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The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By Post and Email to: [fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Research Director

## **PUBLIC SERVICE AND OTHER LEGISLATION AMENDMENT BILL 2012**

Thank you for the opportunity for the Queensland Law Society to provide comments to the Inquiry into the *Public Service and Other Legislation Amendment Bill 2012* (the "Bill").

### **1. Short consultation timeframe**

While we acknowledge that the setting of reporting dates is not within the control of the Committee, we wish to note again the Society's concern over the exceptionally short reporting timeframes. This Bill was introduced on 31 July 2012, reported in Hansard on 1 August 2012, with submissions due by 6 August 2012. Therefore, only three business days were provided for public submissions. The Explanatory Notes to the Bill state that there has been no community consultation on the Bill.

The Society considers that it is important for government to consult with the community on policy **and** the way in which policy is implemented through legislation. The Society is uniquely placed to advise government of unintended consequences in draft legislation.

Given that there is a severely truncated opportunity for review of the amending legislation, an in-depth analysis has not been possible. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. Furthermore, the Society is only able to comment on the following discrete amendments, and did not analyse other parts of the Bill.

### **2. Clause 23- Amendment of s 319, *Industrial Relations Act 1999* (representation of parties)**

The Society supports and welcomes the proposed amendments to s 319(2)(b), *Industrial Relations Act 1999* concerning the representation of parties in proceedings before the Queensland Industrial Relations Commission (QIRC).

We note that the proposed amendments broaden the right of parties to have legal representation in matters before the QIRC by:

- (a) creating an automatic right to representation in a wider range of matters than is presently the case (including arbitration of certain industrial disputes, declarations on industrial matters, injunctive proceedings, and applications for an interpretation of an industrial instrument);
- (b) permitting parties to make an application for legal representation in respect of all proceedings before the QIRC (rather than simply in respect of proceedings under specified sections as is presently the case); and
- (c) in respect of applications, giving the QIRC a broader discretion as to whether to allow such representation.

We further note that the right to legal representation in circumstances where all parties consent has been retained.

These changes give parties greater access to legal representation in proceedings before the QIRC, particularly in more complex matters, and are welcomed by the Society. The Society commends the government for supporting the rights of parties to access legal representation in these circumstances, and we consider that the amendments will strengthen access to justice for those coming before the QIRC. In our view, increasing the rights of parties to apply to be represented offers more flexibility and we consider that parties will welcome this development.

The Society also considers that it may be beneficial for proceedings under Chapter 12, Parts 2 and 16 (dealing with registration and deregistration of industrial organisations, respectively) to be included in proposed s 319(2)(b) as complex matters in which an automatic right to legal representation is available. The Explanatory Notes to the Bill state that the rationale for proposed s 319(2)(b) is that the proceedings contained therein are generally more complex and legalistic in nature and a party should have the right to choose to be represented by a lawyer. In our view, this rationale can be similarly applied to the proceedings under Chapter 12, Parts 2 and 16, and therefore could be included.

### **3. Clause 25- Schedule for minor amendments of the *Industrial Relations Act 1999***

The Explanatory Notes to the Bill state that the schedule of minor amendments to the *Industrial Relations Act 1999* chiefly relates to deleting references to the President of the Commission and replacing it with the Vice President, to reflect new administrative arrangements for the Commission. In his second reading speech, the Premier relevantly states at 1291:

*The first amendment will assist in streamlining the administrative functions of the Queensland Industrial Relations Commission by allocating responsibility for the administration of the commission from the president to the vice-president, including the allocation of the commission's business. The amendment reflects similar arrangements in the higher courts in Queensland where certain administrative functions are allocated to other officers of the court to assist the head of the court in carrying out his or her work. For example, in the Supreme and District courts, judge administrators are appointed to assist the chief justice in arranging the business of and administering the court.*

The proposed amendments in the schedule appear to go further than envisaged by the Premier's comments. The effect of the proposed amendments is to completely remove the President's overall responsibility for the administration of the Commission and registry, and the orderly and expeditious exercise of the Commission's jurisdiction and powers (see s 264(1), *Industrial Relations Act 1999*). As we understand the Supreme Court arrangements, the Chief Justice still retains responsibility for the administration of the Court and its divisions and the orderly and expeditious exercise of the Court's jurisdiction and power (s 13A(1), *Supreme Court of Queensland Act 1991*). Under s 60 of that Act, the Senior Judge Administrator is responsible to the Chief Justice for the administration of the Court in its Trial Division and ensuring the orderly and expeditious exercise of the court in the Trial Division. Similar provisions are contained in the *District Court of Queensland Act 1967*, although we note that s 28F(2) of that Act requires the Judge Administrator to also consult with the Chief Judge in carrying out their functions.

Both the Supreme and District Court arrangements reflect the type of arrangements suggested by the Premier's comments in his second reading speech. However, we do not consider that this has been accurately reflected in the actual amendments themselves, which simply transfer all responsibility for the administration of the Commission and the orderly and expeditious exercise of the Commission's powers to the Vice President. In our view, the arrangements should more closely follow the arrangements of the Supreme and District Courts, with the President retaining overall responsibility for the administration of the Commission and the Vice President being responsible to the President for various administrative roles. The Society considers that these proposals should be given further consideration to determine which particular powers and functions should be allocated to the Vice President and restructured to reflect the arrangements in the Supreme and District Courts.

#### **4. General comment- Amendments to *Public Service Act 2008* and the *Public Interest Disclosure Act 2010***

The proposed amendments to the *Public Service Act 2008* and the *Public Interest Disclosure Act 2010* reflect a policy decision to transfer certain responsibilities of the Public Service Commission to the QIRC and the Queensland Ombudsman. In our view, consideration should be given to the resourcing requirements of those bodies to properly deal with these matters.

Thank you for considering our comments in relation to this Bill. Please contact our Principal Policy Solicitor, Mr Matt Dunn on (07) 3842 5889 or [m.dunn@qsls.com.au](mailto:m.dunn@qsls.com.au); or Policy Solicitor, Ms Raylene D'Cruz on (07) 3842 5884 or [r.dacruz@qsls.com.au](mailto:r.dacruz@qsls.com.au) for further inquiries.

Yours faithfully

Dr John de Groot  
**President**