



Queensland

# **Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015**

**Act No. 7 of 2015**





Queensland

# Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015

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Queensland

## **Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015**

**Act No. 7 of 2015**

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**An Act to amend the Hospital and Health Boards Act 2011 and the Industrial Relations Act 1999, and to make amendments to the legislation mentioned in schedule 1, for particular purposes**

**[Assented to 11 June 2015]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015*.

## **Part 2 Amendment of Industrial Relations Act 1999**

### **2 Act amended**

This part amends the *Industrial Relations Act 1999*.

*Note—*

See also the amendments in schedule 1.

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

(1) Section 3—

*insert—*

(j) promoting and facilitating the regulation of employment by awards and agreements; and

(2) Section 3(p)—

*omit, insert—*

(o) promoting collective bargaining and establishing the primacy of collective agreements over individual agreements.



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**4 Amendment of s 71CA (Queensland Employment Standards subject to provisions of modern industrial instrument)**

Section 71CA, note 2—

*omit.*

**4A Amendment of s 71KE (Application of sdiv 2)**

Section 71KE(5)—

*omit.*

**5 Replacement of s 71LA (Required or permitted provisions)**

Section 71LA—

*omit, insert—*

**71LA Required or permitted provisions**

- (1) A modern industrial instrument must include the provisions required under—
  - (a) part 2; and
  - (b) for a modern award—division 2, subdivision 2; and
  - (c) for a certified agreement—division 2, subdivision 3.
- (2) A modern industrial instrument may include the provisions permitted under division 3.
- (3) This section is subject to section 71NCA.

**6 Omission of s 71LB (Non-allowable provisions)**

Section 71LB—

*omit.*

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**7 Amendment of s 71LC (Provisions that contravene s 71LA or 71LB of no effect)**

Section 71LC, 'or 71LB'—

*omit.*

**8 Omission of ch 2A, pt 3, div 2, sdiv 1 (Required content—all modern industrial instruments)**

Chapter 2A, part 3, division 2, subdivision 1—

*omit.*

**9 Insertion of new s 71MCA**

Chapter 2A, part 3, division 2, subdivision 2, after section 71MC—

*insert—*

**71MCA Dispute resolution procedure**

A modern award must contain a dispute resolution procedure that provides for—

- (a) consultation at the workplace; and
- (b) the involvement of relevant organisations; and
- (c) any other matter prescribed by regulation.

**10 Amendment of s 71N (General matters)**

Section 71N(1), ' , other than non-allowable provisions,'—

*omit.*

**11 Amendment of s 71NA (Provisions related to Queensland Employment Standards)**

(1) Section 71NA(1), ' , other than a non-allowable provision,'—

*omit.*

(2) Section 71NA(2)—

*omit, insert—*

- (2) However, subsection (1) applies only to the extent the effect of the provision is no less favourable to an employee than the Queensland Employment Standards.

## 12 Amendment of s 71NB (Other incidental provisions)

Section 71NB, ‘, other than non-allowable provisions,’—

*omit.*

## 13 Insertion of new s 71NCA

Chapter 2A, part 3, division 3, subdivision 1, after section 71NC—

*insert—*

### **71NCA Other requirements**

- (1) Despite any other provision of this division, a modern industrial instrument may not include—
- (a) a provision that discriminates against an employee; or
  - (b) a provision that displaces, or is otherwise inconsistent with, a provision of the Queensland Employment Standards.
- (2) For subsection (1)(a), a modern industrial instrument does not discriminate against an employee only because it provides for minimum wages for any of the following—
- (a) all young employees;
  - (b) all employees with a disability;
  - (c) all employees engaged as apprentices or trainees;

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- (d) a class of employees mentioned in paragraph (a), (b), or (c).
- (3) Subsection (1)(b) does not apply to a provision that may be included in the modern industrial instrument under section 71NA.

#### **14 Replacement of s 71ND (General matters)**

Section 71ND—

*omit, insert—*

##### **71ND General matters**

- (1) A modern award may include provisions to provide fair and just employment conditions.
- (2) Without limiting subsection (1), a modern award may include provisions about—
  - (a) minimum wages, including—
    - (i) wage rates for young employees, employees with a disability and employees engaged as apprentices or trainees; and
    - (ii) piece rates; and
  - (b) skill-based classifications and career structures.

#### **15 Amendment of s 71NE (Provisions about employment relationship)**

Section 71NE(1), ‘, other than non-allowable provisions,’—

*omit.*

#### **16 Omission of ch 2A, pt 3, div 4 (Non-allowable content)**

Chapter 2A, part 3, division 4—

*omit.*

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**16A Amendment of s 72 (Employees to whom this chapter does not apply)**

Section 72(1A)—

*omit.*

**17 Amendment of s 140CA (Variation of award modernisation request)**

Section 140CA(3) and (4)—

*omit.*

**18 Amendment of s 140D (Modern awards objectives)**

(1) Section 140D(2)(h)—

*omit.*

(2) Section 140D(3)(a), ‘, (h)’—

*omit.*

(3) Section 140D(5), definitions *financial position considerations* and *public sector entity*—

*omit.*

**18A Amendment of s 142 (Who may make certified agreements)**

Section 142(2)—

*omit.*

**19 Amendment of s 149 (Arbitration if conciliation unsuccessful)**

Section 149(2)(c)—

*omit.*

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**20 Amendment of s 149C (Arbitration powers of full bench)**

Section 149C(2)—

*omit, insert—*

- (2) An arbitration determination by the full bench must include the provisions required to be included in a certified agreement under chapter 2A, part 3, division 2, subdivision 3.

**21 Amendment of s 149D (Issues full bench must consider)**

- (1) Section 149D(2)(e) to (g)—

*omit.*

- (2) Section 149D(3)—

*omit.*

**22 Amendment of s 156 (Certifying an agreement)**

- (1) Section 156(1)(d), ‘subdivisions 1 and’—

*omit, insert—*

subdivision

- (2) Section 156(1AA)—

*omit.*

**23 Amendment of s 158 (Other options open to commission instead of refusing to certify agreement)**

Section 158(4) to (6)—

*omit.*

**23A Amendment of s 164 (When a certified agreement is in operation)**

Section 164(2)(c) and (3)—

*omit.*

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**24 Omission of s 176A (Claims including non-allowable content)**

Section 176A—

*omit.*

**24A Omission of ch 6A (Arrangements for high-income senior employees)**

Chapter 6A—

*omit.*

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

(1) Section 319(2)(b) and (ba)—

*omit, insert—*

(b) for proceedings before the commission, other than proceedings under section 278 or 408F—

(i) the proceedings relate to a matter under chapter 4; or

(ii) all parties consent; or

(iii) the proceedings relate to a matter under chapter 3, or under section 275, 276 or 279, or under chapter 12, part 2 or part 16 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 making 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

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- (2) Section 319(3A)—  
*omit.*
- (3) Section 319(4), '(2)(ba)(ii)'—  
*omit, insert—*  
(2)(b)(iii)

**26 Omission of ch 8, pt 7 (Other matters)**

Chapter 8, part 7—  
*omit.*

**27 Omission of s 370A (Definitions for div 4)**

Section 370A—  
*omit.*

**28 Replacement of s 372 (Right of entry—authorised industrial officer)**

Section 372—  
*omit, insert—*

**372 Right of entry—authorised industrial officer**

- (1) An authorised industrial officer may enter a workplace at which an employer carries on a calling of the officer's organisation, during the employer's business hours, to exercise a power under section 373.
- (2) On entering the workplace, the officer must first—
  - (a) notify the employer or the employer's representative of the officer's presence; and
  - (b) produce the officer's authorisation, if required by the employer or representative.



- (3) The employer must not refuse an authorised industrial officer entry to the workplace if the officer complies with subsection (2).

Maximum penalty—27 penalty units.

- (4) If the officer does not comply with subsection (2), the officer may be treated as a trespasser.
- (5) Subsection (2) does not apply if, on entering the workplace, the officer discovers that neither the employer nor the employer's representative having charge of the workplace is present.

**29 Omission of s 372A (Notice of entry)**

Section 372A—

*omit.*

**30 Omission of s 372B (Employer notice in response to entry notice)**

Section 372B—

*omit.*

**31 Replacement of s 373 (Rights of authorised industrial officer after entering place)**

Section 373—

*omit, insert—*

**373 Right to inspect and request information—authorised industrial officer**

- (1) This section applies to an authorised industrial officer who has entered a workplace under section 372.
- (2) The officer may inspect the time and wages record of—
  - (a) a member employee; or

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- (b) an employee who is eligible to become a member of the officer's organisation.
- (3) The officer may also inspect a record required to be kept under the code made under section 400I.
- (4) The employer—
  - (a) must allow the officer to inspect the record for an employee mentioned in subsection (2)(a) or (b), unless the employee has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and
  - (b) must not allow the officer to inspect the record for an employee who has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and
  - (c) must allow the officer to inspect the record mentioned in subsection (3).

Maximum penalty—27 penalty units.

- (5) The officer may make a copy of the time and wages record or the record mentioned in subsection (3), but can not require any help from the employer.
- (6) A person must not, by threats or intimidation, persuade or attempt to persuade an employee or prospective employee to make, or refuse to make, a written request to the employer or prospective employer that the record not be available for inspection by an authorised industrial officer.

Maximum penalty—27 penalty units.

- (7) If the employer keeps particulars other than those mentioned in section 366 in the record, the

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employer need not make the other particulars available for inspection.

(8) The officer may discuss matters under this Act with the following persons during working or non-working time—

- (a) the employer;
- (b) a member employee, or an employee who is eligible to become a member of the officer's organisation.

(9) The officer may discuss any other matter with a member employee, or an employee who is eligible to become a member of the officer's organisation, during non-working time.

(10) A person must not obstruct the officer exercising a power under subsection (8) or (9).

Maximum penalty—27 penalty units.

(11) The officer must not—

- (a) wilfully obstruct the employer, or an employee during the employee's working time; or
- (b) contravene a requirement of this section.

Maximum penalty—27 penalty units.

(12) A person must not act as an authorised industrial officer under this section, unless the person holds a current authorisation.

Maximum penalty—27 penalty units.

(13) In this section—

*member employee* means—

- (a) an employee who is a member of the authorised industrial officer's organisation; or

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(b) a former employee who was, or is, a member of the officer's organisation.

*time and wages record* means the time and wages record required to be kept under section 366.

**32 Omission of ch 15, pt 2 (Particular provisions of industrial instruments)**

Chapter 15, part 2—

*omit.*

**33 Insertion of new ch 20, pt 20**

Chapter 20—

*insert—*

**Part 20 Transitional provisions  
for Industrial Relations  
(Restoring Fairness)  
and Other Legislation  
Amendment Act 2015**

**Division 1 Preliminary**

**839 Definitions for pt 20**

In this part—

*amended Act* means this Act as amended by the amending Act.

*amending Act* means the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015*.

*pre-amended Act* means this Act as in force immediately before the commencement.

*pre-modernisation award* see section 140B.

*relevant certified agreement* means a certified agreement that is—

- (a) a modern industrial instrument; and
- (b) certified by the commission before the commencement.

*relevant modern award* means a modern award made by the commission before the commencement.

*relevant pre-modernisation award*, in relation to a relevant modern award, means a pre-modernisation award that applied to all or some of the employees to whom the relevant modern award applies.

## **Division 2            Review of relevant modern awards**

### **840 Purpose of div 2**

The purpose of this division is—

- (a) to provide for the review and variation by the commission of modern awards made, under the award modernisation process, before the commencement; and
- (b) to ensure the awards mentioned in paragraph (a) are not inconsistent with the amended Act.

### **841 Commission must review and vary relevant modern award**

- (1) This section applies to a relevant modern award if the Minister gives the commission a variation notice under section 140CA in relation to the award modernisation process.

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- (2) The commission must review the relevant modern award and vary it under this division as soon as practicable after receiving the variation notice.
- (3) For reviewing the relevant modern award under this division—
  - (a) the commission must carry out the review in accordance with section 140CC; and
  - (b) section 140CE and chapter 5A, part 3 do not apply.
- (4) The award modernisation process under which the relevant modern award was made continues for the purpose of enabling the award to be reviewed and varied under this division.

#### **842 Requirements for review of relevant modern award**

- (1) In reviewing a relevant modern award under this division, the commission must vary the award to remove—
  - (a) a provision required to be included by repealed section 71M, 71MA or 71MB; and
  - (b) any provision ancillary to a provision mentioned in paragraph (a).

*Example for paragraph (b)—*

clause 8.2 of the Queensland Public Service Officers and Other Employees Award—State 2014

- (2) Also, the commission must vary the relevant modern award to include a provision that was in a relevant pre-modernisation award about any of the following—
  - (a) union encouragement;
  - (b) union delegates;

- 
- (c) industrial relations education leave or trade union training leave;
  - (d) right of entry;
  - (e) prevention and settlement of disputes, including employee grievance procedures;
  - (f) termination, change and redundancy.
- (3) For subsection (2), the commission may amend the provision for insertion in the relevant modern award as the commission considers appropriate having regard to—
- (a) the desirability of a modern award not duplicating provisions of the Queensland Employment Standards; and
  - (b) the modern awards objectives under section 140D; and
  - (c) in relation to a provision mentioned in subsection (2)(e)—the requirements under section 71MCA.
- (4) In this section—
- provision*, of a relevant pre-modernisation award, includes a provision of the award that was of no effect because of repealed chapter 15, part 2.

### 843 Other variations

- (1) The commission may vary a relevant modern award to provide for a matter contained in a relevant pre-modernisation award.
- (2) For deciding whether to vary the relevant modern award under subsection (1), the commission must have regard to—
  - (a) the provisions permitted to be included in a relevant modern award under section 71ND; and

[s 33]

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- (b) the desirability of a modern award not duplicating provisions of the Queensland Employment Standards; and
- (c) the modern awards objectives under section 140D; and
- (d) a submission made by a party covered by the relevant modern award about the proposed variation.

#### **844 Commission may increase the number of modern awards**

- (1) This section applies if the making of the relevant modern award resulted in a significant reduction in the number of awards covering an industry or occupation.
- (2) Before reviewing and varying the relevant modern award under this division, the commission must consider whether to increase the number of modern awards covering the industry or occupation.
- (3) The commission must consider a submission made by a party covered by the relevant modern award about whether to increase the number of modern awards covering the industry or occupation.
- (4) If the commission decides to increase the number of modern awards covering the industry or occupation, the commission must—
  - (a) vary the relevant modern award to reduce its coverage; and
  - (b) make 1 or more additional modern awards covering the employees excluded from coverage of the relevant modern award under paragraph (a).



- 
- (5) An additional modern award made under subsection (4)(b) is, for the purposes of this division, taken to be a relevant modern award.

#### **844A Review and variation of resident medical officers' award**

- (1) This section applies for the review and variation of the relevant modern award called 'Resident Medical Officers (Queensland Health) Award - State 2014' (the *RMO award*).
- (2) A pre-modernisation health award is, to the extent it covered senior medical officers, taken to be a relevant pre-modernisation award for the RMO award.
- (3) The varied RMO award does not apply to a senior medical officer until an agreement is certified, or an arbitration determination is made, under chapter 6 that covers the senior medical officer.
- (4) In this section—

*pre-modernisation health award* means—

- (a) the 'District Health Services - Senior Medical Officers and Resident Medical Officers' Award - State 2012'; or
- (b) the 'Medical Superintendents with Right of Private Practice and Medical Officers with Right of Private Practice - Queensland Public Hospitals, Award - State 2012'.

*senior medical officer* means a senior health service employee within the meaning of the *Hospital and Health Boards Act 2011* who is employed in a position at a classification level mentioned in the *Hospital and Health Boards Regulation 2012*, schedule 1A, part 1.

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### **845 When variation of relevant modern award comes into operation**

A variation of the relevant modern award made under this division comes into operation on the day the commission makes a determination varying the award.

### **846 Application of variation of relevant modern award**

- (1) A variation of a relevant modern award made under this division applies to an employee who is a party covered by the award if—
  - (a) the variation is in operation; and
  - (b) one of the following applies—
    - (i) the employee is covered by a certified agreement that is certified after the variation comes into operation;
    - (ii) the employee is covered by a determination that is made after the variation comes into operation;
    - (iii) if the employee is not covered by a certified agreement on the day the variation comes into operation—the day the variation comes into operation or, if the commission states a later day in the determination varying the award, the stated day.
- (2) Subsection (3) applies to an employee who was covered by a relevant certified agreement immediately before the commencement.
- (3) To remove any doubt, it is declared that the pre-variation modern award continues to apply to the employee until the variation of the relevant modern award starts applying to the employee under subsection (1).

*Note for subsections (1) to (3)—*

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For an employee who was not covered by a relevant certified agreement before the commencement, other than an employee mentioned in subsection (1)(b)(iii), see section 824.

(4) In this section—

*pre-variation modern award* means the relevant modern award as it read immediately before the commencement.

### **Division 3            Provisions for certified agreements**

#### **847 Change of nominal expiry date for relevant certified agreement**

- (1) This section applies if—
- (a) each prescribed modern award for a relevant certified agreement has been reviewed and varied under division 2; and
  - (b) the nominal expiry date for the relevant certified agreement is more than 3 months after the variation day.
- (2) On the variation day, the nominal expiry date for the relevant certified agreement is taken to be the earlier of—
- (a) the day that is 3 months after the variation day; or
  - (b) if an earlier day is prescribed for the expiry by regulation, the prescribed day.

*Note—*

See section 164(2)(a) in relation to the continued operation of the relevant certified agreement after its nominal expiry date.

(3) On the variation day—

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- (a) the requirements under section 143 for a proposed agreement are taken to have been satisfied; and
  - (b) the parties to the relevant certified agreement are taken to have begun negotiations for a proposed agreement.
- (4) For subsection (3)(a), the proposed parties to the proposed agreement are—
- (a) each party to the relevant certified agreement; and
  - (b) an employee organisation that could have been bound by the relevant certified agreement under section 166(2).

- (5) In this section—

***prescribed modern award***, for a relevant certified agreement, means a relevant modern award, or a modern award made under section 844, that applies to all or some of the parties covered by the relevant certified agreement.

***variation day*** means—

- (a) if there is 1 prescribed modern award for the relevant certified agreement—the day the commission makes a determination under division 2 varying the prescribed modern award; or
- (b) if there is more than 1 prescribed modern award for the relevant certified agreement—the day the commission makes a determination under division 2 varying the last of the prescribed modern awards for the relevant certified agreement.

### **848 No extension of relevant certified agreement**

Section 168 does not apply to a relevant certified agreement.

### **849 Regulation may vary relevant certified agreement**

- (1) A regulation may vary a relevant certified agreement in the way stated in the regulation.
- (2) The variation takes effect from the day the regulation commences or, if the regulation states a later day, the later day.
- (3) This section applies subject to chapter 2A, part 3, of the amended Act.

### **850 Restriction on certification of agreements or determination of arbitration**

- (1) This section applies if—
  - (a) a relevant modern award has not been reviewed and varied by the commission under division 2; and
  - (b) after the commencement, an agreement is proposed under chapter 6 that would cover all or some of the parties covered by the relevant modern award.
- (2) The commission—
  - (a) must refuse to certify the proposed agreement; and
  - (b) may not make an arbitration determination under section 150.
- (3) This section is taken to have had effect on and from the day of introduction into the Legislative Assembly of the Bill for the amending Act.

## **Division 4            Other matters about                                  industrial instruments**

### **851 What happens to incomplete award modernisation process**

- (1) This section applies if, before the commencement, an award modernisation process was started under section 140C.
- (2) If the commission had started to modernise a pre-modernisation award before the commencement but no modern award was made—
  - (a) the commission must continue to modernise the pre-modernisation award under the amended Act; and
  - (b) any reference of the matter to the full bench ends on the commencement.
- (3) If the commission had not started to modernise a pre-modernisation award before the commencement, the modernisation process must be conducted under the amended Act.
- (4) For this section, the process for modernising a pre-modernisation award starts when the commission releases an exposure draft of the proposed modern award.

### **852 Continuation of existing individual flexibility arrangements**

- (1) This section applies to an individual flexibility arrangement entered into under an industrial instrument before the commencement.
- (2) The individual flexibility arrangement continues to operate despite the repeal of section 71MB.

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**853 Application of s 831 for completion of arbitration or certification of agreement**

- (1) This section applies to a matter to which section 831 applies.
- (2) For making an arbitration determination for the matter—
  - (a) the determination may include a provision mentioned in repealed chapter 15, part 2; and
  - (b) section 149D of the amended Act applies.
- (3) If the employer and 1 or more parties reach agreement on the terms of a proposed certified agreement, the agreement may include a provision mentioned in repealed chapter 15, part 2.
- (4) This section applies despite section 831(3).

**854 Certification of agreement or making of determination if proceeding started before commencement**

- (1) This section applies if—
  - (a) before the commencement—
    - (i) an agreement was proposed under chapter 6 of the pre-amended Act; and
    - (ii) the agreement was not certified by the commission; and
    - (iii) no arbitration determination was made; and
  - (b) each prescribed modern award for the proposed agreement has been reviewed and varied by the commission under division 2.

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- (2) The amended Act applies for the certification of the agreement or the making of an arbitration determination under section 150.
- (3) In this section—  
*prescribed modern award*, for a proposed agreement, means a relevant modern award, or a modern award made under section 844, that applies to all or some of the parties who would be covered by the proposed agreement.

#### **854A Effect of repeal of ch 6A on high-income guarantee contract**

- (1) This section applies if, immediately before the commencement, an employee was engaged under a high-income guarantee contract (a *continuing contract*).
- (2) From the commencement, the continuing contract continues in effect despite the repeal of chapter 6A.
- (3) The repeal of chapter 6A does not—
  - (a) constitute a termination of the employee's employment; or
  - (b) entitle the employee to a payment of money or other compensation.
- (4) In this section—  
*high-income guarantee contract* has the meaning given under the pre-amended Act.



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## Division 5      Other provisions

### 855 Application of amended s 319

- (1) Section 319 as amended by the amending Act applies to all proceedings before the commission started on or after the commencement.
- (2) For subsection (1), an arbitration under section 149 starts when the requirements under section 149(1) are first satisfied.

### 856 Effect of repeal of ch 15, pt 2

- (1) This section applies if—
  - (a) before the commencement, all or part of a provision of a relevant industrial instrument was of no effect because of the operation of repealed chapter 15, part 2; and
  - (b) on the commencement, the instrument is still in force.
- (2) On the commencement, the provision, or part of the provision, takes effect.
- (3) In this section—

*relevant industrial instrument* has the meaning given under repealed section 691A.

### 857 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the pre-amended Act to the operation of the amended Act; and

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- (b) this Act does not make provision or sufficient provision.
- (2) Without limiting subsection (1), a transitional regulation may continue the operation of a provision of the pre-amended Act that was omitted by the amending Act.
- (3) A transitional regulation may have retrospective operation to a day that is not earlier than the day of the commencement.
- (4) A transitional regulation must declare it is a transitional regulation.
- (5) This section and any transitional regulation expire 2 years after the day of commencement.

**34 Amendment of sch 4 (Provisions for protected action ballots)**

- (1) Schedule 4, section 8(1)(d)—  
*omit.*
- (2) Schedule 4, section 12A—  
*omit.*

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

- (1) Schedule 5, definitions *employee*, *employer notice*, *entry notice*, *excluded provisions*, *high-income guarantee contract*, *high-income position*, *high-income senior employee*, *high-income threshold*, *industrial instrument*, *non-allowable provisions*, *relevant industrial instrument* and *TCR provision*—  
*omit.*
- (2) Schedule 5—  
*insert—*

*employee*, generally, see section 5.

*industrial instrument* means an award, certified agreement, industrial agreement, EFA, code of practice under section 400I or order under chapter 5, parts 5 and 6.

*relevant industrial instrument*, for chapter 2A, see section 71BA.

- (3) Schedule 5, definition *remuneration*, paragraph (b)—  
*omit.*
- (4) Schedule 5, definition *remuneration*, paragraph (c)—  
*renumber* as paragraph (b).

## Part 3 Other amendments

### Division 1 Amendment of Hospital and Health Boards Act 2011

#### 35A Act amended

This division amends the *Hospital and Health Boards Act 2011*.

*Note—*

See also the amendments in schedule 1.

#### 35B Amendment of s 20 (Powers of Services)

Section 20(3), ‘contracted’—  
*omit.*

#### 35C Amendment of s 51A (Health employment directives)

- (1) Section 51A(2)(c), ‘contracted’—

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*omit.*

(2) Section 51A(2)(d)—

*omit.*

(3) Section 51A(2)(e)—

*renumber* as section 51A(2)(d).

### **35D Amendment of s 51C (Relationship between health employment directives and other instruments)**

(1) Section 51C(1)—

*omit, insert—*

(1) If a health employment directive is inconsistent with an industrial instrument, the industrial instrument prevails to the extent of the inconsistency.

(1A) Subsection (1) does not apply if the terms and conditions of employment provided for in the health employment directive are more favourable to the employee than the terms and conditions of employment provided for in the industrial instrument.

(2) Section 51C(3), 'high-income guarantee contract', first mention—

*omit, insert—*

contract entered into with a senior health service employee

(3) Section 51C(3), 'high-income guarantee contract', second mention—

*omit, insert—*

contract

(4) Section 51C(4), 'high-income guarantee contract'—

*omit, insert—*

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contract entered into with a senior health service employee

- (5) Section 51C(6), definition *remuneration*—  
*omit.*

**35E Amendment of s 66 (Conditions of employment)**

Section 66(3)(f), ‘if the employee is a contracted senior health service employee—’—

*omit.*

**35F Amendment of s 67 (Appointment of health service employees)**

Section 67(2), ‘contracted’—

*omit.*

**35G Omission of s 69B (Relationship of high-income guarantee contract with legislation)**

Section 69B—

*omit.*

**35H Amendment of s 74A (Meaning of *senior health service employee*)**

- (1) Section 74A(1), from ‘position —’—

*omit, insert—*

position prescribed by regulation as a senior health service employee position.

- (2) Section 74A(3)—

*omit.*

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**35I Amendment of s 74B (Terms of contract for contracted senior health service employees)**

(1) Section 74B, heading—

*omit, insert—*

**74B Basis of employment for senior health service employees**

(2) Section 74B(1), ‘contracted’—

*omit.*

**35J Amendment of s 75 (Exclusion of certain matters from review under other Acts)**

Section 75(4), definition *excluded matter*, ‘or a senior health service employee’—

*omit.*

**35K Omission of s 80AA (High-income senior employees to be employed by Services)**

Section 80AA—

*omit.*

**35L Amendment of s 80C (Matters and proceedings not affected by persons becoming contracted senior health service employees in Service)**

Section 80C, ‘contracted’—

*omit.*

**35M Insertion of new pt 13, div 6**

Part 13—

*insert—*

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**Division 6**      **Transitional provisions for  
Industrial Relations  
(Restoring Fairness) and  
Other Legislation  
Amendment Act 2015**

**323 Definitions for div 6**

In this division—

*amending Act* means the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015*.

*commission* means the Queensland Industrial Relations Commission.

*interim SMO contract* means—

- (a) a continuing contract within the meaning of the *Industrial Relations Act 1999*, section 854A(1), under which a senior medical officer is engaged; or
- (b) a contract entered into with a senior medical officer—
  - (i) on or after the commencement; and
  - (ii) before an agreement is certified, or an arbitration determination is made, under the *Industrial Relations Act 1999*, chapter 6 that covers all senior medical officers.

*pre-modernisation health agreement* means the ‘Medical Officers’ (Queensland Health) Certified Agreement (No. 3) 2012’.

*pre-modernisation health award* means—

- (a) the ‘District Health Services - Senior Medical Officers and Resident Medical Officers’ Award - State 2012’; or

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- (b) the ‘Medical Superintendents with Right of Private Practice and Medical Officers with Right of Private Practice - Queensland Public Hospitals, Award - State 2012’.

***pre-modernisation health instruments*** means each of the following—

- (a) a pre-modernisation health award;  
(b) the pre-modernisation health agreement.

***senior medical officer*** means a senior health service employee employed in a position at a classification level mentioned in the *Hospital and Health Boards Regulation 2012*, schedule 1A, part 1.

### **324 Pre-modernisation industrial instruments**

- (1) Despite the repeal of the *Industrial Relations Act 1999*, chapter 6A by the amending Act, a pre-modernisation industrial instrument does not apply to a senior medical officer from the commencement.
- (2) Subsection (1) applies subject to section 326.
- (3) On reaching its nominal expiry date, the pre-modernisation health agreement does not become a continuing agreement under the *Industrial Relations Act 1999*, section 827(2).
- (4) In this section—

***pre-modernisation industrial instrument*** see the *Industrial Relations Act 1999*, schedule 5.

### **325 Making of order by commission to apply pre-modernisation health instruments to senior medical officers**

- (1) This section starts applying on 1 August 2015.



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- (2) Subject to subsection (4), a person mentioned in subsection (3) may apply to the commission for an order to apply the pre-modernisation health instruments to senior medical officers.
  - (3) The application may be made by—
    - (a) the chief executive; or
    - (b) an employee organisation, within the meaning of the *Industrial Relations Act 1999*, that is a party to the pre-modernisation health agreement.
  - (4) An application may not be made under subsection (2) if section 327 has started applying to all senior medical officers.
  - (5) If an application is made under subsection (2), the commission must make an order declaring that the pre-modernisation health instruments apply to senior medical officers.
  - (6) However, subsection (5) does not apply if the applicant withdraws the application before the order is made.

### **326 Effect of pre-modernisation instrument order**

- (1) This section applies if the commission makes an order under section 325(5).
- (2) From the start of a senior medical officer's first full pay period that starts on or after the day the order is made—
  - (a) subject to subsection (3) and section 327(3), the pre-modernisation health instruments apply to the senior medical officer; and
  - (b) the senior medical officer's interim SMO contract is terminated, other than to the extent it provides for the senior medical

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officer's private practice and employment details.

*Note—*

While the pre-modernisation health instruments apply to the senior medical officer, the employment conditions under the *Industrial Relations Act 1999*, chapter 2 apply to the officer—see sections 8AA and 71B of that Act.

- (3) Clause 4.11 of the pre-modernisation health agreement does not apply to the senior medical officer despite the making of the order.

*Note—*

Clause 4.11 of the pre-modernisation health agreement is about private practice arrangements.

- (4) The operation of subsection (2) does not—
- (a) constitute a termination of the senior medical officer's employment; or
  - (b) entitle the senior medical officer to a payment of money or other compensation.

- (5) In this section—

***employment details***, in relation to an interim SMO contract, means a matter provided for under schedule 2, items 1 to 8 (other than item 8a) of the contract.

### **327 Making of new certified agreement or determination**

- (1) This section applies to a senior medical officer if, after the commencement, a new agreement is certified, or an arbitration determination is made, under the *Industrial Relations Act 1999*, chapter 6 that covers the senior medical officer.
- (2) If immediately before the relevant day the pre-modernisation health instruments do not apply to the senior medical officer under section

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326, the senior medical officer's interim SMO contract is terminated on the relevant day.

- (3) If immediately before the relevant day the pre-modernisation health instruments apply to the senior medical officer under section 326, on the relevant day—
  - (a) the senior medical officer's interim SMO contract is terminated to the extent it provided for a matter mentioned in section 326(2)(b); and
  - (b) the pre-modernisation health instruments stop applying to the senior medical officer.
- (4) The operation of subsection (2) or (3) does not—
  - (a) constitute a termination of the senior medical officer's employment; or
  - (b) entitle the senior medical officer to a payment of money or other compensation.
- (5) In this section—

*relevant day* means the day the agreement mentioned in subsection (1) is certified, or the arbitration determination mentioned in subsection (1) is made, as the case may be.

### **328 Application of amended s 75**

Section 75 as amended by the amending Act applies to a decision made, or a matter otherwise arising, on or after the commencement.

### **329 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for which—

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- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the pre-amended Act to the operation of the amended Act; and
  - (b) this Act does not make provision or sufficient provision.
- (2) Without limiting subsection (1)—
- (a) a transitional regulation may do anything necessary to facilitate the operation of section 326 or 327 of the amended Act; and
  - (b) a transitional regulation may continue the operation of a repealed provision.
- (3) A transitional regulation may have retrospective operation to a day that is not earlier than the day of the commencement.
- (4) A transitional regulation must declare it is a transitional regulation.
- (5) This section and any transitional regulation expire 2 years after the day of the commencement.
- (6) In this section—

*amended Act* means this Act as amended by the amending Act.

*pre-amended Act* means this Act as it was in force immediately before the commencement.

### **35N Amendment of sch 2 (Dictionary)**

Schedule 2, definitions *contracted senior health service employee* and *high-income guarantee contract*—  
*omit.*

## **Division 2                      Minor or technical amendments**

### **36      Legislation amended**

Schedule 1 amends the legislation mentioned in it.

## **Schedule 1      Minor or technical amendments**

section 36

### **Hospital and Health Boards Act 2011**

- 1      Section 80(1), ‘, other than a person to whom section 80AA applies’—**

*omit.*

- 2      Section 80B(1)(a), ‘or 80AA’—**

*omit.*

### **Hospital and Health Boards Regulation 2012**

- 1      Schedule 5A, section 13, ‘contracted’—**

*omit.*

### **Industrial Relations Act 1999**

- 1      Section 89(2)—**

*omit.*

- 1A     Section 135(1), note—**

*omit.*

- 2 Section 140CE(1)(b), after ‘relates’—**  
*insert—*  
on a stated day determined by the commission, having regard to section 824
- 2A Section 140ED(1), note—**  
*omit.*
- 2B Section 147A(5)(b), note, ‘142(1)(b) and (2)’—**  
*omit, insert—*  
142(b)
- 3 Section 176(3A)—**  
*omit.*
- 4 Chapter 15, part 1, heading—**  
*omit.*

## **Industrial Relations Regulation 2011**

- 1 Sections 7A to 7C—**  
*omit.*
- 1A Part 4A—**  
*omit.*
- 2 Schedule 1AA—**  
*omit.*

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