



Queensland

Industrial Relations and Other Acts Amendment Act 2005

Act No. 11 of 2005



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Industrial Relations and Other Acts Amendment Act 2005

Act No. 11 of 2005

**An Act to amend legislation administered by the Minister for
Employment, Training and Industrial Relations**

[Assented to 1 April 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Industrial Relations and Other Acts Amendment Act 2005*.

Part 2 Industrial Relations Act 1999 amendments

2 Act amended in this part

This part amends the *Industrial Relations Act 1999*.

3 Amendment of s 6 (Who is an employer)

Section 6(2)(e), after ‘proceedings’—
insert—
‘for an offence or’.

4 Amendment of s 8 (Provisions about appointments and procedure of committees)

- (1) Section 8, heading, ‘of committees’—
omit.
- (2) Section 8(a), after ‘president’—
insert—
‘, vice president, deputy presidents’.
- (3) Section 8(d)—

omit, insert—

‘(d) associates.’.

5 **Amendment of s 13 (Payment for annual leave)**

Section 13—

insert—

‘(3) If an employee is entitled to receive an amount representing commission in the employee’s annual leave payment, the employer must pay the default average commission unless—

(a) a relevant industrial instrument or contract between the employer and employee otherwise provides; or

(b) the commission, on application, considers that the default average commission would not represent a fair amount in the circumstances.

‘(4) If, on application under subsection (3)(b), the commission considers that the default average commission would not represent a fair amount in the circumstances, the commission may make the order it considers appropriate in the circumstances.

‘(5) In this section—

default average commission means—

- the total commissions payable to the employee in the 1 year before the leave is taken, or during the employee’s period of employment, whichever is less
- divided by 365.25, or the number of days in the employee’s period of employment, whichever is less
- multiplied by the number of days leave for which payment is being made.’.

6 **Amendment of s 40 (Entitlement)**

Section 40(2) and (3)—

omit, insert—

- ‘(2) An employee, other than a long term casual employee, is entitled to—
- (a) at least 2 days bereavement leave on full pay on the death of a member of the person’s immediate family or household; and
 - (b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid bereavement leave equal to the time reasonably required for the travel.
- ‘(3) A long term casual employee is entitled to—
- (a) at least 2 days unpaid bereavement leave on the death of a member of the person’s immediate family or household; and
 - (b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid bereavement leave equal to the time reasonably required for the travel.’.

7 Insertion of new ch 2, pt 2, div 4A

Chapter 2, part 2—

insert—

‘Division 4A Cultural leave

‘40A Entitlement

- ‘(1) An employee may take up to 5 days unpaid cultural leave in each year, if the employer agrees.
- ‘(2) The employer must not unreasonably refuse the leave.
- ‘(3) In considering the employee’s request for leave, the employer must consider at least the following—
- (a) the employer’s capacity to reorganise work arrangements to accommodate the employee’s request;
 - (b) the impact of the employee’s absence on the delivery of customer service;

- (c) the particular circumstances of the employee;
 - (d) the impact of a refusal on the employee, including the employee's ability to balance his or her work and family responsibilities.
- ‘(4) The employee must, if practicable, give the employer—
- (a) reasonable notice of the intention to take cultural leave before taking the leave; and
 - (b) the reason for taking the leave; and
 - (c) the period that the employee estimates the employee will be absent.
- ‘(5) If it is not practicable for the employee to give the notice before taking the leave, the employee must give the employer notice of the matters in subsection (4)(b) and (c) at the first opportunity.
- ‘(6) It is declared that leave provided under this section is a welfare measure for the purposes of the *Anti-Discrimination Act 1991*, section 104.¹
- ‘(7) In this section—
- employee* means an employee who is required by Aboriginal tradition or Island custom to attend an Aboriginal or Torres Strait Islander ceremony.’.

8 Amendment of s 46 (Payment for long service leave)

- (1) Section 46(6)—
renumber as section 46(12).
 - (2) Section 46—
insert—
- ‘(6) If an employee is entitled to receive an amount representing commission in the employee's long service leave payment, the employer must pay the default average commission unless—

¹ *Anti-Discrimination Act 1991*, section 104 (Welfare measures)

- (a) a relevant industrial instrument or contract between the employer and employee otherwise provides; or
 - (b) the commission, on application, considers that the default average commission would not represent a fair amount in the circumstances.
- ‘(7) If, on application under subsection (6)(b), the commission considers that the default average commission would not represent a fair amount in the circumstances, the commission may make the order it considers appropriate in the circumstances.’.
- (3) Section 46(12), as amended—
insert—
‘default average commission means—
- the total commissions payable to the employee in the 1 year before the leave is taken
 - divided by 52.179
 - multiplied by the number of weeks leave for which payment is being made.’.

9 Amendment of s 49 (Payment for long service leave)

Section 49(3) to (6)—

relocate and renumber as section 46(8) to (11).

10 Amendment of s 71 (Continuity of service—generally)

Section 71(9), ‘to (6)’—

omit, insert—

‘, (4), (5), (6)(b) or (7)’.

11 Amendment of s 72 (Who this chapter does not apply to)

- (1) Section 72(1)(c), ‘dismissal is for a reason mentioned in section 73(2)(i), (j), (k) or (m)’—

omit, insert—

‘reason for the dismissal is an invalid reason’.

(2) Section 72(1)(d)—

insert—

‘(iii) the reason for the dismissal is an invalid reason;
or’.

12 Amendment of s 73 (When is a dismissal unfair)

Section 73—

insert—

‘(3) In this section—

parental leave has the meaning given in section 17.’.

13 Insertion of new s 122A

Chapter 4, part 4—

insert—

‘122A Proof of the reason for, or the intention of, conduct not required

‘(1) This section applies if—

(a) in an application under this part about an entity’s conduct, it is alleged that the conduct was, or is being, carried out for a particular reason or with a particular intent; and

(b) for the entity to carry out the conduct for that reason or with that intent would constitute a contravention of this part.

‘(2) It is to be presumed, in proceedings under this part arising from the application, that the conduct was, or is being, carried out for that reason or with that intent, unless the entity proves otherwise.’.

14 Amendment of s 126 (Content of awards)

(1) Section 126(i)—

insert—

‘(iv) contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), to be reached on work and family responsibilities; and’.

(2) Section 126—

insert—

‘(j) takes into account employees’ family responsibilities.’.

15 Amendment of s 129 (Flow-on of certified agreements)

Section 129—

insert—

‘(2) However, the commission must include in an award provisions that are based on a certified agreement if—

(a) the parties to the certified agreement agree; and

(b) the parties to the certified agreement are bound by the award.

‘(3) The provisions included under subsection (2) must apply only to the parties to the certified agreement.’.

16 Amendment of s 137 (Order setting minimum wages and conditions)

Section 137(4)(b)(i), after ‘Training’—

insert—

‘and Employment’.

17 Amendment of s 138 (Order setting tool allowance)

Section 138(3)(b)(i), after ‘Training’—

insert—

‘and Employment’.

18 Amendment of s 138B (Wages payable to former apprentices or trainees)

Section 138B(3), after ‘Training’—

insert—

‘and Employment’.

19 Amendment of s 140 (Orders for wages and employment conditions)

Section 140(3)(b)(i), after ‘Training’—

insert—

‘and Employment’.

20 Amendment of s 140A (Vocational placement)

Section 140A(2)(b)(i), after ‘Training’—

insert—

‘and Employment’.

21 Amendment of s 150 (Determinations made under s 149)

Section 150(2) to (6)—

omit, insert—

- ‘(2) The determination has effect subject to any conditions specified in it.
- ‘(3) The determination (including a determination made before the commencement of this subsection) operates until—
 - (a) before its nominal expiry date has passed—the commission, acting on an application under subsection (4), revokes it under subsection (5); or
 - (b) after its nominal expiry date has passed—
 - (a) it is replaced by a certified agreement; or
 - (b) the commission, acting on an application under subsection (4), revokes it under subsection (6).

- ‘(4) The following persons may apply to the commission to revoke a determination—
- (a) the employer;
 - (b) a valid majority of the employees to whom the determination applies;
 - (c) an employee organisation that—
 - (i) is bound by the determination; and
 - (ii) has at least 1 member who is an employee bound by the determination.
- ‘(5) Before the determination’s nominal expiry date has passed, the commission must not revoke the determination unless satisfied—
- (a) the employer and the 1 or more employee organisations, or a valid majority of the employees, who are bound by the determination have agreed to the revocation (for example, because they propose to make an agreement under division 1²); and
 - (b) the revocation would not be against the public interest.
- ‘(6) After the determination’s nominal expiry date has passed, the commission must revoke the determination if, and only if, satisfied—
- (a) for a determination that provides that it may be revoked if particular conditions are met—the conditions have been met; or
 - (b) for a determination that does not provide for the way it may be revoked—it is in the public interest to revoke the determination.
- ‘(7) The revocation takes effect when the commission’s approval takes effect.
- ‘(8) While a determination operates—

- (a) the determination prevails, to the extent of any inconsistency, over an award or industrial agreement or an order made under section 137; and
- (b) the determination can not be amended.’.

22 Amendment of s 160 (When an agreement passes the no-disadvantage test)

Section 160(5), before ‘president’—
insert—
‘vice’.

23 Amendment of s 173 (Terminating agreement after its nominal expiry date)

Section 173(3)(a), ‘certain’—
omit, insert—
‘particular’.

24 Amendment of s 181 (When industrial action must not be taken)

Section 181(1)(b), ‘while it operates’—
omit, insert—
‘from when it starts operating until its nominal expiry date has passed’.

25 Amendment of s 209 (When does a QWA pass the no-disadvantage test)

Section 209(4), before ‘president’—
insert—
‘vice’.

26 Insertion of new ss 242A and 242B

Chapter 8, part 1, division 1, after section 242—

insert—

‘242A Official seal

- ‘(1) The court has an official seal.
- ‘(2) All courts and persons acting judicially must take judicial notice of the official seal affixed to any document and must presume, until the contrary is proved, that it was properly affixed.

‘242B Finances of court

‘The court is part of the department for the purposes of the *Financial Administration and Audit Act 1977*.’.

27 Amendment of s 252 (President’s annual report)

Section 252—

insert—

- ‘(1A) The registrar must prepare, and give to the president, a report for the year on the working of the registry for inclusion in the president’s report under subsection (1).’.

28 Omission of ch 8, pt 1, div 5

Chapter 8, part 1, division 5—

omit.

29 Insertion of new ss 255A and 255B

After section 255—

insert—

‘255A Official seal

- ‘(1) The commission has an official seal.
- ‘(2) All courts and persons acting judicially must take judicial notice of the official seal affixed to any document and must presume, until the contrary is proved, that it was properly affixed.

‘255B Finances of commission

‘The commission is part of the department for the purposes of the *Financial Administration and Audit Act 1977*.’

30 Amendment of s 263 (Removal of commissioners from office)

Section 263, ‘address to the Legislative Assembly’—
omit, insert—
‘address of the Legislative Assembly’.

31 Amendment of s 269 (Commissioner administrator to consider efficiencies that may be achieved by using dual commissioners)

Section 269, heading, ‘**Commissioner administrator**’—
omit, insert—
‘**Vice president**’.

32 Amendment of s 276 (Power to amend or void contracts)

(1) Section 276—

insert—

‘(1A) The commission must not—

- (a) amend a contract (whether made before or after the commencement of this subsection) to include an accident pay provision; or
- (b) declare a contract (whether made before or after the commencement of this subsection) wholly or partly void, because it does not contain an accident pay provision.’

(2) Section 276(7)—

insert—

‘**accident pay provision** means a provision for accident pay, or other payment, on account of a worker sustaining an injury.

injury means an injury under the *Workers' Compensation and Rehabilitation Act 2003*.

worker means a worker under the *Workers' Compensation and Rehabilitation Act 2003*.

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

(1) Section 278(2), '\$20 000'—

omit, insert—

'\$50 000'.

(2) Section 278(11), 'or 408'—

omit, insert—

', 400F or 408'.

34 Amendment of s 290 (Office of Industrial Magistrate)

Section 290(a) and (b), 'stipendiary'—

omit.

35 Amendment of s 335 (Costs)

Section 335, heading—

omit, insert—

'335 General power to award costs'.

36 Amendment of s 338 (Rules)

(1) Section 338(3)(a), 'Stipendiary'—

omit.

(2) Section 338(3)(c), '2 commissioners'—

omit, insert—

'the vice president and another commissioner'.

37 Amendment of s 353 (Entry to places)

Section 353(2)—

insert—

‘(c) enter that part of the place the inspector reasonably believes clothing outwork is being, has been, or is about to be carried on.’.

38 Amendment of s 355 (Power to require documents to be produced)

Section 355—

insert—

‘(7) To remove any doubt, it is declared that the powers of an inspector under this section—

- (a) are additional to the powers under section 371;³ and
- (b) do not limit, and are not limited by, any other powers of an inspector under this Act.’.

39 Amendment of s 391(Wages etc. to be paid without deduction)

Section 391(2)(b), before ‘Recognition Council’—

insert—

‘and Employment’.

40 Amendment of s 393 (Paying wages)

Section 393(6), before ‘unless’—

insert—

‘or for a shorter period stated in an industrial instrument,’.

3 Section 371 (Inspection of time and wages record—inspector)

41 Amendment of s 399 (Recovery of unpaid wages etc.)

Section 399(6), after ‘278’—

insert—

‘or 400F’.

42 Amendment of s 400 (Enforcement of magistrate’s order)

Section 400(3) to (5)—

omit, insert—

‘(3) Also, an amount ordered to be paid, including costs, may be recovered by the person from the employer as a debt.

‘(4) For subsection (3), the order requiring payment may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*, and on being filed—

(a) is taken to be an order properly made by a Magistrates Court; and

(b) without limiting subsection (2), may be enforced as an order made by the Magistrates Court.

‘(5) In this section—

employer includes—

(a) an employer to whom an order made under section 140A⁴ applies; and

(b) an apparent employer to whom an order made under section 400F⁵ applies.’.

43 Insertion of new ch 11, pt 2, div 3A

Chapter 11, part 2—

insert—

4 Section 140A (Vocational placement)

5 Section 400F (Recovery of unpaid wages)

‘Division 3A Recovery of wages for clothing outworkers

‘400A Definitions for div 3

‘In this division—

apparent employer see section 400B(2).

referred claim means a claim referred to a referred employer under section 400C(4).

referred employer see section 400C(2).

superannuation contributions means contributions to an approved superannuation fund for an outworker who, under a relevant industrial instrument, is an eligible employee for entitlement to occupational superannuation benefits.

unpaid wages claim means a claim for wages, or superannuation contributions, made under section 400B.

‘400B Claims by clothing outworkers for unpaid wages and super

- ‘(1) This section applies if—
- (a) all or any of the wages payable to an outworker in the clothing industry are not paid; or
 - (b) all or any of the superannuation contributions payable for an outworker in the clothing industry are not paid.
- ‘(2) The outworker may make a claim for the wages, or superannuation contributions, against a person who the outworker believes is his or her employer (the *apparent employer*).
- ‘(3) However, the claim can not be made against a person whose only connection with the clothing industry is the sale of clothing by retail.
- ‘(4) A claim, to the extent it relates to wages, must be made within 6 months after the work was finished.

- ‘(5) The outworker makes an unpaid wages claim by serving the apparent employer with a written notice that—
- (a) claims payment of the wages or superannuation contributions; and
 - (b) states these particulars—
 - (i) the name of the outworker; and
 - (ii) the address at which the outworker may be contacted; and
 - (iii) a description of the work done; and
 - (iv) the date on which the work was done; and
 - (v) the amount of wages owing; and
 - (vi) the amount of superannuation contributions owing; and
 - (vii) details of the approved superannuation fund to which superannuation contributions should have been paid, that are sufficiently detailed to enable the contributions to be properly paid.
- ‘(6) The particulars stated in the claim must be verified by statutory declaration.
- ‘(7) This section applies only to wages for work done or superannuation contributions payable after the commencement of this section.

‘400C Liability of apparent employer for unpaid wages and super

- ‘(1) Subject to subsection (5), an apparent employer served with an unpaid wages claim is liable for the amount claimed unless the apparent employer proves in proceedings under section 400F that—
- (a) the work was not done; or
 - (b) an amount claimed is not the correct amount; or
 - (c) an amount claimed has already been paid.

- ‘(2) An apparent employer may, within 14 days after being served with an unpaid wages claim, refer the claim to another person whom the apparent employer reasonably believes is the person for whom the work was done (the *referred employer*).
- ‘(3) However, the claim can not be referred to a person whose only connection with the clothing industry is the sale of clothing by retail.
- ‘(4) An apparent employer refers an unpaid wages claim by—
 - (a) serving the referred employer with a copy of the unpaid wages claim and a written notice that states—
 - (i) the name and address of the apparent employer; and
 - (ii) the date on which the outworker served the apparent employer with the unpaid wages claim; and
 - (b) advising the outworker in writing of—
 - (i) the name and address of the referred employer; and
 - (ii) the date on which the apparent employer served the referred employer with the referred claim.
- ‘(5) The apparent employer is not liable for any part of the amount claimed in an unpaid wages claim for which the referred employer accepts liability under section 400D.

‘400D Liability of referred employer for unpaid wages

- ‘(1) A referred employer may, within 14 days after being served with a referred claim, accept liability for all or part of the amount claimed by paying it to—
 - (a) for wages—the outworker; or
 - (b) for superannuation contributions—the superannuation fund stated in the unpaid wages claim.
- ‘(2) A referred employer who accepts liability must serve the apparent employer with a written notice of the acceptance and of the amount paid.

- ‘(3) If the apparent employer pays all or any part of the amount claimed for which the referred employer does not accept liability, the apparent employer may deduct or set-off that amount from any amount that the apparent employer owes to the referred employer, whether or not in relation to the work that is the subject of the referred claim.

‘400E Reimbursement of apparent or referred employer

‘An application may be made to the commission or to a magistrate for an order that the employer of the outworker reimburse the apparent or referred employer for the amount that the apparent or referred employer paid to—

- (a) the outworker; or
- (b) an approved superannuation fund for the outworker.

‘400F Recovery of unpaid wages

- ‘(1) An application may be made for an order that an apparent employer pay an unpaid wages claim.
- ‘(2) The application may be made to—
- (a) if the total amount claimed is \$50 000 or less—the commission or a magistrate; or
 - (b) otherwise—a magistrate.
- ‘(3) The application may be made by—
- (a) an outworker; or
 - (b) an employee organisation of which the outworker is a member, acting for the outworker; or
 - (c) an inspector.
- ‘(4) The application must be made within 6 years after the amount claimed in the application became payable.
- ‘(5) The commission or magistrate must order the apparent employer to pay the wages or superannuation contributions claimed unless the apparent employer proves that—
- (a) the work was not done; or

- (b) an amount claimed is not the correct amount; or
 - (c) an amount claimed has already been paid.
- ‘(6) If the commission or magistrate is satisfied that an amount claimed is not the correct amount, the commission or magistrate may order payment of the amount that the commission or magistrate is satisfied is payable.
- ‘(7) For an order about superannuation contributions, the order must require the amount to be paid to—
- (a) the approved superannuation fund; or
 - (b) a complying superannuation fund; or
 - (c) a superannuation fund nominated by the outworker; or
 - (d) an eligible rollover fund; or
 - (e) if the amount is less than the amount of total benefits than may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the outworker.
- ‘(8) The superannuation contributions must be paid into the unclaimed moneys fund if the outworker does not nominate a superannuation fund for the purpose of the order, if the order requires a fund to be nominated.
- ‘(9) In this section—
- superannuation contributions*** includes an amount equal to the return that would have been accrued in relation to the superannuation contributions had they been properly paid to an approved superannuation fund.

‘400G Offences relating to claims under this division

‘A person must not—

- (a) by intimidation or by any other act or omission, intentionally hinder, prevent or discourage someone from making an unpaid wages claim or an application under section 400F; or

- (b) make any statement that the person knows is false or misleading in a material particular in any notice given for the purposes of section 400C or 400D; or
- (c) serve a referred claim on someone under section 400C if the person does not reasonably believe that the work under an unpaid wages claim was done for the other person.

Maximum penalty—100 penalty units.

‘400H Effect of sections 400B–400G

- ‘(1) Sections 400B to 400G do not limit or exclude any other rights of a person to recover wages or superannuation contributions, or any liability of any person in relation to the wages or superannuation contributions, whether or not arising under this Act, another law, or an industrial instrument.
- ‘(2) Nothing in section 400D(3) limits or excludes any right of recovery arising under any other law in relation to any amount of money owed by the apparent employer to the referred employer.

‘400I Mandatory code of practice for outworkers

- ‘(1) The Governor in Council may make a code of practice for the purpose of ensuring that outworkers in the clothing industry receive their lawful entitlements.
- ‘(2) In particular, the Governor in Council may make a code of practice if it is considered—
 - (a) that current voluntary self-regulatory mechanisms are inadequate to achieve improvements in the level of compliance with obligations to ensure outworkers receive their lawful entitlements; or
 - (b) that persons engaged in the clothing industry are not in good faith attempting to negotiate improvements or extensions to the current voluntary self-regulatory mechanisms.
- ‘(3) The code may require employers or other persons engaged in the clothing industry to adopt the standards of conduct and

practice relating to outworkers in the clothing industry that are set out in the code.

- ‘(4) The Governor in Council must give notice of the making of the code of practice.
- ‘(5) The notice is subordinate legislation.
- ‘(6) A contravention of the code of practice is an offence.
Maximum penalty—100 penalty units.
- ‘(7) An award prevails over a code of practice to the extent of any inconsistency.’.

44 Omission of s 405 (Agreement about superannuation fund)

Section 405—
omit.

45 Amendment of s 406 (Contributing occupational superannuation)

Section 406—
insert—

- ‘(6) An employer may continue to contribute to another superannuation fund in accordance with an agreement under the repealed section 405.
- ‘(7) In this section—
repealed section 405 means section 405 as in force immediately before the commencement of this subsection.’.

46 Amendment of s 638 (General deregistration grounds)

Section 638(b)—
omit.

47 Amendment of s 666 (Non-payment of wages)

Section 666(1), from ‘a relevant’ to ‘section 8A or 136’ and footnote—

omit, insert—

‘this Act, a relevant industrial instrument or permit’.

48 Amendment of s 670 (Contraventions of industrial instruments)

Section 670—

insert—

- ‘(5) A magistrate may hear and decide a complaint for an offence against this section.
- ‘(6) If the magistrate finds that—
- (a) the defendant contravened an industrial instrument; and
 - (b) the contravention resulted in an amount being unpaid;
- the magistrate must order the defendant to pay an entity the amount that the magistrate finds is payable.
- ‘(7) However, even if the magistrate does not find the defendant guilty of a contravention of an industrial instrument, the magistrate may order the defendant to pay an entity the amount that the magistrate, on the balance of probabilities, finds is payable.
- ‘(8) The magistrate may order the amount to be paid in the way that the magistrate considers appropriate.
- ‘(9) The magistrate may make an order under subsection (6) or (7) in addition to any penalty that the magistrate may impose.
- ‘(10) An order must not be made for payment of an amount that became payable more than 6 years before the proceedings were brought.
- ‘(11) An order for the payment of an amount must not be made under this section if the order may be made under another section of this Act.’.

49 Amendment of s 696 (Aged or infirm persons permits)

- (1) Section 696(1), ‘provided for by an industrial instrument’—
omit.
- (2) Section 696—
insert—
- ‘(1A) For subsection (1), the minimum wage is the greater of—
- (a) the Queensland minimum wage; or
 - (b) the minimum wage provided for by a relevant industrial instrument; or
 - (c) the minimum wage determined by the commission, after considering—
 - (i) the Queensland minimum wage; and
 - (ii) any industrial instrument that regulates employment conditions of employees engaged in a similar kind of work as the aged or infirm person under the proposed permit.’.

50 Amendment of s 708 (Approved forms)

- Section 708—
insert—
- ‘(1A) The president must consult with the vice president before approving a form for use by, or in, the commission or registry.’.

51 Omission of ch 16 (Industrial relations advisory committee)

Chapter 16—
omit.

52 Insertion of new ch 20, pt 3

Chapter 20—
insert—

‘Part 3 2005 amendment Act

‘735 Definition for part

‘In this part—

2005 amendment Act means the *Industrial Relations and Other Acts Amendment Act 2005*.

‘736 Continuity of service

‘The amendment of section 71(9) by the 2005 amendment Act applies only to an employee’s service after the commencement of the amendment.

‘737 Dismissals

‘The amendment of section 72(1)(c) and (d) by the 2005 amendment Act applies only to a dismissal after the commencement of the amendment.’.

53 Amendment of sch 1 (Industrial matters)

Schedule 1—

insert—

‘28 Balancing work and family responsibilities.’.

54 Amendment of sch 2 (Appointments and procedures)

(1) Schedule 2, heading—

omit, insert—

‘Schedule 2 Appointments’.

(2) Schedule 2, section 4, heading—

omit, insert—

‘4 Leave under the Judges (Pensions and Long Leave) Act 1957’.

(3) Schedule 2, section 4A, heading—

omit, insert—

‘4A Other leave’.

- (4) Schedule 2, section 4A, ‘of absence’—

omit, insert—

‘, other than leave mentioned in the *Judges (Pensions and Long Leave) Act 1957*, section 15.’.

- (5) Schedule 2, part 1—

insert—

‘4B Other terms and conditions

‘A member holds office on the terms and conditions, not provided for by this Act or the *Judges (Salaries and Allowances) Act 1967*, decided by the Governor in Council.’.

- (6) Schedule 2—

insert—

‘Part 1A Associates

‘4C Appointment conditions

- ‘(1) The Governor in Council may appoint associates to the members of the commission.
- ‘(2) An associate holds office on the wages and conditions decided by the Governor in Council.
- ‘(3) An associate is to be appointed under this Act, and not under the *Public Service Act 1996*.’.
- (7) Schedule 2, parts 4 and 5—
- omit.*

55 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, definitions *approved superannuation fund*, *parental leave* and *Training Recognition Council*—
- omit.*
- (2) Schedule 5—

insert—

‘apparent employer, for chapter 11, part 2, division 3A, see section 400A.

approved superannuation fund means a complying superannuation fund nominated in an industrial instrument.

referred employer, for chapter 11, part 2, division 3A, see section 400A.

referred claim, for chapter 11, part 2, division 3A, see section 400A.

Training and Employment Recognition Council means the Training and Employment Recognition Council established under the *Vocational Education, Training and Employment Act 2000*, section 167.

unpaid wages claim, for chapter 11, part 2, division 3A, see section 400A.’.

- (3) Schedule 5, definition *industrial instrument*, after ‘EFA’—

insert—

‘, code of practice under section 400I’.

Part 3 Trading (Allowable Hours) Act 1990 amendments

56 Act amended in this part

This part amends the *Trading (Allowable Hours) Act 1990*.

57 Amendment of s 31B (Industrial commission order amended)

Section 31B—

insert—

- ‘(6A) Subsection (6) does not apply to 26 December or 1 January if that date—

- (a) falls on a Sunday; and
- (b) would have been a public holiday had there not been a substitution under the *Holidays Act 1983*, section 2(2) or (3) or 3.⁶.

Part 4 Workers' Compensation and Rehabilitation Act 2003 amendments

58 Act amended in this part

This part amends the *Workers' Compensation and Rehabilitation Act 2003*.

59 Amendment of s 5 (Workers' compensation scheme)

Section 5(4)—

insert—

'(da) provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury to which this Act or a former Act applies; and'.

60 Amendment of s 285 (Consequence of failure to give information)

Section 285(1), 'the other party'—

omit, insert—

'another party'.

6 *Holidays Act 1983*, section 2 (Public holidays) or 3 (Minister may change public holidays)

61 Replacement of ch 14, pt 1, hdg

Chapter 14, part 1, heading—

omit, insert—

‘Part 1 Access to documents and information’.

62 Amendment of s 572 (Claimant or worker entitled to obtain certain documents)

Section 572(3)—

insert—

‘(d) the document holder suspects on reasonable grounds that the claimant or worker requires the document for a purpose prohibited by section 572A.’.

63 Insertion of new s 572A

After section 572—

insert—

‘572A Access to particular documents for employment purposes prohibited

- ‘(1) A person must not, for a purpose relating to the employment of a worker by the person or another person—
- (a) obtain or attempt to obtain a workers’ compensation document about the worker; or
 - (b) use or attempt to use a workers’ compensation document about the worker.

Maximum penalty—100 penalty units.

- ‘(2) However, subsection (1) does not apply to a workers’ compensation document relating to the worker’s capacity to work if the document is necessary to secure the worker’s rehabilitation or early return to work under chapter 4.’⁷

‘(3) In this section—

employment means any process for selecting a person for employment or for deciding whether the employment of a person is to continue.

worker means a person who is or was a claimant or worker for any provision of this Act or a former Act.

workers’ compensation document, about a worker, means any document relating to the worker’s application for compensation or claim for damages under this Act or a former Act.’.

64 Amendment of s 573 (Disclosure of information)

Section 573, heading—

omit, insert—

‘573 Permissible disclosure of information’.

65 Insertion of new s 585

Chapter 14, part 5, before section 586—

insert—

‘585 Entitlements to compensation under contract of employment prohibited and void

‘(1) A contract of employment can not include a provision for accident pay, or other payment, on account of a worker sustaining an injury.

‘(2) A provision of a contract of employment is of no force or effect to the extent it provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.

‘(3) In this section—

contract of employment means a contract of service or a contract with an individual in the circumstances mentioned in

schedule 2, part 1⁸ but does not include an industrial instrument.⁹.

66 Insertion of new ch 17

After chapter 16—

insert—

‘Chapter 17 Transitional provision for Industrial Relations and Other Acts Amendment Act 2005

‘626 Compensation under contracts of employment

‘(1) Section 585, as inserted by the *Industrial Relations and Other Acts Amendment Act 2005*, applies only to—

- (a) a contract of employment entered into on or after the commencement of this section; or
- (b) for a contract of employment entered into before the commencement of this section—an amendment to the contract of employment made on or after the commencement that inserts into the contract a provision about accident pay, or other payment, on account of a worker sustaining an injury.

‘(2) In this section—

contract of employment see section 585.’.

8 Schedule 2 (Who is a worker in particular circumstances), part 1 (Persons who are workers)

9 For industrial instruments, see section 107D (Entitlements to compensation under industrial instrument generally prohibited and void).



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