

Queensland



# **INDUSTRIAL RELATIONS AMENDMENT ACT 2001**

**Act No. 87 of 2001**



# Queensland



## INDUSTRIAL RELATIONS AMENDMENT ACT 2001

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Queensland



## **Industrial Relations Amendment Act 2001**

**Act No. 87 of 2001**

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**An Act to amend the *Industrial Relations Act 1999***

*[Assented to 3 December 2001]*

**The Parliament of Queensland enacts—****1 Short title**

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

**2 Commencement**

(1) Sections 16, 18 to 21 and 28 to 30 commence on 1 May 2002.

(2) Section 6 is taken to have commenced on 1 July 1999.

**3 Act amended**

This Act amends the *Industrial Relations Act 1999*.

**4 Amendment of s 3 (Principal object of this Act)**

(1) Section 3(d) to (m)—

*renumber* as section 3(e) to (n).

(2) Section 3(c)—

*omit, insert—*

‘(c) preventing and eliminating discrimination in employment; and

(d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and’.

**5 Amendment of s 6 (Who is an employer)**

Section 6(2)—

*insert—*

‘(g) a person declared to be an employer under section 275.<sup>1</sup>’.

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1 Section 275 (Power to declare persons to be employees or employers)

**6 Amendment of s 11 (Entitlement)**

(1) Section 11(4) to (7)—

*renumber* as section 11(5) to (8).

(2) Section 11—

*insert*—

‘(4) However, if an employee is entitled to additional annual leave as compensation for working on a particular public holiday, annual leave is inclusive of the particular public holiday.’.

**7 Renumbering of ch 2, pt 2, divs 1–4**

Chapter 2, part 2, divisions 1 to 4—

*renumber* as chapter 2, part 2, divisions 2 to 5.

**8 Insertion of new ch 2, pt 2, div 1**

Chapter 2, part 2—

*insert*—

***‘Division 1—Preliminary*****‘15A Who is a “long term casual employee” for pt 2**

‘(1) A “long term casual employee” is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under this part.

‘(2) The periods of employment mentioned in subsection (1) include periods before and after the commencement of this section.’.

**9 Replacement of s 16 (Who this division does not apply to)**

Section 16—

*omit, insert*—

**‘16 Who this division does not apply to**

‘This division does not apply to—

- (a) casual employees, other than long term casual employees; or
- (b) seasonal employees; or
- (c) pieceworkers.’.

### **10 Amendment of s 33 (Employer’s obligations)**

Section 33(2), ‘this subsection’—

*omit, insert—*

‘subsection (1)’.

### **11 Amendment of s 39 (Entitlement)**

(1) Section 39(2) to (7)—

*renumber* as section 39(3) to (8).

(2) Section 39—

*insert—*

‘(2) A long term casual employee is entitled to 5 days unpaid leave (also “**carer’s leave**”) in each year to care and support—

- (a) members of the employee’s immediate family when they are ill;  
or
- (b) members of the employee’s household when they are ill.’.

(3) Section 39(8), as renumbered, after ‘employee’—

*insert—*

‘who may use sick leave as carer’s leave’.

(4) Section 39—

*insert—*

‘(9) A long term casual employee may take additional unpaid carer’s leave if the employer agrees.’.

### **12 Amendment of s 40 (Entitlement)**

(1) Section 40(1)—

*omit, insert—*



**(1)** This section does not apply to—

- (a) casual employees, other than long term casual employees; or
- (b) pieceworkers.’.

**(2)** Section 40(2), after ‘employee’—

*insert—*

‘, other than a long term casual employee,’.

**(3)** Section 40(3) and (4)—

*renumber* as section 40(4) and (5).

**(4)** Section 40—

*insert—*

‘**(3)** A long term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person’s immediate family or household in Australia.’.

**(5)** Section 40(5), as renumbered, after ‘take’—

*insert—*

‘additional leave as’.

### **13 Amendment of s 72 (Who this chapter does not apply to)**

**(1)** Section 72(1)(c) and (d)—

*omit, insert—*

- (c) a short term casual employee, unless the dismissal is for a reason mentioned in section 73(2)(i), (j), (k) or (m); or
- (d) an employee engaged for a specific period or task, unless—
  - (i) the main purpose of engaging the employee in that way is, or was at the time of the employee’s engagement, to avoid the employer’s obligations under part 2; or
  - (ii) the employee is participating in a labour market program and is dismissed before the period ends or the task is complete; or’.

**(2)** Section 72(2) to (7)—

*renumber* as section 72(3) to (8).

(3) Section 72—

*insert—*

‘(2) In deciding—

- (a) the probationary period for subsection (1)(a); or
- (b) whether an employee is a short term casual employee for subsection (1)(c) and (8);

periods of employment with a former employer that are taken to be service with a new employer because of section 69<sup>2</sup> must be taken into account.’.

(4) Section 72(6), as renumbered, ‘subsection (4)’—

*omit, insert—*

‘subsection (5)’.

#### **14 Amendment of s 73 (When is a dismissal unfair)**

(1) Section 73(2)(j) and (k)—

*renumber* as section 73(2)(l) and (m).

(2) Section 73(2)(i)—

*omit, insert—*

- ‘(i) the employee or employee’s spouse is pregnant or has applied to adopt a child;
- (j) the employee or employee’s spouse has given birth to a child or adopted a child;
- (k) applying for, or being absent on, parental leave;’.

#### **15 Replacement of ch 3, pt 4 (Dismissal of 15 or more employees)**

Chapter 3, part 4—

*omit, insert—*

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2 Section 69 (Continuity of service—transfer of calling)

## **‘PART 4—ADDITIONAL REQUIREMENTS FOR DISMISSAL**

### *‘Division 1—Orders giving effect to article 12 of Termination of Employment Convention*

#### **‘86 When this division applies**

‘This division applies to an application about severance allowance or other separation benefits.

#### **‘87 Orders about severance allowance and other separation benefits**

‘(1) The commission may make an order about severance allowance or other separation benefits on application by—

- (a) an employee; or
- (b) an organisation whose rules entitle it to represent the employee’s industrial interests.

‘(2) An employer must not contravene the order.

‘(3) If an employer contravenes the order, the commission may—

- (a) make any of the orders it may make under section 78(2), (3) or (4);<sup>3</sup> or
- (b) order the employer to pay the employee an amount of not more than the monetary value of 135 penalty units.

‘(4) In this section—

“**severance allowance or other separation benefits**” means severance allowance or other separation benefits under article 12 of the Termination of Employment Convention 1982.

#### **‘88 Time for making application under this division**

‘An application for an order under this division must be made—

- (a) before, or within 21 days after, the dismissal takes effect; or

---

3 Section 78 (Remedies—reinstatement or re-employment)

- (b) within a further period the commission allows on an application made at any time.

***‘Division 2—Order giving effect to article 13 of Termination of Employment Convention***

**‘89 When this division applies**

‘This division applies if an employer decides to dismiss 15 or more employees for an economic, technological or structural reason.

**‘90 Employer must give notice of proposed dismissals**

‘(1) The employer may dismiss the employees only if the employer, as soon as practicable after making the decision, notifies—

- (a) the Commonwealth department or agency whose primary function is helping unemployed people find work; and
- (b) each employee organisation of which any of the employees is a member.

‘(2) The notice must state—

- (a) the number and categories of employees being dismissed; and
- (b) the reasons for the dismissals; and
- (c) the time when, or the period over which, the employer intends to carry out the dismissals.

‘(3) If satisfied an employer has dismissed, or proposes to dismiss, an employee without giving the notice, the commission may make any or all of the following orders—

- (a) any of the orders it may make under section 78(2), (3) or (4);<sup>4</sup>
- (b) an order imposing on the employer a penalty of not more than 16 penalty units;
- (c) an order that the employer pay the employee an amount of not more than the monetary value of 135 penalty units;

---

4 Section 78 (Remedies—reinstatement or re-employment)

(d) an order declaring the dismissal ineffective until the employer has given the notice.

‘(4) An application for an order may be made by—

- (a) an employee, including a dismissed employee; or
- (b) an organisation whose rules entitle it to represent the employee’s industrial interests; or
- (c) an inspector.

‘(5) The commission may order that a penalty, or part of a penalty, under subsection (3)(b) be paid to any person who may have made the application, other than an officer or employee of the State or a public service officer.

‘(6) Any part of the penalty ordered to be paid to the person under subsection (5) must first be paid to the person.

‘(7) The remainder of the penalty must then be paid to the consolidated fund.

‘(8) A failure to give a notice is not an offence.

### **‘90A Employer must consult with employee organisations about dismissals**

‘(1) The employer must give each employee organisation of which any of the employees is a member an opportunity to consult with the employer on ways to—

- (a) avoid or minimise the dismissals; and
- (b) minimise the adverse effects of the dismissals, for example, by finding alternative employment.

‘(2) The employer must do so as soon as practicable after making the decision to dismiss employees, but in any case before dismissing any of the employees.

‘(3) If the employer does not give the organisation an opportunity to consult as required, the commission may make the orders it considers appropriate to put employees, and their organisations, in the same position, as nearly as can be done, as if the employer had done so.

‘(4) The commission may make an order on application from an employee or organisation that is to be affected by the order.

‘(5) Subsections (1) and (2) do not apply to an organisation if the employer could not reasonably be expected to have known, at the time of the decision, that the organisation’s rules entitled it to represent the industrial interests of a dismissed employee.

### **‘90B Time for making application under this division**

‘An application for an order under this division must be made—

- (a) before, or within 21 days after, the dismissal takes effect; or
- (b) within a further period the commission allows on an application made at any time.’.

### **16 Amendment of s 126 (Content of awards)**

(1) Section 126(e) to (h)—

*renumber* as section 126(f) to (i).

(2) Section 126—

*insert*—

- ‘(e) provides for equal remuneration for men and women employees for work of equal or comparable value; and’.

### **17 Amendment of s 149 (Arbitration if conciliation unsuccessful)**

(1) Section 149(2)(b)—

*omit, insert*—

- ‘(b) the commission may give directions or make orders of an interlocutory nature.’.

(2) Section 149(4) to (6)—

*renumber* as section 149(8) to (10).

(3) Section 149(3)—

*omit, insert*—

‘(3) Industrial action organised, or engaged in, while the commission determines the matter by arbitration is not protected industrial action for section 174.

‘(4) In exercising the arbitration powers, the commission must limit its consideration to the matters at issue during negotiations for the proposed agreement.

‘(5) In considering the matters at issue, the commission must consider at least the following—

- (a) the merits of the case;
- (b) the likely effects of the commission’s proposed determination, and any matters agreed before arbitration, on employees and employers who will be bound by the proposed determination;
- (c) the public interest, and to that end the commission must consider—
  - (i) the objects of this Act; and
  - (ii) the likely effects of the commission’s determination on the community, economy, industry generally and on the particular enterprise or industry concerned;
- (d) the extent to which the negotiating parties have negotiated in good faith.

‘(6) The commission must publish its reasons when determining a matter under this section.

‘(7) The reasons must address each of the things the commission considered under subsection (5).’.

## **18 Amendment of s 156 (Certifying an agreement)**

(1) Section 156(1)—

*insert—*

- ‘(1) for an agreement other than a multi-employer agreement or project agreement, the employer—
  - (i) remunerates all men and women employees of the employer equally for work of equal or comparable value; or
  - (ii) will, because of the agreement if it is certified, remunerate all men and women employees of the employer equally for work of equal or comparable value; or

(iii) is implementing equal remuneration for work of equal or comparable value for all men and women employees of the employer; and

(m) for a multi-employer agreement or project agreement—the agreement provides for equal remuneration for all men and women employees covered by the agreement for work of equal or comparable value.’.

(2) Section 156—

*insert—*

‘(3) For subsection (1)(l), the commission may consider, but must not review, any relevant industrial instrument to decide whether the instrument provides for equal remuneration for all men and women employees covered by the instrument for work of equal or comparable value.’.

## **19 Amendment of s 157 (When commission to refuse to certify an agreement)**

(1) Section 157(5)—

*renumber* as section 157(6).

(2) Section 157—

*insert—*

‘(5) The commission must refuse to certify an agreement if a provision of the agreement seeks to prohibit or restrict an application being made under chapter 2, part 5.<sup>5</sup>’.

## **20 Amendment of s 193 (Matters to be included in QWA)**

Section 193(1), from ‘includes’—

*omit, insert—*

‘includes—

(a) the provisions about discrimination prescribed under a regulation; and

---

5 Chapter 2 (General employment conditions), part 5 (Equal remuneration for work of equal or comparative value)



- (b) provision for the remuneration of the employee on the basis of equal remuneration for the employee for work of equal or comparable value performed by other men and women employees of the employer.’.

## 21 Amendment of s 203 (Approving QWA)

Section 203—

*insert—*

‘(7) For subsection (1), the commission may consider, but must not review, any relevant industrial instrument to decide whether the instrument provides for equal remuneration for all men and women employees covered by the instrument for work of equal or comparable value.<sup>6</sup>’.

## 22 Amendment of s 265 (Commission’s jurisdiction)

(1) Section 265(4) to (7)—

*renumber* as section 265(5) to (8).

(2) Section 265(3)—

*omit, insert—*

‘(3) The commission—

- (a) may hold an inquiry into or about an industrial matter on application by an interested person or on its own initiative; and
- (b) must hold an inquiry into or about an industrial matter if the Minister directs.

‘(4) The commission must report the result of the inquiry, and make recommendations, to the Minister.’.

## 23 Amendment of s 275 (Power to declare persons to be employees)

(1) Section 275, heading, after ‘**employees**’—

*insert—*

‘**or employers**’.

---

6 For the requirement for a QWA to include provision for equal remuneration for work of equal or comparable value, see section 193 (Matters to be included in QWA).

(2) Section 275(1), from ‘declaring’—

*omit, insert—*

‘declaring—

- (a) a class of persons who perform work in an industry under a contract for services to be employees; and
- (b) a person to be an employer of the employees.’.

#### **24 Amendment of s 276 (Power to amend or void contracts)**

Section 276(1)(a)(i), ‘services’—

*omit, insert—*

‘service’.

#### **25 Amendment of s 287 (General rulings)**

(1) Section 287(1)(c), from ‘, whether’—

*omit, insert—*

‘for all employees.’.

(2) Section 287(2) to (10)—

*renumber* as section 287(3) to (11).

(3) Section 287—

*insert—*

‘(2) The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each calendar year.’.

(4) Section 287(9), as renumbered, ‘subsection (4)’—

*omit, insert—*

‘subsection (5)’.

(5) Section 287(10), as renumbered, ‘subsection (8)’—

*omit, insert—*

‘subsection (9)’.

**26 Amendment of s 319 (Representation of parties)**

(1) Section 319(2)(b)(i), after ‘chapter 4’—

*insert—*

‘, other than section 110’.

(2) Section 319(2)(b)(iii) and (iv)—

*omit, insert—*

‘(iii) the proceedings relate to a matter under chapter 3, or under section 110, 275, 276 or 279, or under chapter 12, part 2 or part 16<sup>7</sup> and, on application by a party or person—

(A) the commission is satisfied, having regard to the matter the proceedings relate to, that there are special circumstances that make it desirable for the party or person to be legally represented; or

(B) the commission is satisfied the party or person can be adequately represented only by a lawyer; or’.

**27 Amendment of s 335 (Costs)**

(1) Section 335(1), after ‘costs’—

*insert—*

‘, including witness expenses and other expenses,’.

(2) Section 335(2)—

*omit, insert—*

‘(2) In making an order, the court or commission may order a party to pay another party an amount reasonably payable to a person, who is not a lawyer, for representing the other party.’.

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<sup>7</sup> Chapter 3 (Dismissals), section 110 (Encouragement provisions permitted), 275 (Power to declare persons to be employees or employers), 276 (Power to amend or void contracts) or 279 (Orders about representation rights of employee organisations), or chapter 12 (Industrial organisations), part 2 (Registration) or 16 (Deregistration)

**28 Amendment of s 366 (Time and wages record—industrial instrument employees)**

(1) Section 366(2) to (5)—

*renumber* as section 366(3) to (6).

(2) Section 366—

*insert*—

‘(2) The employer must ensure the time and wages record clearly states the employer’s full name.

Maximum penalty—40 penalty units.’

**29 Amendment of s 367 (Time and wages record—non-industrial instrument employees)**

(1) Section 367(2) to (4)—

*renumber* as section 367(3) to (5).

(2) Section 367—

*insert*—

‘(2) The employer must ensure the time and wages record clearly states the employer’s full name.

Maximum penalty—40 penalty units.’

**30 Amendment of s 370 (Notation of wages details)**

Section 370—

*insert*—

‘(3) The statement must also clearly state the employer’s full name.

Maximum penalty—40 penalty units.’

**31 Amendment of s 532 (Obligation to admit)**

Section 532(1)(b), ‘division 3’—

*omit, insert*—

‘division 2’.

**32 Amendment of s 580 (Exemption if federal election held)**

Section 580(3)(c), ‘to’, first mention—

*omit.*

**33 Amendment of s 665 (Avoiding Act’s obligations)**

Section 665(2), from ‘13 weeks’—

*omit, insert—*

‘8.6667 weeks leave for 10 years service.’.

**34 Amendment of s 670 (Contravention of industrial instruments)**

Section 670(4), ‘agreement’—

*omit, insert—*

‘instrument’.

**35 Omission of sch 4 (Amendment of model election rules)**

Schedule 4—

*omit.*

**36 Amendment of sch 5 (Dictionary)**

Schedule 5—

*insert—*

‘**“long term casual employee”**, for chapter 2, part 2, see section 15A.<sup>8</sup>

**“remuneration”**, for a provision relating to work of equal or comparable value, includes—

- (a) the wage or salary payable to an employee; and
- (b) amounts payable or other benefits made available to an employee under a contract of service.’.

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8 Section 15A (Who is a “long term casual employee” for pt 2)

