

Queensland



WORKPLACE RELATIONS AMENDMENT BILL 1998



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TABLE OF PROVISIONS

Section	Page
1 Short title	4
2 Acts amended	4
3 Amendment of s 3 (Principal object of this Act)	4
4 Amendment of s 30 (Effect of a certified agreement in relation to awards and other agreements)	4
5 Omission of ch 2, pt 2 (Queensland workplace agreements)	4
6 Amendment of s 115 (Definitions for pt 3)	4
7 Amendment of s 116 (When does an agreement pass the no-disadvantage test)	5
8 Amendment of s 117 (Special case—employee eligible for supported wage system)	6
9 Amendment of s 118 (Special case—employee undertaking approved traineeship)	6
10 Amendment of s 119 (Special case—employee undertaking approved apprenticeship)	6
11 Omission of s 121 (Determination of designated awards for QWA)	7
12 Amendment of s 127 (Making, amending and repealing awards)	7
13 Amendment of s 128 (Allowable award matters)	7
14 Amendment of s 129 (Limitation on commission's powers for awards)	8
15 Omission of ss 130 and 131	8
16 Amendment of s 132 (General rulings)	8
17 Amendment of s 133 (Inclusion of enterprise flexibility provisions in awards)	8
18 Amendment of s 190 (Definitions for pt 4)	9
19 Amendment of s 192 (Approval of long service leave conditions)	9

Workplace Relations Amendment

20	Amendment of s 201 (Taking long service leave)	9
21	Amendment of s 287 (Commission's functions)	10
22	Amendment of s 300 (Statement of policy)	10
23	Amendment of s 372 (Functions and powers)	10
24	Amendment of s 373 (Delegation by employment advocate)	10
25	Amendment of s 485 (Regulation-making power)	11
26	Replacement of ch hdg	11
27	Omission of ch 16, pts 1 and 2	11
28	Omission of s 509 (Section 55(4) awards and exceptional matters orders prevail over pre and post commencement certified agreements) . . .	11
29	Replacement of s 512 (EFA displaced by certain awards or orders)	12
	512 EFA displaced by certain awards	12
30	Insertion of new ch 17	12
	CHAPTER 17—SAVINGS AND TRANSITIONAL PROVISIONS FOR WORKPLACE RELATIONS AMENDMENT ACT 1998	
	517 Existing QWAs	12
	518 Transitional provisions for employment advocate	13
	519 Compensation to new employee for shortfall in entitlements	14
	520 Preservation of certain general conditions	15
31	Amendment of sch 5 (Dictionary)	15
	SCHEDULE	17
	AMENDMENT OF INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991	

1998

A BILL

FOR

***An Act to amend the Workplace Relations Act 1997 and the Industrial
Relations (Protection from Invalidities) Act 1991***

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Workplace Relations Amendment Act 1998*.

3

4

Acts amended

5

Clause **2.(1)** This Act, other than the schedule, amends the *Workplace Relations Act 1997*.

6

7

(2) The schedule amends the *Industrial Relations (Protection from Invalidities) Act 1991*.

8

9

Amendment of s 3 (Principal object of this Act)

10

Clause **3.** Section 3(f)(ii), ‘and individual’—
 omit.

11

12

Amendment of s 30 (Effect of a certified agreement in relation to awards and other agreements)

13

14

Clause **4.** Section 30(2)—
 omit.

15

16

Omission of ch 2, pt 2 (Queensland workplace agreements)

17

Clause **5.** Chapter 2, part 2—
 omit.

18

19

Amendment of s 115 (Definitions for pt 3)

20

Clause **6.(1)** Section 115, definitions “agreement”, “award”, “designated award” and “initial day”—

21

22

Workplace Relations Amendment

	<i>omit.</i>	1
	(2) Section 115—	2
	<i>insert—</i>	3
	‘ “award” includes an award under the Commonwealth Act, part VIE.	4
	“designated award” , in relation to a person to whom a certified agreement	5
	will apply, means an award that the commission under section 120 ¹	6
	has decided is appropriate for deciding whether the agreement passes	7
	the no-disadvantage test.	8
	“initial day” , for a certified agreement, means the day on which the	9
	agreement was certified.’.	10
	(3) Section 115, definition “relevant award” , ‘an agreement’—	11
	<i>omit, insert—</i>	12
	‘a certified agreement’.	13
	Amendment of s 116 (When does an agreement pass the	14
	no-disadvantage test)	15
Clause	7.(1) Section 116, heading, ‘ an ’—	16
	<i>omit, insert—</i>	17
	‘a certified’.	18
	(2) Section 116(1), ‘ An ’—	19
	<i>omit, insert—</i>	20
	‘A certified’.	21
	(3) Section 116(2)—	22
	<i>omit, insert—</i>	23
	‘(2) Subject to sections 117 to 119,² a certified agreement disadvantages	24
	employees in relation to their employment conditions only if its certification	25

¹ Section 120 (Determination of designated awards for certified agreement)

² Sections 117 (Special case—employee eligible for supported wage system),
118 (Special case—employee undertaking approved traineeship) and
119 (Special case—employee undertaking approved apprenticeship)

Workplace Relations Amendment

would result, on balance, in a reduction in the employees' overall employment conditions—

(a) under a relevant award or designated award; and

(b) under any law of the Commonwealth or a State that a commissioner considers relevant.’.

(4) Section 116(3)—

omit.

Amendment of s 117 (Special case—employee eligible for supported wage system)

Clause **8.(1)** Section 117(1), ‘if an’—

omit, insert—

‘if a certified’.

(2) Section 117(2), ‘approval or’—

omit.

Amendment of s 118 (Special case—employee undertaking approved traineeship)

Clause **9.(1)** Section 118(1), ‘if an’—

omit, insert—

‘if a certified’.

(2) Section 118(2), ‘approval or’—

omit.

Amendment of s 119 (Special case—employee undertaking approved apprenticeship)

Clause **10.(1)** Section 119(1)(a), ‘an agreement’—

omit, insert—

‘a certified agreement’.

Workplace Relations Amendment

(2) Section 119(2), ‘approval or’— 1
omit. 2

Omission of s 121 (Determination of designated awards for QWA) 3

Clause 11. Section 121— 4
omit. 5

Amendment of s 127 (Making, amending and repealing awards) 6

Clause 12.(1) Section 127(2)— 7
omit. 8
 (2) Section 127(3)— 9
renumber as section 127(2). 10
 (3) Section 127(4)(a), ‘or QWA’— 11
omit. 12
 (4) Section 127(4)(b), ‘either of the agreements’— 13
omit, insert— 14
 ‘a certified agreement’. 15

Amendment of s 128 (Allowable award matters) 16

Clause 13.(1) Section 128, heading— 17
omit. 18
 (2) Section 128(1)— 19
omit. 20
 (3) Section 128(2), ‘for an allowable award matter’— 21
omit. 22
 (4) Section 128(2)— 23
relocate and renumber as section 127(3). 24

Workplace Relations Amendment

(5) Section 128(3) to (5)—

omit.

Amendment of s 129 (Limitation on commission's powers for awards)

Clause 14.(1) Section 129(1)—

omit.

(2) Section 129(2), 'in relation to matters covered by section 128(1)(r)'—

omit.

(3) Section 129(3), 'Subsection (2)(b)'—

omit, insert—

'Subsection (1)(b)'.

(4) Section 129(2) to (8)—

renumber as section 129(1) to (7).

Omission of ss 130 and 131

Clause 15. Sections 130 and 131—

omit.

Amendment of s 132 (General rulings)

Clause 16. Section 132(1), 'allowable award'—

omit, insert—

'industrial'.

Amendment of s 133 (Inclusion of enterprise flexibility provisions in awards)

Clause 17. Section 133(3), from 'amendment—'—

omit, insert—

‘amendment, if it included an amendment to wage rates specified in the award, would provide for minimum wage rates consistent with sections 122 and 123.³’

Amendment of s 190 (Definitions for pt 4)

Clause **18.** Section 190, definition “**industrial authority**”—
omit.

Amendment of s 192 (Approval of long service leave conditions)

Clause **19.(1)** Section 192(2), ‘An industrial authority’—
omit, insert—
‘The commission’.
(2) Section 192(2), ‘or QWA’—
omit.
(3) Section 192(2), ‘the industrial authority’—
omit, insert—
‘the commission’.
(4) Section 192(3), ‘industrial authority’—
omit, insert—
‘commission’.

Amendment of s 201 (Taking long service leave)

Clause **20.(1)** Section 201(1), ‘an industrial authority’—
omit, insert—
‘the commission’.
(2) Section 201(1), ‘the industrial authority’—

³ Sections 122 (Objects of ch 3) and 123 (Performance of commission’s functions under this chapter)

Workplace Relations Amendment

omit, insert— 1
‘the commission’. 2

Amendment of s 287 (Commission’s functions) 3

Clause 21.(1) Section 287(a)(ii), ‘based on allowable award matters’— 4
omit. 5
(2) Section 287(f), ‘on allowable award matters’— 6
omit. 7

Amendment of s 300 (Statement of policy) 8

Clause 22. Section 300(2), ‘about an allowable award matter’— 9
omit. 10

Amendment of s 372 (Functions and powers) 11

Clause 23.(1) Section 372(1)(c), (d) and (f)— 12
omit. 13
(2) Section 372(1)(e) and (g)— 14
renumber as section 372(1)(c) and (d). 15
(3) Section 372(2)(c)— 16
omit. 17

Amendment of s 373 (Delegation by employment advocate) 18

Clause 24.(1) Section 373(a), ‘to (c), (f) or (g)’— 19
omit, insert— 20
‘, (b) or (d)’. 21
(2) Section 373(b), ‘to (c)’— 22
omit, insert— 23
‘or (b)’. 24

Workplace Relations Amendment

(3) Section 373(c), ‘(d) or (e)’—	1
<i>omit, insert—</i>	2
‘(c)’.	3

Amendment of s 485 (Regulation-making power)	4
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Clause	25.(1) Section 485(2)(a) to (e)—	5
	<i>omit, insert—</i>	6
	‘(a) requiring an employer who is a party to a certified agreement to supply information for statistical purposes; and’.	7
		8
	(2) Section 485(2)(f) and (g)—	9
	<i>renumber</i> as section 485(2)(b) and (c).	10

Replacement of ch hdg	11
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Clause	26. Chapter 16, heading—	12
	<i>omit, insert—</i>	13

‘CHAPTER 16—TRANSITIONAL PROVISIONS FOR ACT 1997 NO. 1’.	14
	15

Omission of ch 16, pts 1 and 2	16
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Clause	27. Chapter 16, parts 1 and 2—	17
	<i>omit.</i>	18

Omission of s 509 (Section 55(4) awards and exceptional matters orders prevail over pre and post commencement certified agreements)	19
	20

Clause	28. Section 509—	21
	<i>omit.</i>	22

	Replacement of s 512 (EFA displaced by certain awards or orders)	1
Clause	29. Section 512—	2
	<i>omit, insert—</i>	3
	‘EFA displaced by certain awards	4
	‘512. An award made under section 55(4)⁴ prevails over an EFA to the	5
	extent of any inconsistency.’.	6
	Insertion of new ch 17	7
Clause	30. After chapter 16—	8
	<i>insert—</i>	9
	‘CHAPTER 17—SAVINGS AND TRANSITIONAL	10
	PROVISIONS FOR WORKPLACE RELATIONS	11
	AMENDMENT ACT 1998	12
	‘Existing QWAs	13
	‘517.(1) A QWA that has been approved, and was operating	14
	immediately before the commencement of this section, continues to have	15
	effect after the commencement until 31 December 1998, unless terminated	16
	before that day.	17
	‘(2) Any other QWA ceases to have effect on the commencement of this	18
	section.	19
	‘(3) The following sections, as in force immediately before the	20
	commencement of this section, continue to apply, despite the repeal, in	21
	relation to a QWA until 31 December 1999—	22
	(a) sections 96, 97(1), 98 and 113;	23

⁴ Section 55 (What happens if commission terminates a bargaining period under s 54(3) or (7))

-
- (b) sections 115 to 119 and 121.⁵ 1
- ‘(4) Despite the *Acts Interpretation Act 1954*,⁶ section 20, an action under 2
the repealed section 97(1), or under section 97(1) as continued by 3
subsection (3), must be brought before 1 January 2000. 4
- ‘(5) Without limiting subsection (6), the remaining provisions of the 5
repealed chapter 2, part 2, other than— 6
- (a) those relating to the making, amendment or extension of a QWA; 7
or 8
- (b) those relating to the approval of a QWA, amendment agreement 9
or extension agreement; or 10
- (c) section 110; 11
- continue to apply, despite the repeal, in relation to a QWA until 12
31 December 1998. 13
- ‘(6) A repealed definition for chapter 2, part 2⁷ continues to apply for this 14
section until 31 December 1999. 15
- ‘Transitional provisions for employment advocate 16**
- ‘518.(1) This section applies to the functions mentioned in section 17
372(1)(c), (d) and (f) as in force immediately before the commencement of 18
this section. 19
- ‘(2) After the commencement, the employment advocate has and may 20
continue to perform the functions until 31 December 1999. 21
- ‘(3) A delegation by the employment advocate that is in force 22
immediately before the commencement continues in force after the 23

⁵ Sections 96 (Penalties for contravening this part), 97 (Damages for contravention of QWA), 98 (Compensation to new employee for shortfall in entitlements), 113 (Evidence), 115 (Definitions in pt 3), 116 (When does an agreement pass the no-disadvantage test), 117 (Special case—employee eligible for supported wage system), 118 (Special case—employee undertaking approved traineeship), 119 (Special case—employee undertaking approved apprenticeship) and 121 (Determination of designated awards for QWA)

⁶ *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

⁷ Chapter 2, part 2 (Queensland Workplace Agreements)

commencement.

‘(4) The employment advocate may delegate the employment advocate’s powers to—

- (a) for a function mentioned in the repealed section 372(1)(c) and (f)—an appropriately qualified public service officer or employee; or
- (b) for a function mentioned in the repealed section 372(1)(c)—an appropriately qualified person; or
- (c) for a function mentioned in the repealed section 372(1)(d)—an inspector.

‘(5) A delegation under this section that is in force on 31 December 1999, ends on that day.

‘Compensation to new employee for shortfall in entitlements

‘519.(1) This section applies if, immediately before the commencement of this section—

- (a) a QWA was operating; and
- (b) the QWA had not been approved; and
- (c) a refusal notice had not been issued for the QWA.

‘(2) A new employee who was working under the QWA is entitled to recover any shortfall from the employer in an Industrial Magistrates Court.

‘(3) An action under subsection (2) must be brought before 1 January 2000.

‘(4) For subsection (2), there is a shortfall if the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b)—

- (a) the total value of the entitlements to which the employee became entitled under the QWA for the period while it was in operation;
- (b) the total value of the entitlements to which the employee would have been otherwise entitled for that period if the QWA had not been made, in relation to the employment to which the QWA relates.

Workplace Relations Amendment

‘(5) In this section—

“**new employee**” has the meaning given under the repealed section 68.

“**otherwise entitled**” means entitled under an award, agreement or law mentioned in section 116(2),⁸ as in force immediately before the commencement of this section.

‘Preservation of certain general conditions

‘**520.(1)** The repealed Act, sections 221, 222, 230, 233, 235, 236 and 237,⁹ continues to have effect and applies—

- (a) to an award, industrial agreement, certified agreement or EFA in force immediately before 27 March 1997 and continued in force under this Act; and
- (b) from the commencement of this section, to an award or certified agreement made or certified on or after 27 March 1997.’.

Amendment of sch 5 (Dictionary)

Clause

31.(1) Schedule 5, definitions “**additional approval requirements**”, “**allowable award matter**”, “**amendment agreement**”, “**ancillary document**”, “**approval notice**”, “**bargaining agent**”, “**certified copy**”, “**exceptional matters order**”, “**existing employee**”, “**extension agreement**”, “**file**”, “**filing receipt**”, “**filing requirements**”, “**new employee**”, “**nominal expiry date**”, “**party**”, “**penalty provision**”, “**period of operation**”, “**QWA**”, “**QWA date**”, “**QWA industrial action**”, “**refusal notice**”, “**relevant or designated award**”, “**termination agreement**”, “**termination notice**” and “**working day**”—

omit.

(2) Schedule 5—

insert—

⁸ Section 116 (When does an agreement pass the no-disadvantage test)

⁹ Sections 221 (Hours of work), 222 (Public holidays), 230 (Sick leave), 233 (Annual leave), 235 (Payment for annual leave), 236 (Payment in lieu of annual leave) and 237 (Pro rata annual leave)

Workplace Relations Amendment

‘ “nominal expiry date” , for a certified agreement, see section 14.	1
“party” , for an industrial instrument or permit, includes a person bound by the instrument or permit.	2 3
“penalty provision” , for chapter 2, part 1, division 9, see section 62.	4
“working day” , for chapter 2, part 1, see section 16.’.	5
(3) Schedule 5, definition “award” , paragraph (a)—	6
omit, insert—	7
‘(a) generally, means—	8
(i) an award made under chapter 3 or continued in force under this Act; or	9 10
(ii) an award as amended under the chapter; and’.	11
(4) Schedule 5, definition “employee” , paragraph (b)—	12
omit.	13
(5) Schedule 5, definition “employee” , paragraph (c)—	14
renumber as paragraph (b).	15
(6) Schedule 5, definition “employer” , paragraph (b)—	16
omit.	17
(7) Schedule 5, definition “employer” , paragraph (c)—	18
renumber as paragraph (b).	19

SCHEDULE

1

**AMENDMENT OF INDUSTRIAL RELATIONS
(PROTECTION FROM INVALIDITIES) ACT 1991**

2

3

section 2(2)

4

1. Section 18—

5

omit, insert—

6

‘Expiry of Act

7

‘18. This Act expires on 31 December 1999.’.

8

9