what it was given for. Employees whose first language is not English are particularly susceptible to being affected. The provision of an acknowledgement does not address this issue. Particularly where the acknowledgement is sent by email, there is scope for it not to be received or given its proper attention. Similarly, given that there is no form for the acknowledgement, there is further scope for confusion on the part of the person receiving the acknowledgement about its scope and purpose.

The requirement for an authorisation to be given in writing reflects best practice and there is no pressing reason which has been shown for that position to be varied. If the proposed amendment is to be adopted, then it should be made clear that such consent can be withdrawn by the employee at any time and that an irrevocable authority will not be valid.

Thank you for the opportunity to provide comment on this Bill. Please contact our Policy Solicitor, Ms Raylene D'Cruz on (07) 3842 5884 or r.dacruz@qls.com.au; or our Principal Policy Solicitor Mr Matt Dunn on (07) 3842 5889 or m.dunn@qls.com.au for further inquiries.

Yours faithfully

Annette Bradfield
President