

Queensland



INDUSTRIAL RELATIONS AMENDMENT BILL 1994



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MINOR OR CONSEQUENTIAL AMENDMENTS

1994

A BILL

FOR

An Act to amend the Industrial Relations Act 1990

The Parliament of Queensland enacts—

1

Short title

2

1. This Act may be cited as the *Industrial Relations Amendment Act 1994*.

3

4

Amended Act

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2. This Act amends the *Industrial Relations Act 1990*.

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Amendment of s 75 (Power of Industrial Magistrate concerning unpaid superannuation contribution)

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8

3.(1) Section 75(2) and (3)—

9

omit, insert—

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‘(2) The order must require the amount to be paid to—

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(a) if the employee is employed by the employer—an approved occupational superannuation fund relevant to the employee’s employment; or

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14

(b) if the employee is no longer employed by the employer—

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(i) an approved occupational superannuation fund relevant to the employee’s employment with that employer; or

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17

(ii) a complying superannuation fund; or

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(iii) a superannuation fund nominated by the employee; or

19

(iv) an eligible rollover fund; or

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(v) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee.’.

21

22

23

(2) Section 75(4), ‘under subsection (3)’—

24

omit.

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Industrial Relations Amendment

(3) Section 75(4) and (5)—	1
<i>renumber</i> as section 75(3) and (4).	2
Amendment of s 120 (Appeals to Industrial Commission)	3
4.(1) Section 120(7)—	4
<i>renumber</i> as section 120(8).	5
(2) Section 120—	6
<i>insert</i> —	7
‘(7) A person aggrieved by a decision of the Industrial Registrar under section 344 or 346 may appeal against the decision to a Full Bench of the Industrial Commission on a ground other than error of law or excess, or want, of jurisdiction.’.	8 9 10 11
Replacement of ss 122 and 123	12
5. Sections 122 and 123—	13
<i>omit, insert</i> —	14
‘Decisions on appeal that are final	15
‘122. A decision of a Full Bench of the Industrial Commission on the following appeals is final—	16 17
(a) an appeal against a decision of a single Industrial Commissioner;	18
(b) an appeal against a decision of the Industrial Registrar under section 344 or 346.	19 20
‘Appeals to both Court and Commission	21
‘123.(1) A person who wants to appeal against a decision of the Industrial Commission constituted by a single Commissioner, or a decision of the Industrial Registrar under section 344 or 346, may appeal both to—	22 23 24
(a) the Industrial Court; and	25
(b) a Full Bench of the Commission.	26
‘(2) The person must file 2 separate appeals setting out—	27

Industrial Relations Amendment

(a) for the appeal to the Industrial Court—only the grounds mentioned in section 118(2); and	1 2
(b) for the appeal to a Full Bench—	3
(i) if the appeal is against a decision of a single Commissioner—only the grounds mentioned in section 120(1); or	4 5 6
(ii) if the appeal is against a decision of the Industrial Registrar—only the grounds mentioned in section 120(7).	7 8
‘(3) The President must decide the order in which the appeals are to be heard.	9 10
‘(4) In this section—	11
“ appeal against decision ” includes application for a prerogative order in relation to a decision.’.	12 13
Replacement of s 228 (Preference)	14
6. Section 228—	15
omit, insert—	16
‘ Preference	17
‘ 228.(1) If in proceedings in the Industrial Commission, it is agreed by the parties or is considered by the Commission to be advisable, that preference should be granted, either generally or to a particular industrial organisation of employees, a member of a particular industrial organisation of employees or a person who has applied to become a member of a particular industrial organisation of employees, the preference is to be granted.	18 19 20 21 22 23 24
‘(2) Preference is granted subject to—	25
(a) the condition that an employer is not required to give preference to a member, or a person who has applied to become a member, of an industrial organisation of employees over a person for whom there is in force a certificate under section 388 (Conscientious objection to membership of industrial organisation); and	26 27 28 29 30 31
(b) any other conditions the Commission considers appropriate.	32

Industrial Relations Amendment

‘(3) Preference may be granted for particular matters, including the following matters—	1 2
(a) engagement in employment;	3
(b) promotion;	4
(c) regrading;	5
(d) transfer;	6
(e) retention in employment;	7
(f) taking annual leave;	8
(g) overtime;	9
(h) vocational training.	10
‘(4) Preference may be granted in the way the Commission considers appropriate.’.	11 12
Amendment of s 290 (Exclusion of employees from Division)	13
7.(1) Section 290(1)(a) and (2)(a)—	14
omit, insert—	15
‘(a) a casual employee; or’.	16
(2) Section 290(3)—	17
omit, insert—	18
‘(3) Subdivision 3 (Remedies for unlawful dismissal) applies to casual employees other than casual employees excluded by regulation.	19 20
‘(4) The regulations may exclude particular employees from the operation of particular provisions of this Division.’.	21 22
Insertion of new s 296A	23
8. After section 296—	24
insert—	25

‘Onus of proof (s 170EDA Cwlth)

‘296A.(1) This section applies to an application that alleges an employer dismissed an employee in contravention of section 291(1)(b) (which deals with dismissal without valid reason).

‘(2) The onus is on the employer to prove the employee was dismissed for a reason mentioned in section 291(1)(b).

‘(3) If the employer does so—

- (a) for an application that alleges the reason was not valid under section 291(2)(a) because the dismissal was harsh, unjust or unreasonable—the employee must prove the reason was not valid; or
- (b) for an application that alleges the reason was not valid under section 291(2)(b)—the employer must prove the reason was valid.’.

Amendment of s 297 (Orders for unlawful dismissal other than under s 175EC)

9.(1) Section 297(3)—

renumber as section 297(5).

(2) Section 297(2)—

omit, insert—

‘(2) If the Commission is satisfied an employer contravened this Division when dismissing an employee (other than a contravention of section 293 or 307¹), it may order—

- (a) the employee be reinstated, on conditions no less favourable than those on which the employee was employed immediately before dismissal, by the employer by—
 - (i) reappointing the employee to the position in which the employee was employed immediately before dismissal; or

¹ Section 293 deals with the notice or compensation required to be given to an employee who is being dismissed. Section 307 deals with the notice required to be given by an employer to the CES when dismissing 15 or more employees.

Industrial Relations Amendment

(ii) appointing the employee to another position; or	1
(b) if the Commission considers reinstatement would be impracticable—the employer pay the employee an amount of compensation decided by the Commission.	2 3 4
‘(3) If the Commission makes an order under subsection (2)(a), it may also—	5 6
(a) make any order it considers necessary to maintain the continuity of the employee’s employment; and	7 8
(b) order the employer to pay the employee the remuneration lost by the employee because of the dismissal, after taking into account any employment benefits or wages received by the employee since the dismissal; and	9 10 11 12
(c) order the employee to repay any amount paid to the employee by or for the employer on the dismissal.	13 14
‘(4) Under subsection (2)(b), the amount of compensation must not be greater than the remuneration the employer would have been liable to pay the employee for the 6 months immediately following the dismissal, paid at the rate the employee received immediately before the dismissal.’.	15 16 17 18
Amendment of s 344 (Model rules, adoption by industrial organisations)	19 20
10.(1) Section 344(1) and (2)—	21
<i>omit, insert—</i>	22
‘ 344.(1) The Minister may make rules (“ model rules ”) that accord with this Part as model rules for industrial organisations.	23 24
‘(2) The model rules are subordinate legislation.’.	25
(2) Section 344(9) and (10)—	26
<i>omit, insert—</i>	27
‘(9) If—	28
(a) an industrial organisation complies with subsection (6); but	29
(b) the rules are not approved by the Industrial Registrar as conforming with this Division’s requirements;	30 31

the Registrar must require the organisation to file with the Registrar, in a specified time, a complete set of its rules altered to conform with this Division's requirements.

‘(10) If—

- (a) the organisation does not lodge a complete set of its rules in the specified time; or
- (b) the organisation lodges a complete set of rules in the specified time but the Industrial Registrar still refuses to approve the rules as conforming with this Division's requirements;

the model rules become the organisation's rules for the matters to which they relate.

‘(11) The model rules replace any existing rules for those matters—

- (a) if the rules are not lodged in the specified time—at the end of the specified time; or
- (b) if the rules are lodged in the specified time but the Industrial Registrar still refuses to approve the rules—on the refusal.’.

Replacement of s 346 (Approval and registration of rules)

11. Section 346—

omit, insert—

‘Approval and registration of rules and alterations

‘**346.(1)** The Industrial Registrar must submit the rules of an association seeking registration as an industrial organisation to the Commission for approval.

‘**(2)** The Commission must approve the rules if satisfied they are not contrary to this Act or to law.

‘**(3)** The Industrial Registrar may approve a proposed alteration of rules of an industrial organisation other than—

- (a) an alteration consisting of the adoption without change of model rules mentioned in section 344; or
- (b) an alteration ordered, directed or decided and prepared by—

Industrial Relations Amendment

(i) the Industrial Court; or	1
(ii) the Industrial Commission; or	2
(iii) an Industrial Commissioner; or	3
(iv) the Industrial Registrar.	4
‘(4) The Industrial Registrar must approve a proposed alteration if satisfied it—	5
	6
(a) is not contrary to this Act or to law; and	7
(b) is made in accordance with the rules of the industrial organisation concerned.	8
	9
‘(5) The Industrial Registrar must register all rules and alterations of rules.	10
	11
‘(6) The rules of an association seeking registration as an industrial organisation take effect when registered.	12
	13
‘(7) The alteration of rules takes effect—	14
(a) for an alteration mentioned in subsection (3)(a)—from the time mentioned in section 344; or	15
	16
(b) for an alteration mentioned in subsection (3)(b)—from the day of the order, direction or decision; or	17
	18
(c) otherwise—when registered.’.	19
Amendment of s 492 (Payment of employee’s wages etc. to Industrial Inspector)	20
	21
12.(1) Section 492(2), ‘to the inspector’—	22
<i>omit.</i>	23
(2) Section 492(6), ‘subsection (5)’—	24
<i>omit, insert—</i>	25
‘subsection (6)’.	26
(3) Section 492(3) to (6)—	27
<i>renumber</i> as section 492(4) to (7).	28
(4) Section 492—	29

Industrial Relations Amendment

<i>insert—</i>	1
‘(3) The payment must be made—	2
(a) under subsection (2)(a)—to the inspector; or	3
(b) under subsection (2)(b)—	4
(i) into a complying superannuation fund in the time specified	5
by the inspector; or	6
(ii) if not paid into a complying superannuation fund in the	7
specified time—to the inspector.’.	8

Amendment of s 493 (Industrial Inspector’s obligations for moneys paid on demand)	9
	10

13.(1) Section 493(4), ‘Subject to subsections (5) and (6), an’—	11
<i>omit, insert—</i>	12
‘An’.	13
(2) Section 493(4)(a)(iii) and(iv)—	14
<i>omit, insert—</i>	15
‘(iii) if the employee is employed by the employer—an approved	16
occupational superannuation fund relevant to the employee’s	17
employment; or	18
(iv) if the employee is no longer employed by the employer—	19
(A) an approved occupational superannuation fund relevant	20
to the employee’s employment with that employer; or	21
(B) a complying superannuation fund; or	22
(C) a superannuation fund nominated by the employee; or	23
(D) an eligible rollover fund; or	24
(E) if the amount is less than the amount of total benefits	25
that may revert to an employee under the	26
<i>Superannuation Industry (Supervision) Act 1993</i>	27
(Cwlth)—the employee;’.	28
(3) Section 493(5), from ‘to the credit’ to ‘the employee’—	29

Industrial Relations Amendment

<i>omit.</i>	1
(4) Section 493(6) to (8)—	2
<i>omit, insert—</i>	3
(6) The department must account for the money given to it by an Industrial Inspector in the way specified under subsection (4).’	4 5
(5) Section 493(9), ‘under subsection (7)’—	6
<i>omit.</i>	7
(6) Section 493(9)—	8
<i>renumber</i> as section 493(7).	9
	10

SCHEDULE	1
MINOR OR CONSEQUENTIAL AMENDMENTS	2
section 2	3
1. Section 5(1), definitions “Chief Industrial Inspector”, “industrial cause” or “cause”, “Industrial Commissioner” or “Commissioner”, “Industrial Inspector” and “Industrial Registrar”—	4
<i>omit.</i>	5
	6
	7
2. Section 5(1)—	8
<i>insert—</i>	9
‘ “approved occupational superannuation fund” means a complying	10
superannuation fund nominated in an award, industrial agreement,	11
certified agreement or enterprise flexibility agreement.	12
“cause” means an industrial cause, and includes an industrial matter and	13
industrial dispute.	14
“Commissioner” means the Chief Industrial Commissioner or an	15
Industrial Commissioner.	16
“complying superannuation fund” has the meaning given under the	17
<i>Superannuation Industry (Supervision) Act 1993</i> (Cwlth).	18
“eligible rollover fund” has the meaning given under the <i>Superannuation</i>	19
<i>Industry (Supervision) Act 1993</i> (Cwlth).	20
“Industrial Commissioner” includes the Chief Industrial Commissioner.	21
“Industrial Inspector” includes the Chief Industrial Inspector.’.	22
3. Section 5(1), definition “decision”, after ‘any variation’—	23
<i>insert—</i>	24
‘or extension’.	25

SCHEDULE (continued)

4. Section 5(2) and (3)—	1
<i>omit, insert—</i>	2
‘References to offices in industrial organisations etc.	3
‘5A. A reference in this Act to an office in an industrial organisation or association of persons includes a reference to an office in a branch of the industrial organisation or association.	4 5 6
‘References to making false or misleading statements	7
‘5B. A reference in this Act to a person making a statement knowing that it is false or misleading in a material particular includes a reference to the person making the statement being reckless about whether the statement is false or misleading in a material particular.	8 9 10 11
‘References to engaging in conduct	12
‘5C. A reference in this Act to engaging in conduct includes a reference to being, directly or indirectly, a party to or concerned in the conduct.’.	13 14
5. Section 12(1)(d), ‘means of prerogative writ’—	15
<i>omit, insert—</i>	16
‘way of prerogative order’.	17
6. Section 13(2)(b)—	18
<i>omit, insert—</i>	19
‘(b) a prerogative order or injunction cannot be made or granted about a proceeding in the Court within its jurisdiction.’.	20 21
7. Section 118(2), after ‘single Commissioner’—	22
<i>insert—</i>	23
‘or a decision of the Industrial Registrar under section 344 or 346’.	24

SCHEDULE (continued)

8. Section 118(4)—	1
<i>omit.</i>	2
9. Section 118(5)(b)(iii), from ‘, Industrial Registrar’ to ‘Barrister,’—	3
<i>omit, insert—</i>	4
‘or Industrial Registrar’.	5
10. Section 118(5)—	6
<i>renumber</i> as section 118(4).	7
11. In Part 9—	8
<i>insert—</i>	9
‘Transitional appeals	10
‘126A.(1) Part 9, as it existed immediately before the commencement of	11
the <i>Industrial Relations Amendment Act 1994</i> , applies to appeals filed under	12
section 118 or 120 before the commencement.	13
‘(2) This section expires 6 months after it commences.’.	14
12. Section 161(2)(a), ‘2 and 3 and’—	15
<i>omit, insert—</i>	16
‘4 or 5 or’.	17
13. Section 181(1)(a), ‘2 or 3’—	18
<i>omit, insert—</i>	19
‘4 or 5’.	20

SCHEDULE (continued)

14. Section 217—	1
<i>insert—</i>	2
‘(2) However, subsection (1) does not prevent the inclusion in an	3
agreement of a provision allowing an employer to give preference of a type	4
mentioned in section 228.’	5
15. Section 235, ‘in advance’—	6
<i>omit.</i>	7
16. Section 235—	8
<i>insert—</i>	9
‘(2) The leave must be paid in advance.’	10
17. Section 241(1)(c)(iv)(A), ‘or a certified agreement’—	11
<i>omit, insert—</i>	12
‘, a certified agreement or an enterprise flexibility agreement’.	13
18. Section 251(1)—	14
<i>insert—</i>	15
‘ “ meat works ” means a place where livestock are slaughtered or meat is	16
boned.’	17
19. Section 329(2)(e)—	18
<i>omit, insert—</i>	19
‘(e) the association’s rules make provision required by this Act to be	20
made by the rules of an industrial organisation and the	21
Commission has approved the rules under section 346;’	22

SCHEDULE (continued)

20. Section 330(3), ‘years’—	1
<i>omit, insert—</i>	2
‘year’.	3
 21. In Part 14, Division 3—	4
<i>insert—</i>	5
‘Transitional rules	6
‘347A.(1) This Act, as it existed immediately before the commencement	7
of the <i>Industrial Relations Amendment Act 1994</i> , applies to rules submitted	8
to the Certifying Barrister under sections 344 or 346 before the	9
commencement.	10
‘(2) This section expires 6 months after it commences.’.	11
 22. Sections 397(5)(c), 425(2)(c)(ii)(A) and 444(2)(a), ‘or certified	12
agreements’—	13
<i>omit, insert—</i>	14
‘, certified agreements or enterprise flexibility agreements’.	15
 23. Section 448(c) and (d), ‘or certified agreements’—	16
<i>omit, insert—</i>	17
‘, certified agreement or enterprise flexibility agreement’.	18
 24. Section 483 (as inserted by the <i>Statute Law (Miscellaneous</i>	19
<i>Provisions) Act 1994</i>)—	20
<i>renumber and relocate</i> as section 617A (in Part 21).	21
 25. Section 512—	22
<i>omit.</i>	23

SCHEDULE (continued)

26. Section 515(3)—	1
<i>omit.</i>	2
27. Section 518(1)—	3
<i>insert—</i>	4
‘(d) section 235(2) when—	5
(i) an award, industrial agreement, certified agreement or	6
enterprise flexibility agreement otherwise provides; or	7
(ii) the Commission otherwise decides.’	8
28. Section 607(a), after ‘certified agreements’—	9
<i>insert—</i>	10
‘, enterprise flexibility agreements’.	11
29. Section 622—	12
<i>omit, insert—</i>	13
‘Transitional provision about dismissals	14
‘ 622.(1) Part 12, Division 5, as it existed immediately before the	15
commencement of the <i>Industrial Relations Amendment Act 1994</i> (the	16
“ amending Act ”), continues to apply to a dismissal within the meaning of	17
the Division that happened before the commencement as if the amending	18
Act had not been passed.	19
‘ (2) Part 12, Division 5, as it exists after the commencement, does not	20
apply to the dismissal.	21
‘ (3) This section expires 6 months after it commences.’	22
	23