

Queensland



**INDUSTRIAL RELATIONS  
AND ANOTHER  
ACT AMENDMENT ACT 2001**

**Act No. 18 of 2001**



# Queensland



## INDUSTRIAL RELATIONS AND ANOTHER ACT AMENDMENT ACT 2001

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**Industrial Relations and Another  
Act Amendment Act 2001**

**Act No. 18 of 2001**

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**An Act to amend the *Industrial Relations Act 1999* and the *Building and Construction Industry (Portable Long Service Leave) Act 1991***

*[Assented to 11 May 2001]*

The Parliament of Queensland enacts—

## PART 1—PRELIMINARY

### 1 Short title

This Act may be cited as the *Industrial Relations and Another Act Amendment Act 2001*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

## PART 2—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

### 3 Act amended in pt 2

This part amends the *Industrial Relations Act 1999*.

### 4 Amendment of s 43 (Entitlement)

(1) Section 43(2)(a), (2)(b) and (6), definition “**proportionate payment**”, ‘15 years’—

*omit, insert—*

‘10 years’.

(2) Section 43(2)(a), (2)(b) and (6), definition “**proportionate payment**”, ‘13 weeks’—

*omit, insert—*

‘8.6667 weeks’.

(3) Section 43(4), (5) and (6)—

*renumber* as section 43(5), (6) and (9).

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**(4)** Section 43(3)—

*omit, insert—*

‘**(3)** An employee who has completed at least 7 years continuous service is entitled to a proportionate payment for long service leave on the termination of the employee’s service.

‘**(4)** However, if the employee’s service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if—

- (a) the employee’s service is terminated because of the employee’s death; or
- (b) the employee terminates the service because of—
  - (i) the employee’s illness or incapacity; or
  - (ii) a domestic or other pressing necessity; or
- (c) the termination is because the employer—
  - (i) dismisses the employee for a reason other than the employee’s conduct, capacity or performance; or
  - (ii) unfairly dismisses the employee.’

**(5)** Section 43—

*insert—*

‘**(7)** For the purposes of working out when an employee may take long service leave, only two-thirds of the employee’s continuous service completed before the commencement of this subsection counts as continuous service.

‘**(8)** Subsection (7) does not reduce an entitlement to long service leave that an employee has accrued before subsection (7) commences.

*Examples of subsections (7) and (8)—*

An employee has completed 15 years continuous service immediately before the commencement. The 15 years counts as 10 years continuous service for working out when the employee may take long service leave. The employee may take the leave immediately. The employee’s entitlement then is 13 weeks ( $15 \times 0.86667$  weeks).

An employee has completed 10 years continuous service immediately before the commencement. The 10 years counts as 6.6667 years continuous service for working out when the employee may take long service leave. The employee may take the leave after completing another 3.3333 years continuous service. The employee’s entitlement then will be 11.5556 weeks ( $[10 + 3.3333] \times 0.86667$  weeks).

An employee has completed 1 year continuous service immediately before the commencement. The 1 year counts as 0.6667 years continuous service for working out

when the employee may take long service leave. The employee may take the leave after completing another 9.3333 years continuous service. The employee's entitlement then will be 8.9556 weeks ( $[1 + 9.3333] \times 0.86667$  weeks).

An employee starts employment after the commencement. The employee may take long service leave after completing 10 years continuous service. The employee's entitlement then will be 8.6667 weeks ( $10 \times 0.86667$  weeks).<sup>1</sup>.

## **5 Amendment of ch 2, pt 3, div 3, heading**

Chapter 2, part 3, division 3, heading, after '*Casual*'—

*insert—*

**'or regular part-time'**.

## **6 Amendment of s 48 (Taking long service leave—alternative provision for casual employees)**

(1) Section 48, heading, after '**casual**'—

*insert—*

**'or regular part-time'**.

(2) Section 48(1), after '**casual**'—

*insert—*

**'or regular part-time<sup>1</sup>'**.

## **7 Amendment of s 49 (Payment for long service leave)**

(1) Section 49(2) to (6)—

*renumber* as section 49(3) to (7).

(2) Section 49(1)—

*omit, insert—*

**(1)** This section applies if an employee who is entitled to long service leave was a casual or regular part-time employee at any time during the employee's continuous service to which the long service leave relates.

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<sup>1</sup> See the dictionary for the definition "**regular part-time employee**".



‘(2) The minimum amount payable to the employee for long service leave is worked out using the formula—

$$\frac{\text{actual service}}{52} \times \frac{8.6667}{10} \times \text{hourly rate}$$

*Example—*

An employee who worked 15 600 ordinary working hours over a 10 year period and is being paid an hourly rate of \$12 is entitled to be paid—

$$\frac{15\,600}{52} \times \frac{8.6667}{10} \times \$12 = \$3\,120.01'.$$

## **8 Amendment of s 50 (Entitlement—employees in sugar industry and meat works)**

Section 50(2)—

*omit, insert—*

‘(2) The employee is entitled to long service leave on full pay of at least the number of weeks worked out using the following formula—

$$\text{section 43 entitlement} \times \frac{\text{actual service}}{10}$$

*Example—*

An employee who worked half of each year, over a 10 year period, is entitled to half the section 43 entitlement, that is, half of 8.6667 weeks leave ( $8.6667 \times \frac{5}{10} = 4.3334$ ).’.

## **9 Replacement of s 53 (Payment instead of long service leave on termination)**

Section 53—

*omit, insert—*

### **‘53 Payment instead of long service leave**

‘(1) An employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave if subsection (2) or (3) applies.

‘(2) If the relevant industrial instrument provides for the employee to be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made, in accordance with

the industrial instrument, if the employee and employer agree by a signed agreement.

‘(3) If no industrial instrument provides for the employee to be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made only if the payment is ordered by the commission on application by the employee.

‘(4) The commission may order the payment only if satisfied the payment should be made—

- (a) on compassionate grounds; or
- (b) on the ground of financial hardship.

‘(5) Despite section 58(2), the full bench must not make a general ruling that allows an employee to be paid for an entitlement to long service leave instead of taking the leave.

‘(6) In subsection (3)—

“**employee**” includes a registered worker under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

“**entitlement to long service leave**” includes an entitlement to long service leave under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 57(1).<sup>2</sup>.

## **10 Amendment of s 58 (Review of general employment conditions)**

(1) Section 58(2)—

*omit.*

(2) Section 58(3)—

*renumber* as section 58(2).

## **10A Amendment of s 75 (Conciliation before application heard)**

Section 75(6), ‘president’—

*omit, insert—*

‘commissioner administrator’.

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<sup>2</sup> *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 57 (Entitlement to long service leave)

**10B Replacement of s 264 (Administrative responsibilities for the commission and registry)**

Section 264—

*omit, insert—*

**‘264 Administrative responsibilities for the commission and registry**

‘(1) In addition to performing the functions of a member, the commissioner administrator is responsible for the administration of the commission and registry, and the orderly and expeditious exercise of the commission’s jurisdiction and powers.

‘(2) Without limiting subsection (1), the commissioner administrator is responsible for determining the member or members who is or are to constitute the commission, including a full bench of the commission, for a matter or proceeding.

‘(3) The commissioner administrator has the power to do all things necessary or convenient to be done to perform responsibilities under subsection (1) or (2).’.

**10C Amendment of s 269 (President or commissioner administrator to consider efficiencies that may be achieved by allocating matters to dual commissioners)**

(1) Section 269, heading—

*omit, insert—*

**‘269 Commissioner administrator to consider efficiencies that may be achieved by using dual commissioners’.**

(2) Section 269, ‘the president and’—

*omit.*

**10D Amendment of s 270 (Reallocation of commission’s work)**

‘Section 270, ‘president or’—

*omit.*

**10E Amendment of s 278 (Power to recover unpaid wages and superannuation contribution etc.)**

Section 278(6), ‘president’—

*omit, insert—*

‘commissioner administrator’.

**10F Amendment of s 281 (Reference to full bench)**

(1) Section 281(2), ‘president’s’—

*omit, insert—*

‘commissioner administrator’s’.

(2) Section 281—

*insert—*

‘(2A) However, if the commissioner constituting the commission is the commissioner administrator, the commissioner administrator may refer the matter only with the president’s approval.’.

(3) Section 281(3), ‘president’—

*omit, insert—*

‘commissioner administrator’.

(4) Section 281(4)—

*omit, insert—*

‘(4) The commissioner administrator may approve the referral of a matter to the full bench under subsection (2) only if the commissioner administrator is satisfied the matter is of substantial industrial significance.

‘(4A) The president may approve the referral of a matter to the full bench under subsection (3) only if the president is satisfied the matter is of substantial industrial significance.

‘(4B) On application under subsection (4), the commissioner administrator may refer the matter to the full bench only if the commissioner administrator is satisfied the matter is of substantial industrial significance.’.

(5) Section 281(2A), (3), (4), (4A) and (4B) (as amended or inserted) and (5)—

*renumber* as section 281(3) to (8).

### **PART 3—AMENDMENT OF BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991**

#### **11 Act amended in pt 3**

This part amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

#### **12 Amendment of s 56 (Application for entitlement to long service leave or payment instead of long service leave)**

(1) Section 56(3)—

*renumber* as section 56(4).

(2) Section 56—

*insert*—

‘(3) If no building and construction industry award or agreement provides for the worker to be paid all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made only if—

- (a) the worker has accrued 10 years service in the register of workers; and

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- (b) the industrial relations commission has ordered the payment under the *Industrial Relations Act 1999*, section 53(3).<sup>3</sup>.

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3 *Industrial Relations Act 1999*, section 53 (Payment instead of long service leave)