

20 April 2017

Our ref (KB/IndLC)

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600
By Email: eec.sen@aph.gov.au

Dear Committee Secretary

Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017

Thank you for the opportunity to comment on the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017 (the Bill).

The Queensland Law Society (the Society), in carrying out its central ethos of advocating for good law and good lawyers, endeavours to be an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader Queensland community.

Removal of 4 yearly modern award review

The Society supports the removal of the 4 yearly modern award review as the primary mechanism for award review/variation. Removing this requirement will result in significant savings to public and private entities and free up the Fair Work Commission (FWC) for other matters.

Amendment of section 188 of the *Fair Work Act 2009* (Cth)

The Society supports the amendment of section 188 of the *Fair Work Act 2009* (Cth) (**the Act**) to enable the FWC to approve an enterprise agreement despite minor procedural or technical flaws in the agreement making process. We suggest that it would be beneficial for this section to include some examples of what may be regarded as a "minor procedural or technical error" for the purpose of section 188(2).

Insertion of new section 641B

The Society is concerned about the drafting approach taken in the new section 641B.

This new section would modify the application of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* (**JMIPC Act**) so that a Commission can be established by the Houses of Parliament to investigate and report on alleged misbehaviour or incapacity of an FWC Member, so that the Houses can determine whether to pray for the termination of the FWC Member's appointment or the removal of the FWC Member from office under the relevant legislation.

The approach taken is to insert a table modifying the relevant provisions of the JMIPC Act. The effect is intended to be that the JMIPC Act will apply, "in addition to its general application, as if a provision of that Act referred to in an item in column 1 of the ... table were amended as specified in column 2 of the item."

This approach seems to increase the risk that there will be unintended consequences arising from reading two Acts together, including the risk of inconsistent interpretation.

As noted by respected legal commentators, "*It can be expected that when two pieces of legislation are notionally amalgamated, there may be difficulties in fitting all the provisions together.*"¹

At a practical level, this approach:

- arguably makes the precise legal position difficult to identify as it requires reference to two Acts in order to determine the law;
- means that when subordinate legislation is proposed, it will be necessary for Parliamentary drafters to refer to both the JMIPC Act and this legislation to ensure that any subordinate legislation is appropriate for both Acts and considers all issues; and
- generally complicates the statute book.

A more prudent approach would be to amend the JMIPC Act in the usual manner so that the JMIPC Act incorporates the procedure relevant to dealing with the termination or removal of judicial or quasi-judicial officers in the one Act.

Please do not hesitate to contact our Policy Solicitor, Kate Brodnik on _____ or
_____ if you wish to discuss the content of this letter.

Yours faithfully


Christine Smyth
President

¹ DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (7th edition) LexisNexis Butterworths Australia, 2011 at 277.