

I hereby certify that this PUBLIC BILL has finally passed the  
Legislative Assembly of Queensland.

*M. Harris*

Legislative Assembly Chamber,  
Brisbane,

The Clerk of the Parliament.

*27 November 2013*

In the name and on behalf of the Queen, I assent to this Bill.

*Penelope Wainwright*

Government House,

Brisbane, *27th November,* 2013



Queensland

No. *61* of 2013  
A BILL for

An Act to amend the Industrial Relations Act 1999, the Hospital and Health Boards Act 2011, the Superannuation (State Public Sector) Act 1990, the Superannuation (State Public Sector) Regulation 2006 and the Trading (Allowable Hours) Act 1990, and to make minor and consequential amendments to the Acts listed in schedule 1, for particular purposes





Queensland

# Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013

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# 2013

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## A Bill

for

**An Act to amend the *Industrial Relations Act 1999*, the *Hospital and Health Boards Act 2011*, the *Superannuation (State Public Sector) Act 1990*, the *Superannuation (State Public Sector) Regulation 2006* and the *Trading (Allowable Hours) Act 1990*, and to make minor and consequential amendments to the Acts listed in schedule 1, for particular purposes**

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## The Parliament of Queensland enacts—

# Part 1 Preliminary

## 1 Short title

This Act may be cited as the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

## 2 Commencement

This Act, other than the following provisions, commences on 1 December 2013—

- (a) sections 13(1), 14, 43 to 55, 59 and 64 to 72;
- (b) section 75 to the extent it inserts the following provisions of new chapter 20, part 18—
  - part heading
  - division 1
  - division 3, subdivision 1
  - division 4
  - division 5, heading
  - sections 833 and 835;
- (c) section 76;
- (d) part 2, divisions 3 and 4;
- (e) schedule 1, part 1.

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## **Part 2**                      **Amendments relating to industrial relations**

### **Division 1**                **Amendment of Industrial Relations Act 1999**

#### **3**            **Act amended**

This division amends the *Industrial Relations Act 1999*.

*Note—*

See also the amendments in schedule 1, parts 1 and 2.

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

(1) Section 3(j)—

*omit.*

(2) Section 3(o)—

*omit.*

#### **5**            **Amendment of ch 2, hdg (General employment conditions)**

Chapter 2, heading, ‘General’—

*omit, insert—*

**Pre-modernisation**

#### **6**            **Insertion of new ch 2, pt 1AA**

Chapter 2, before part 1—

*insert—*

## **Part 1AA Preliminary**

### **8AA Application of ch 2**

This chapter applies to an employee who is bound by a pre-modernisation industrial instrument in relation to particular employment.

*Note—*

See chapter 2A (Modern employment conditions) in relation to conditions of employment for all other employees.

## **7 Insertion of new ch 2A**

After chapter 2—

*insert—*

## **Chapter 2A Modern employment conditions**

### **Part 1 Preliminary**

#### **71B Application of ch 2A**

This chapter applies to all employees in relation to particular employment if chapter 2 does not apply to the employee in relation to the employment.

#### **71BA Definitions for ch 2A**

In this chapter—

*modern industrial instrument* means any of the following—

- (a) a modern award;



- (b) a certified agreement that is certified under chapter 6 as amended by the modernising Act;
- (c) a determination made under section 149 as inserted by the modernising Act.

***modernising Act*** means the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

***ordinary hours of work***, for an employee, means—

- (a) the employee's ordinary hours of work as provided for under a modern industrial instrument that applies to the employee; or
- (b) if paragraph (a) does not apply—the hours agreed by the employee and his or her employer as the employee's ordinary hours of work.

***pre-modernisation industrial instrument*** means any of the following—

- (a) an award made under chapter 5 or continued in force under this Act, including an award as amended under chapter 5;
- (b) a certified agreement that is certified under chapter 6 as in force before its amendment by the modernising Act;
- (c) a determination made under section 149 as it was in force before its replacement by the modernising Act.

***relevant industrial instrument***, in relation to an employee, means a modern industrial instrument that applies to the employee.

### **71BB Meaning of *long term casual employee***

- (1) For this chapter, a *long term casual employee* is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under this chapter.
- (2) The periods of employment mentioned in subsection (1) include periods before and after the commencement of this section.

## **Part 2                      Queensland Employment Standards**

### **Division 1              Preliminary**

#### **71C Meaning of *Queensland Employment Standards***

- (1) This part provides for minimum standards of employment of employees.
- (2) The minimum standards relate to the following matters—
  - (a) minimum wage—division 2;
  - (b) annual leave—division 3;
  - (c) personal leave, including sick leave, carer's leave, bereavement leave and cultural leave—division 4;
  - (d) parental leave—division 5;
  - (e) long service leave—division 6;
  - (f) public holidays—division 7;
  - (g) jury service leave—division 8;

- (h) notice of termination and redundancy pay—division 9.
- (3) Divisions 2 to 9 are the *Queensland Employment Standards*.

### **71CA Queensland Employment Standards subject to provisions of modern industrial instrument**

The Queensland Employment Standards have effect subject to provisions included in a modern industrial instrument under this Act.

*Notes—*

- 1 See part 3 for provisions about the content of a modern industrial instrument.
- 2 In particular, under section 71OI a modern industrial instrument must not contain provisions that are inconsistent with the Queensland Employment Standards. However, particular provisions may be included if their effect is no less favourable to an employee than the Queensland Employment Standards (see section 71NA).

### **71CB Relationship between Queensland Employment Standards and directives**

- (1) This section applies if a directive is inconsistent with a provision of the Queensland Employment Standards (a *QES provision*).
- (2) For an inconsistency provision, the directive is taken not to be inconsistent with the QES provision to the extent that the effect of the directive is more favourable to an employee than the QES provision.
- (3) In this section—  
*directive* means—
  - (a) a directive under the *Public Service Act 2008* made by the chief executive of the Public Service Commission that is the

subject of a regulation under section 52(2) of that Act; or

- (b) a directive under the *Public Service Act 2008* made by the Minister administering this Act; or
- (c) a health employment directive under the *Hospital and Health Boards Act 2011*.

***inconsistency provision*** means—

- (a) the *Public Service Act 2008*, section 51; or
- (b) the *Hospital and Health Boards Act 2011*, section 51B.

## **Division 2      Minimum wage**

### **71D Entitlement to minimum wage**

- (1) An employee is entitled to a wage that is not less than the Queensland minimum wage.
- (2) This section does not apply to an employee who is excluded under section 287(5) from the operation of the full bench's general ruling declaring the Queensland minimum wage.

## **Division 3      Annual leave**

### **Subdivision 1 Entitlement to annual leave**

#### **71E Application of sdiv 1**

This subdivision does not apply to—

- (a) casual employees; or
- (b) pieceworkers; or
- (c) school-based apprentices or trainees.

### **71EA Entitlement**

- (1) For each completed year of employment with an employer, an employee is entitled to—
  - (a) if the employee is not a shift worker—at least 4 weeks annual leave; or
  - (b) if the employee is a shift worker—at least 5 weeks annual leave.
- (2) Annual leave is exclusive of a public holiday that falls during the leave.
- (3) However, if an employee is entitled to additional annual leave as compensation for working on a particular public holiday, annual leave is inclusive of the particular public holiday.
- (4) Annual leave accumulates, unless a modern industrial instrument provides otherwise.
- (5) This section does not confer an entitlement or an additional entitlement in relation to employment before 4 June 1999.
- (6) In this section—

*shift worker* means an employee who—

  - (a) is employed in a calling in which shifts are worked 24 hours a day, 7 days a week; and
  - (b) works a rotating roster that includes each of the shifts.

### **71EB Working out completed year of employment**

- (1) This section applies for working out a completed year of employment for section 71EA.
- (2) The following periods when an employee is absent without pay are not to be taken into account—

- (a) a period of more than 3 months when an employee is absent with the employer's approval;
- (b) a period when an employee is absent without the employer's approval, unless the employee is absent for not more than 3 months because of illness or injury certified to by a doctor.

## **Subdivision 2 Taking annual leave**

### **71EC When annual leave may be taken**

- (1) An employee and employer may agree when the employee is to take annual leave.
- (2) If the employee and employer can not agree, the employer—
  - (a) may decide when the employee is to take leave; and
  - (b) must give the employee at least 14 days written notice of the starting date of the leave.
- (3) An employee and employer may agree that the employee take all or any part of the employee's annual leave before becoming entitled to it.
- (4) If the employee takes leave before becoming entitled to it, the employee is only entitled, at the end of the completed year of employment, to the balance of the leave that would be due at the end of the year.

### **71ED Terms that may be included in modern industrial instruments**

A modern industrial instrument may include the following—

- (a) terms requiring an employee to take annual leave in particular circumstances, but only if the requirement is reasonable;
- (b) terms otherwise dealing with the taking of annual leave.

### **Subdivision 3 Payment for annual leave**

#### **71EE Payment for annual leave**

- (1) Unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.
- (2) The employer must pay for the leave—
  - (a) at the ordinary rate being paid to the employee immediately before the leave is taken; or
  - (b) if, immediately before taking the leave, the employee is being paid at a higher rate than the ordinary rate—at the higher rate.
- (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 a 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 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 starting on the day the leave commences and ending on the day before the employee is due to return to work.

### **71EF Annual leave loading**

- (1) In addition to the employee's annual leave entitlement under this division, the employee is entitled to receive a further amount of at least 17½% of the amount payable under section 71EE(2)(a).
- (2) However, if the employee's employer pays the employee a prescribed additional amount and the amount—
  - (a) is less than 17½% of the amount payable under section 71EE(2)(a)—the employee is entitled to receive a further amount so the employee receives the amount the employee is entitled to under subsection (1); or
  - (b) is at least 17½% of the amount payable under section 71EE(2)(a)—the employee is not entitled to receive an amount under subsection (1).



- (3) In this section—

*prescribed additional amount* means an amount, however described, in addition to the employee's annual leave entitlement under this division.

*Example of how a prescribed additional amount might be described—*

annual leave bonus, annual leave loading

## **Subdivision 4 Cashing out annual leave**

### **71EG Requirements for cashing out annual leave**

- (1) Annual leave may not be cashed out except under this section.
- (2) An employer and an employee may agree to the employee cashing out a particular amount of the employee's annual leave.
- (3) The employer and employee must not agree to the employee cashing out an amount of annual leave if the cashing out would result in the employee's accrued annual leave entitlement being less than 4 weeks.
- (4) Each cashing out of a particular amount of annual leave must be by a separate agreement in writing.
- (5) The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the annual leave that has been forgone.

## **Subdivision 5 Payment on termination of employment**

### **71EH Payment for annual leave on termination of employment**

- (1) This section applies if an employee's employment is terminated by the employee or employer.
- (2) If the employee has not taken all the annual leave the employee is entitled to, the employee is presumed to have taken the leave from the day the termination takes effect (the *termination day*).
- (3) The employer must immediately pay the employee for the annual leave not taken, including any public holiday during the period the employee is presumed to have taken the leave.
- (4) If the employee has been employed for less than 1 year, the employer must pay the employee proportionate annual leave for the period.
- (5) The employer must pay the employee at least the ordinary rate being paid to the employee immediately before the termination day, unless a modern industrial instrument states otherwise.

## **Division 4 Personal leave**

### **Subdivision 1 Sick leave**

#### **71F Application of sdiv 1**

This subdivision does not apply to—

- (a) casual employees; or
- (b) pieceworkers; or

- (c) school-based apprentices or trainees.

### **71FA Entitlement to sick leave**

- (1) An employee is entitled to at least 10 days sick leave on full pay for each completed year of employment with an employer.
- (2) Unless a modern industrial instrument provides otherwise, an employee's entitlement to paid sick leave accumulates—
  - (a) progressively during a year of employment according to the employee's ordinary hours of work; and
  - (b) from year to year.
- (3) Sick leave may be taken for part of a day.

*Examples—*

- 1 An employee is ordinarily required to work for 8 hours on a particular day and on that day becomes sick after working 3 hours. The employee may take sick leave for the remaining 5 hours that the employee is unable to work because of the sickness.
  - 2 An employee is ordinarily required to perform work for 40 hours a week over 5 days, but has come to an arrangement with the employer to work 10 hours a day for 4 days a week. If the employee is unable to work because of sickness on a day, the employee may take 10 hours sick leave, which equates to 1<sup>1</sup>/<sub>4</sub> days sick leave.
- (4) This section does not confer an entitlement or an additional entitlement in relation to employment before the commencement of this section.
  - (5) In this section—

**day**, for an employee who is paid on the basis of the number of hours worked, means—

    - (a) for an employee for whom a modern industrial instrument provides sick leave—a

day within the meaning of the instrument to the extent it relates to sick leave; or

- (b) otherwise—one-fifth of the number of the employee's ordinary hours of work for a week, averaged over each completed 6 weeks of employment with the employer.

### **71FB Requirement for employee to give notice etc.**

- (1) An employee's entitlement under section 71FA is conditional on—
  - (a) the employee promptly notifying the employer of—
    - (i) any illness that will cause the employee to be absent from work; and
    - (ii) the approximate period for which the employee will be absent; and
  - (b) if the employee is absent for more than 2 days—
    - (i) the employee giving the employer a doctor's certificate about the nature of the illness and the approximate period for which the employee will be absent; or
    - (ii) the employee giving the employer other evidence of the illness to the employer's satisfaction.
- (2) This section does not apply if—
  - (a) a modern industrial instrument provides otherwise; or
  - (b) the employee and employer agree otherwise.

---

## Subdivision 2 Carer's leave

### 71FC Entitlement—employees other than casual employees

- (1) This section does not apply to a casual employee.
- (2) An employee may use up to 10 days of sick leave on full pay (*carer's leave*) in each year to care for and support members of the employee's immediate family or household—
  - (a) when they are ill; or
  - (b) because an unexpected emergency arises.

*Example for paragraph (b)—*

unexpected failure of child care arrangements

- (3) If the employee has exhausted the entitlement under subsection (2), the employee may take up to an additional 2 days unpaid carer's leave each time the employee needs to care for and support members of the employee's immediate family or household—
  - (a) when they are ill; or
  - (b) because an unexpected emergency arises.
- (4) The employee may take additional unpaid carer's leave with the employer's agreement.
- (5) An employee can not take carer's leave if another person has taken leave enabling him or her to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.
- (6) Carer's leave may be taken for part of a day.
- (7) In this section—

*sick leave* includes sick leave accrued before the commencement of this section.

### **71FD Entitlement—long term casual employees**

- (1) This section applies to a long term casual employee.
- (2) The employee is entitled to 10 days leave (also *carer's leave*) in each year to care for and support members of the employee's immediate family or household—
  - (a) when they are ill; or
  - (b) because an unexpected emergency arises.
- (3) The employee may take additional carer's leave if the employer agrees.
- (4) The employee can not take carer's leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.
- (5) Carer's leave may be taken for part of a day.
- (6) The employer must not fail to re-engage the employee only because the employee has taken carer's leave under this section.
- (7) Leave taken under this section is unpaid.

### **71FE Entitlement—short term casual employees**

- (1) This section applies to a short term casual employee.
- (2) The employee is entitled to leave work or to be unavailable to attend work for up to 2 days (also *carer's leave*) each time the employee needs to care for and support members of the employee's immediate family or household—
  - (a) when they are ill; or
  - (b) because an unexpected emergency arises; or
  - (c) because of the birth of a child.

- (3) The employee may leave work or be unavailable to attend work for reasons mentioned in subsection (2) for additional periods if the employer agrees.
- (4) The employee can not take carer's leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.
- (5) Carer's leave may be taken for part of a day.
- (6) The employer must not fail to re-engage the employee only because the employee has taken carer's leave under this section.
- (7) However, the rights of an employer not to re-engage the employee are not otherwise affected.
- (8) Leave taken under this section is unpaid.

### **71FF Employee to provide supporting information to employer**

- (1) This section applies if an employee is taking carer's leave to care for and support a member of the employee's immediate family or household who is ill.
- (2) The employee must, if required by the employer, produce a doctor's certificate or statutory declaration evidencing that the member is ill with an illness requiring care by another person.
- (3) The employee must, if practicable, give the employer—
  - (a) notice of the intention to take carer's leave before taking the leave; and

- (b) the name of the person requiring care and the person's relationship to the employee; and
  - (c) the reason for taking the leave; and
  - (d) the period that the employee estimates he or she will be absent; and
  - (e) if the reason for taking the leave is because an unexpected emergency has arisen—the nature of the emergency.
- (4) If it is not practicable for the employee to notify the employer of the intention to take carer's leave before taking the leave, the employee must notify the employer at the first reasonable opportunity.

### **Subdivision 3 Bereavement leave**

#### **71FG Application of sdiv 3**

This subdivision does not apply to pieceworkers.

#### **71FH Entitlement—employees other than casual employees**

An employee, other than a 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.



### **71FI Entitlement—casual employees**

- (1) 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.
- (2) A short term casual employee is entitled to be unavailable to attend work—
  - (a) for up to 2 days on 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.
- (3) The employer must not fail to re-engage a casual employee only because the employee has taken bereavement leave under this section.
- (4) However, the rights of an employer not to re-engage a casual employee are not otherwise affected.

### **71FJ Evidence to be provided by employee**

An employee who takes bereavement leave must give the employer a copy of the funeral notice or other evidence of the death the employer reasonably requires.

### **71FK Additional leave**

An employee may take additional leave as unpaid bereavement leave if the employer agrees.

## **Subdivision 4 Cultural leave**

### **71FL Entitlement**

- (1) This section applies to an employee who is required by Aboriginal tradition or Island custom to attend an Aboriginal or Torres Strait Islander ceremony.
- (2) The employee may take up to 5 days unpaid cultural leave in each year, if the employer agrees.
- (3) The employer must not unreasonably refuse the leave.
- (4) 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 work and family responsibilities.
- (5) 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.
- (6) 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 (5)(b) and (c) at the first opportunity.
- (7) It is declared that leave provided under this section is a welfare measure for the purposes of the *Anti-Discrimination Act 1991*, section 104.

## **Subdivision 5 General provision**

### **71FM Relationship to other rights**

- (1) This part has effect despite a relevant law to the extent the relevant law provides an employee with a benefit that is less favourable to the employee.
- (2) In this section—  
*relevant law* means another law of the State.

## **Division 5 Parental leave**

### **Subdivision 1 Preliminary**

#### **71G Application of div 5**

This division does not apply to—

- (a) short term casual employees; or
- (b) seasonal employees; or
- (c) pieceworkers.

## **71GA Explanation of types of parental leave**

- (1) This division provides for parental leave.
- (2) The types of parental leave are as follows—
  - (a) birth-related leave, for—
    - (i) an employee who is pregnant; or
    - (ii) an employee whose spouse gives birth;

*Notes—*

- 1 Birth-related leave for a pregnant employee (maternity leave) may be taken by a pregnant employee in connection with the birth of her child or to enable her to be the child's primary caregiver.
- 2 Birth-related leave for an employee whose spouse gives birth may be short (in connection with the child's birth) or long (to enable the employee to be the child's primary caregiver).

- (b) adoption leave, for an employee with whom an adopted child is placed;

*Note—*

Adoption leave may be short (in connection with the child's placement) or long (to enable the employee to be the child's primary caregiver).

- (c) surrogacy leave, for an employee who is an intended parent under a surrogacy arrangement.

*Note—*

Surrogacy leave may be short (when the child born as a result of the surrogacy arrangement starts residing with the employee) or long (to enable the employee to be the child's primary caregiver).

## **71GB Definitions for div 5**

In this division—

*adoption leave* means short adoption leave or long adoption leave.

***birth-related leave*** means short birth-related leave or long birth-related leave.

***child*** means—

- (a) for adoption leave—a child who is under the age of 5 years, but does not include a child who, immediately before the child was adopted by the employee—
  - (i) had been living with the employee for a continuous period of at least 6 months; or
  - (ii) was the employee’s stepchild or the child or stepchild of the employee’s spouse; or
- (b) for surrogacy leave—a child born as a result of a surrogacy arrangement.

***intended parent***, for a surrogacy arrangement, see the *Surrogacy Act 2010*, section 9.

***long adoption leave*** means leave taken by an employee to enable the employee to be the primary caregiver of an adopted child.

***long birth-related leave*** means—

- (a) maternity leave; or
- (b) leave taken by an employee whose spouse has given birth to enable the employee to be the child’s primary caregiver.

***long parental leave*** means—

- (a) long birth-related leave; or
- (b) long adoption leave; or
- (c) long surrogacy leave.

***long surrogacy leave*** means leave taken by an employee to enable the employee to be the primary caregiver of a child born as a result of a surrogacy arrangement.

***maternity leave*** means leave taken by a pregnant employee—

- (a) for the birth of her child; or
- (b) to enable her to be the child's primary caregiver.

***parental leave*** means long parental leave or short parental leave.

***parental leave entitlement*** means the parental leave entitlement mentioned in section 71GD, 71GE or 71GF.

***short adoption leave*** means leave taken by an employee at the time of the placement of an adopted child with the employee.

***short birth-related leave*** means leave taken by an employee, in connection with the birth of a child of the employee's spouse, at the time of—

- (a) the birth of the child; or
- (b) the other termination of the pregnancy.

***short parental leave*** means—

- (a) short birth-related leave; or
- (b) short adoption leave; or
- (c) short surrogacy leave.

***short surrogacy leave*** means leave taken by an employee when a child born as a result of a surrogacy arrangement starts residing with the employee.

***short term casual employee*** means a casual employee, other than a long term casual employee.

***surrogacy arrangement*** see the *Surrogacy Act 2010*, section 7.

*surrogacy leave* means long surrogacy leave or short surrogacy leave.

## **Subdivision 2 Entitlement**

### **71GC Application of sdiv 2**

- (1) This subdivision applies to—
  - (a) an employee, other than a long term casual employee, who has had at least 12 months continuous service with the employer; and
  - (b) a long term casual employee.
- (2) In this section—

*continuous service* means service, including a period of authorised leave or absence, under an unbroken employment contract.

### **71GD Entitlement to birth-related leave**

- (1) A pregnant employee is entitled to an unbroken period of up to 52 weeks unpaid maternity leave—
  - (a) for the child's birth; and
  - (b) to be the child's primary caregiver.
- (2) For the birth of a child of an employee's spouse, the employee is entitled to the following leave—
  - (a) an unbroken period of up to 1 week's unpaid short birth-related leave;
  - (b) a further unbroken period of up to 51 weeks unpaid long birth-related leave.

### **71GE Entitlement to adoption leave**

For the adoption of a child, an employee is entitled to the following leave—

- (a) an unbroken period of up to 3 weeks unpaid short adoption leave;
- (b) a further unbroken period of up to 49 weeks unpaid long adoption leave.

### **71GF Entitlement to surrogacy leave**

An employee who is an intended parent under a surrogacy arrangement is entitled to the following leave—

- (a) an unbroken period of up to 1 week's unpaid short surrogacy leave;
- (b) a further unbroken period of up to 51 weeks unpaid long surrogacy leave.

### **71GG Maximum period of parental leave**

- (1) Parental leave must not extend—
  - (a) beyond 1 year after the child was born or adopted or started residing with the employee under the surrogacy arrangement; or
  - (b) if an application for an extension of parental leave under section 71GR is agreed to—beyond 2 years after the child was born or adopted or started residing with the employee under the surrogacy arrangement.
- (2) The maximum period of parental leave allowed under subsection (1) is the *maximum period of parental leave*.
- (3) This section applies despite sections 71GD to 71GF.



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## **Subdivision 3 Notices and information**

### **71GH Employee notice—intention to take maternity leave**

- (1) This section applies if a pregnant employee wants to take maternity leave.
- (2) The employee must give the employer—
  - (a) at least 10 weeks written notice of intention to take the leave; and
  - (b) at least 4 weeks written notice of the dates on which she wants to start and end the leave.
- (3) The employee must, before starting the leave, give the employer—
  - (a) a doctor's certificate confirming that she is pregnant and the expected date of birth; and
  - (b) a statutory declaration by the employee stating the period of any parental leave sought by her spouse.

### **71GI Employee notice—intention to take birth-related leave other than maternity leave**

- (1) This section applies if an employee wants to take birth-related leave, other than maternity leave.
- (2) The employee must give the employer—
  - (a) for long birth-related leave—at least 10 weeks written notice of intention to take the leave; and
  - (b) at least 4 weeks written notice of the dates on which the employee wants to start and end the leave.
- (3) The employee must, before starting the leave, give the employer—

- (a) a doctor's certificate confirming that the employee's spouse is pregnant and the expected date of birth; and
- (b) for long birth-related leave—a statutory declaration by the employee stating—
  - (i) the period of any maternity leave sought by the employee's spouse; and
  - (ii) that the employee is seeking the leave to be the child's primary caregiver.

### **71GJ Employee notice—intention to take adoption leave**

- (1) This section applies if an employee wants to take adoption leave.
- (2) The employee must give the employer—
  - (a) for long adoption leave—written notice of any approval to adopt a child at least 10 weeks before the expected date of placement of the child for adoption purposes (the *expected placement date*); and
  - (b) written notice of the dates on which the employee wants to start and end the leave, as soon as practicable after the employee is notified of the expected placement date but, in any case, at least 14 days before starting the leave.
- (3) The employee must, before starting the leave, give the employer—
  - (a) a statement from an adoption agency of the expected placement date; and
  - (b) for long adoption leave—a statutory declaration by the employee stating—
    - (i) the period of any adoption leave sought by the employee's spouse; and

(ii) that the employee is seeking the leave to be the child's primary caregiver.

(4) In this section—

***adoption agency*** means an agency, body, office or court, authorised by a Commonwealth or State law to perform functions about adoption.

### **71GK Employee notice—intention to take surrogacy leave**

- (1) This section applies if an employee wants to take surrogacy leave.
- (2) The employee must give the employer—
  - (a) for long surrogacy leave—written notice of intention to take the leave at least 10 weeks before the expected date when a child is to start residing with the employee under the surrogacy arrangement (the ***expected residence date***); and
  - (b) at least 4 weeks written notice of the dates on which the employee wants to start and end the leave.
- (3) The employee must, before starting the leave, give the employer a statutory declaration by the employee stating—
  - (a) the employee is an intended parent under a surrogacy arrangement; and
  - (b) the expected residence date; and
  - (c) for long surrogacy leave—
    - (i) the period of leave sought by the employee; and
    - (ii) the period of any surrogacy leave sought by the employee's spouse; and

- (iii) that the employee is seeking the leave to be the child's primary caregiver.

### **71GL Reasons not to give notice or documents**

- (1) An employee does not fail to comply with section 71GH, 71GI, 71GJ or 71GK if the failure was caused by—
  - (a) the child being born, or the pregnancy otherwise terminating, before the expected date of birth; or
  - (b) the child being placed for adoption before the expected placement date; or
  - (c) the child starting to reside with the employee before the expected residence date; or
  - (d) another reason that was reasonable in the circumstances.
- (2) However, the employee must give the employer—
  - (a) notice of the period of the leave within 2 weeks after the child's birth or placement or the child starts residing with the employee; and
  - (b) in the case of the birth of a living child—a doctor's certificate stating the date on which the child was born.

### **71GM Consequences of failure to give notice of intention to take parental leave**

- (1) This section applies if an employee fails to comply with section 71GH, 71GI, 71GJ or 71GK.

- (2) Despite subdivision 2, the employer is not required to provide the parental leave until the employee complies with the section.

### **71GN Employee notice—change to situation**

An employee must notify the employer of any change in the information provided under section 71GH, 71GI, 71GJ or 71GK within 2 weeks after the change.

### **71GO Employee to advise employer about particular changes**

- (1) This section applies to an employee who is absent on parental leave.
- (2) The employee must advise the employer of any change in the employee's contact details, including any change of address.

*Note—*

Advice given under subsection (2) may be used by an employer for section 71GQ to advise the employee about significant change at the workplace.

- (3) The employee must also take reasonable steps to advise the employer of any significant change affecting the following as soon as possible after the change happens—
  - (a) the length of the employee's parental leave;
  - (b) the date the employee intends to return to work;
  - (c) an earlier decision to return to work on a full-time basis or to apply to return to work on a part-time basis.

### **71GP Employer to advise about parental leave entitlements**

- (1) Subsection (2) applies to an employer on becoming aware—
  - (a) an employee or an employee's spouse is pregnant; or
  - (b) an employee is adopting a child; or
  - (c) an employee is an intended parent under a surrogacy arrangement.
- (2) The employer must inform the employee of—
  - (a) the employee's entitlement to parental leave under this division; and
  - (b) the employee's obligations to notify the employer of any matter under this division.
- (3) An employer can not rely on an employee's failure to give a notice or other document required by this division unless the employer establishes that subsection (2) has been complied with.

### **71GQ Employer's obligation to advise about significant change at the workplace**

- (1) This section applies if an employer decides to implement significant change at a workplace.
- (2) The employer must take reasonable action to advise each employee who is absent from the workplace on parental leave about the proposed change before it is implemented.
- (3) The advice must inform the employee of the change and any effect it will have on the position the employee held before starting parental leave, including, for example, the status or level of responsibility attached to the position.

- (4) The employer must give the employee a reasonable opportunity to discuss any significant effect the change will have on the employee's position.

#### **Subdivision 4 Application to extend parental leave or return part-time**

##### **71GR Application for extension of parental leave**

- (1) An employee entitled to parental leave under subdivision 2, or who is taking parental leave, may apply to the employer—
- (a) if the parental leave is maternity leave—for an extension of the maternity leave for an unbroken period of up to 104 weeks in total; or
  - (b) otherwise—for an extension of either or both of the following—
    - (i) the short parental leave for an unbroken period of up to 8 weeks in total;
    - (ii) the long parental leave for an unbroken period of up to 96 weeks in total.
- (2) An employee may not make more than 1 application under subsection (1) within a 12-month period in relation to a particular instance of parental leave, unless the employer agrees.

##### **71GS Application to work part-time**

- (1) An employee on parental leave may apply to the employer to return to work on a part-time basis.

- (2) An employee may not make more than 1 application under this section within a 12-month period, unless the employer agrees.

### **71GT Application for extension or part-time work**

- (1) An application mentioned in section 71GR or 71GS must—
- (a) be in writing; and
  - (b) be made—
    - (i) for an application for extension of short parental leave—at least 2 business days before the leave ends; or
    - (ii) for an application for extension of long parental leave—at least 4 weeks before the leave ends; or
    - (iii) for an application to return to work on a part-time basis—at least 7 weeks before the leave ends; and
  - (c) state it is an application for extension of parental leave under section 71GR or an application to return to work on a part-time basis under section 71GS, as appropriate; and
  - (d) state the dates the extension, or return to work on a part-time basis, being applied for is to start and end; and
  - (e) state the impact refusal of the application might have on the employee and the employee's dependants; and
  - (f) for an application for extension of long parental leave or to return to work on a part-time basis—be accompanied by a statutory declaration by the employee stating—



- (i) for an application for extension of long parental leave—that the employee is seeking the extension so the employee can continue to be the child’s primary caregiver; or
  - (ii) for an application to return to work on a part-time basis—that the employee is seeking to work on a part-time basis so the employee can continue to be the child’s primary caregiver when not at work.
- (2) The period for which an application may be made under section 71GR can not extend beyond the day the child in relation to whom parental leave was taken is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 2006*.

### **71GU Employer’s decision on application for extension or part-time work**

- (1) In deciding whether to agree to an application under section 71GR or 71GS, the employer must consider the following—
- (a) the particular circumstances of the employee that give rise to the application, particularly circumstances relating to the employee’s role as the child’s caregiver;
  - (b) the impact refusal of the application might have on the employee and the employee’s dependants;
  - (c) the effect that agreeing to the application would have on the conduct of the employer’s business, including, for example—
    - (i) any additional cost the employer would incur; and

- (ii) the employer's capacity to reorganise work arrangements; and
  - (iii) the availability of competent replacement staff; and
  - (iv) any loss of efficiency in the conduct of the employer's business; and
  - (v) the impact of the employee's absence or temporary absence on the delivery of customer service.
- (2) The employer must not unreasonably refuse an application under section 71GR or 71GS.
- (3) The employer must advise the employee, in writing, of the employer's decision—
  - (a) if the application is for an extension of short parental leave—as soon as possible after receiving the application but before the short parental leave ends; or
  - (b) for any other application—within 14 days after receiving the application.
- (4) If the employer refuses the application, the employer must provide the employee with written reasons for refusing the application.

## **Subdivision 5 Other provisions affecting duration of parental leave**

### **71GV Spouses not to take long parental leave at same time**

- (1) An employee is not entitled to long parental leave when his or her spouse is on parental leave.
- (2) If the employee contravenes subsection (1), the period of parental leave the employee is entitled to is reduced by the period for which the

employee and his or her spouse were on parental leave in contravention of subsection (1).

### **71GW Cancelling parental leave**

- (1) Parental leave applied for but not started is automatically cancelled if—
  - (a) the employee withdraws the application for leave by written notice to the employer; or
  - (b) the pregnancy terminates other than by the birth of a living child; or
  - (c) the placement of the child with the employee for adoption purposes does not proceed; or
  - (d) a child does not start residing with the employee under the surrogacy arrangement.
- (2) Subsection (3) applies if, while an employee is on parental leave—
  - (a) the pregnancy terminates other than by the birth of a living child; or
  - (b) the child in relation to whom the employee is on parental leave dies; or
  - (c) the placement of the child with the employee for adoption purposes does not proceed or continue; or
  - (d) the residence of the child with the employee under the surrogacy arrangement does not start or continue.
- (3) The employee is entitled to resume work at a time nominated by the employer within 2 weeks after the day on which the employee gives the employer a written notice stating—
  - (a) the employee intends to resume work; and
  - (b) the reason for the resumption.

- (4) This section does not affect an employee's entitlement to special maternity leave or sick leave under section 71GZC.

### **71GX Parental leave with other leave**

- (1) An employee may take any annual leave or long service leave to which the employee is entitled instead of or together with parental leave.
- (2) However, the total period of leave can not extend beyond the maximum period of parental leave.
- (3) While the employee is on unpaid parental leave, the employee is not entitled to paid sick leave or other paid leave, unless the employer agrees.
- (4) In this section—  
*other paid leave* means paid leave authorised by any of the following—
  - (a) a law;
  - (b) a modern industrial instrument;
  - (c) an employment contract.

### **71GY Interruption of parental leave by return to work**

- (1) An employee and employer may agree that the employee break the period of parental leave by returning to work for the employer, whether on a full-time, part-time or casual basis.
- (2) The period of parental leave can not be extended by the return to work beyond the maximum period of parental leave under section 71GG.

### **71GZ Extending period of parental leave by notice**

- (1) An employee may extend the period of parental leave by written notice given to the employer at least 14 days—
  - (a) before the start of the parental leave; or
  - (b) if the parental leave has been started—before the parental leave ends.
- (2) The notice must state when the extended period of parental leave ends.
- (3) The total period of parental leave can not be extended under subsection (1) beyond the total period mentioned in section 71GG(1)(a).
- (4) Parental leave may be extended under subsection (1) only once.

### **71GZA Shortening period of parental leave**

If the employer agrees, an employee may shorten parental leave by written notice given to the employer at least 14 days before the employee wants to return to work.

### **71GZB Effect on parental leave of employee ceasing to be primary caregiver**

- (1) This section applies if—
  - (a) during a substantial period starting on or after the start of an employee's long parental leave the employee is not the child's primary caregiver; and
  - (b) considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary caregiver within a reasonable period.

- (2) The employer may notify the employee of the day, at least 4 weeks after the employer gives the notice, on which the employee must return to work.
- (3) If the employee returns to work, the employer must cancel the rest of the leave.

## **Subdivision 6 Other entitlements**

### **71GZC Special maternity leave and sick leave**

- (1) This section applies if, before an employee starts maternity leave—
  - (a) the employee's pregnancy terminates before the expected date of birth, other than by the birth of a living child; or
  - (b) the employee suffers illness related to her pregnancy.
- (2) For as long as a doctor certifies it to be necessary, the employee is entitled to the following types of leave—
  - (a) unpaid leave (*special maternity leave*);
  - (b) paid sick leave, either instead of, or as well as, special maternity leave.

### **71GZD Special adoption leave**

An employee who is seeking to adopt a child is entitled to up to 2 days unpaid leave to attend compulsory interviews or examinations as part of the adoption procedure.

### **71GZE Special surrogacy leave**

An employee who is an intended parent under a surrogacy arrangement is entitled to up to 2 days unpaid leave to attend compulsory interviews or court hearings associated with the surrogacy arrangement.

### **71GZF Return to work after parental leave etc.**

- (1) This section applies to—
  - (a) an employee who returns to work after parental leave; or
  - (b) a female employee who returns to work after special maternity leave or sick leave under section 71GZC.
- (2) The employee is entitled to be employed in—
  - (a) the position held by the employee immediately before starting parental leave; or
  - (b) if the employee worked part-time because of the pregnancy before starting maternity leave—the position held by the employee immediately before starting part-time work; or
  - (c) if the employee was transferred to a safe job under section 71GZG before starting maternity leave—the position held by the employee immediately before the transfer.
- (3) If the position mentioned in subsection (2) no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.

- (4) An employer must make a position to which the employee is entitled available to the employee.
- (5) If a long term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

### **71GZG Transfer to a safe job**

- (1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or newborn child.
- (2) The assessment of the risk is to be made on the basis of—
  - (a) a doctor's certificate given by the employee to the employer; and
  - (b) the employer's duties under the *Work Health and Safety Act 2011*.
- (3) The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.
- (4) If an adjustment is not feasible or can not reasonably be required to be made, the employer must transfer the employee to other appropriate work that—
  - (a) will not expose her to the risk; and
  - (b) is, as nearly as possible, comparable in status and remuneration to that of her present work.
- (5) If a transfer is not feasible or can not reasonably be required to be made, the employer must grant



the employee maternity leave, or any available paid sick leave, for as long as a doctor certifies it is necessary to avoid exposure to the risk.

### **71GZH Continuity of service**

- (1) Parental leave does not break an employee's continuity of service.
- (2) Parental leave is not to be taken into account in working out the employee's period of service, other than—
  - (a) to decide the employee's entitlement to a later period of parental leave; or
  - (b) as expressly provided in—
    - (i) this Act; or
    - (ii) a modern industrial instrument; or
    - (iii) an employment contract.

### **71GZI Dismissal because of pregnancy or parental leave**

- (1) An employer must not dismiss an employee because—
  - (a) the employee or the employee's spouse is pregnant or has applied to adopt a child; or
  - (b) the employee or the employee's spouse has given birth to a child or adopted a child; or
  - (c) the employee is an intended parent under a surrogacy arrangement or a child has started residing with the employee under a surrogacy arrangement; or
  - (d) the employee has applied for, or is absent on, parental leave.
- (2) This section does not affect any other rights of—

- (a) an employer to dismiss an employee; or
- (b) a dismissed employee.

### **71GZJ Replacement employees**

- (1) The employer must, before a replacement employee starts employment, give the replacement employee a written notice informing the replacement employee of—
  - (a) the temporary nature of the employment; and
  - (b) the parent's right to return to work.
- (2) In this section—

*replacement employee* means—

  - (a) a person who is specifically employed because an employee (the *parent*)—
    - (i) starts parental leave; or
    - (ii) is transferred to a safe job under section 71GZC; or
  - (b) a person replacing an employee who is temporarily promoted or transferred to replace the parent.

## **Subdivision 7 General**

### **71GZK Relationship to other rights**

- (1) This division has effect despite a relevant law to the extent the relevant law provides an employee with a benefit that is less favourable to the employee.
- (2) In this section—

*relevant law* means another law of the State.

## **Division 6      Long service leave**

### **Subdivision 1   Preliminary**

#### **71H Definitions for div 6**

In this division—

*continuous service*, of an employee, means—

- (a) in section 71HN—the period of continuous service the employee is taken to have had with an employer under section 71HN(2)(b); or
- (b) elsewhere—the employee’s continuous service with the same employer, whether wholly in the State or partly in and partly outside the State.

*owner*, of a meat works, includes a person who carries on the business of the works.

*period between seasons* includes the period between—

- (a) the end of 1 season and the start of the next season; and
- (b) for a particular employee—the day the employee stops employment in 1 season and the day the employee starts employment in the next season.

*season* means a period, whether falling completely in 1 calendar year or partly in 1 calendar year and partly in the next calendar year, when—

- (a) for the sugar industry—
  - (i) sugar cane is delivered to, and crushed at, a sugar mill; or

- (ii) sugar cane is harvested, or farm work is performed, in the sugar industry; or
- (b) for a meat works—stock are delivered to, and slaughtered at, the works.

## **Subdivision 2 Relationship of division 6 with continuity of service provisions**

### **71HA Application of pt 5 for particular purposes**

To remove any doubt, it is declared that the provisions of part 5 apply for working out an employee's rights and entitlements to long service leave under this division or a modern industrial instrument.

## **Subdivision 3 Entitlement**

### **71HB Entitlement—employees other than seasonal employees**

- (1) This section applies to an employee, other than a seasonal employee.

*Note—*

For provisions applicable to seasonal employees, see subdivisions 7 and 8.

- (2) The employee is entitled to long service leave, on full pay, of—
  - (a) if the employee has completed 10 years continuous service—8.6667 weeks; and
  - (b) after 10 years service, if the employee has completed at least a further 5 years continuous service—a period that bears to 8.6667 weeks the proportion that the

employee's further period of continuous service bears to 10 years.

- (3) An employee who has completed at least 7 years continuous service is entitled to a proportionate payment for long service leave on the termination of the employee's service.
  - (4) However, if the employee's service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if—
    - (a) the employee's service is terminated because of the employee's death; or
    - (b) the employee terminates the service because of—
      - (i) the employee's illness or incapacity; or
      - (ii) a domestic or other pressing necessity; or
    - (c) the termination is because the employer—
      - (i) dismisses the employee for a reason other than the employee's conduct, capacity or performance; or
      - (ii) unfairly dismisses the employee; or
    - (d) the termination is because of the passing of time and—
      - (i) the employee had a reasonable expectation that the employment with the employer would continue until the employee had completed at least 10 years continuous service; and
      - (ii) the employee was prepared to continue the employment with the employer.
  - (5) Long service leave is exclusive of a public holiday that falls during the period of the leave.
-

- (6) An employee who is entitled to long service leave other than under this Act is entitled to leave that is at least as favourable as the entitlement under this section.
- (7) For working out when an employee may take long service leave, only two-thirds of the employee's continuous service completed before 3 June 2001 counts as continuous service.
- (8) Subsection (7) does not reduce an entitlement to long service leave that an employee has accrued before subsection (7) commences.

*Examples for subsections (7) and (8)—*

An employee has completed 15 years of continuous service immediately before the commencement. The 15 years counts as 10 years continuous service for working out when the employee may take long service leave. The employee may take the leave immediately. The employee's entitlement then is 13 weeks ( $15 \times 0.86667$  weeks).

An employee has completed 10 years of continuous service immediately before the commencement. The 10 years counts as 6.6667 years continuous service for working out when the employee may take long service leave. The employee may take the leave after completing another 3.3333 years continuous service. The employee's entitlement then will be 11.5556 weeks ( $[10 + 3.3333] \times 0.86667$  weeks).

An employee has completed 1 year of continuous service immediately before the commencement. The 1 year counts as 0.6667 years continuous service for working out when the employee may take long service leave. The employee may take the leave after completing another 9.3333 years continuous service. The employee's entitlement then will be 8.9556 weeks ( $[1 + 9.3333] \times 0.86667$  weeks).

An employee starts employment after the commencement. The employee may take long service leave after completing 10 years continuous service. The employee's entitlement then will be 8.6667 weeks ( $10 \times 0.86667$  weeks).

- (9) In this section—

*proportionate payment* means a payment equal to the employee's full pay for a period that represents the same proportion of 8.6667 weeks that the employee's period of continuous service bears to 10 years.

### **71HC Continuity of service—service before 23 June 1990**

- (1) This section applies to service of an employee, other than a casual employee, before 23 June 1990.
- (2) The repealed *Industrial Conciliation and Arbitration Act 1961*, sections 17, 18, 19 and 20, applies for—
  - (a) working out the employee's continuous service before 23 June 1990; and
  - (b) calculating the employee's entitlement to long service leave in relation to continuous service before 23 June 1990.

## **Subdivision 4 Taking long service leave**

### **71HD Taking long service leave**

- (1) The commission may insert in a modern industrial instrument provisions—
  - (a) about when, the way in which, and the conditions on which, long service leave may be taken; or
  - (b) requiring that leave in the nature of long service leave taken, before the provisions take effect, by an employee to whom the instrument applies must be deducted from the long service leave to which the employee is entitled under the provisions.

- (2) An employee and employer may agree when the employee will take long service leave.
- (3) If the employee and employer can not agree, the employer may—
  - (a) decide when the employee will take long service leave; and
  - (b) give the employee at least 3 months written notice of the date on which the employee must take at least 4 weeks long service leave.

## **Subdivision 5 Payment for long service leave etc. for employees generally**

### **71HE Rate of payment**

- (1) An employer must pay an employee for long service leave at the following rate—
  - (a) if the employee is, immediately before taking the leave, being paid at a higher rate than the ordinary rate—the higher rate;
  - (b) otherwise—the ordinary rate being paid to the employee immediately before the leave is taken.
- (2) An employer must not reduce an employee's usual rate, before an employee starts long service leave, with intent to avoid the employer's obligation under subsection (1)(a).
- (3) If satisfied an employer has contravened subsection (2), the commission may order the employer to pay the employee at the usual rate even though the employee was not being paid the usual rate immediately before starting leave.
- (4) If, during the employee's long service leave—



- (a) the ordinary rate is increased above the higher rate—the employer must pay the employee at the increased rate for the part of the leave period to which the increased rate applies; or
  - (b) the ordinary rate is reduced—the employer may pay the employee at the reduced rate for the part of the leave period to which the reduced rate applies.
- (5) If the employee is a seasonal employee, this section applies subject to section 71HN.
- (6) In this section—
- usual rate* means the rate—
- (a) at which the employee is being paid for ordinary time; and
  - (b) that is higher than the ordinary rate.

### **71HF Payment for commission**

- (1) 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.
- (2) Subsection (1) does not apply if—
  - (a) a relevant industrial instrument, or a 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.
- (3) If, on application under subsection (2)(b), the commission considers 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.

(4) In this section—

*default average commission* means—

- the total commission 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.

#### **71HG Disputes about payment—piecework rates**

- (1) This section applies if a dispute arises between an employee who is paid at piecework rates and the employer about the rate the employee should be paid for long service leave.
- (2) The commission may decide the rate payable.

#### **71HH Other matters relating to payment for long service leave**

- (1) An employee and employer may agree on when, and the way in which, the employee will be paid for long service leave.
- (2) The commission may decide any matter relating to payment for long service leave that the employee and employer can not agree on.
- (3) An amount payable for long service leave becomes payable at a time agreed between the employee and employer or, if they can not agree, at a time decided by the commission.

## **Subdivision 6 Casual or regular part-time employees**

### **71HI Definition for sdiv 6**

In this subdivision—

*casual employee* means an employee who is employed more than once by the same employer over a period.

### **71HJ Continuity of service—casual employees**

- (1) This section applies to a casual employee.
- (2) The employee's service is continuous service with the employer even though—
  - (a) the employment is broken; or
  - (b) any of the employment is not full-time employment; or
  - (c) the employee is employed by the employer under 2 or more employment contracts; or
  - (d) the employee would, apart from this section, be taken to be engaged in casual employment; or
  - (e) the employee has engaged in other employment during the period.
- (3) However, the continuous service ends if the employment is broken by more than 3 months between the end of 1 employment contract and the start of the next employment contract.
- (4) In working out the length of the employee's continuous service—
  - (a) the following service must not be taken into account—

- (i) service by the employee before 23 June 1990;
    - (ii) if the employee obtained the entitlement only because of the enactment of the repealed *Industrial Relations Reform Act 1994*, section 17—the employee’s service between 23 June 1990 and 30 March 1994; and
  - (b) subject to subsection (2), a period when the employee was not employed by the employer must be taken into account.
- (5) Subsection (4)(a)(i) does not affect the employee’s entitlement to long service leave under—
- (a) an award made before 23 June 1990; or
  - (b) the repealed *Industrial Conciliation and Arbitration Act 1961*.
- (6) This section does not limit any other entitlement to long service leave the employee may have.

### **71HK Taking long service leave—casual or regular part-time employees**

- (1) This section applies to a casual or regular part-time employee.
- (2) The employer may agree with the employee that the employee’s entitlement to long service leave may be taken in the form of its full-time equivalent.

*Example—*

If an employee—

- (a) is entitled to be paid for 260 hours long service leave; and
- (b) works under an award that provides for a full-time working week of 40 ordinary working hours;

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the employee and the employer may agree that the employee take 6½ weeks leave ( $260 \div 40 = 6\frac{1}{2}$ ).

### 71HL Payment for long service leave

- (1) This section applies to an employee who is entitled to long service leave if the employee was a casual employee or regular part-time employee at any time during the employee's continuous service to which the long service leave relates.
- (2) The minimum amount payable to the employee for long service leave is worked out using the formula—

$$\frac{\text{actual service}}{52} \times \frac{8.6667}{10} \times \text{hourly rate}$$

*Example—*

An employee who worked 15600 ordinary working hours over a 10-year period and is being paid an hourly rate of \$12 is entitled to be paid—

$$\frac{15600}{52} \times \frac{8.6667}{10} \times \$12 = \$3120.01$$

- (3) In this section—

***actual service*** means the total ordinary working hours actually worked by an employee during the employee's period of continuous service.

***hourly rate*** means the hourly rate for ordinary time payable to the employee—

- (a) if the employee takes the long service leave—on the day the employee's leave starts; or
- (b) if the employee's employment is terminated—on the day the termination takes effect.

## **Subdivision 7 Seasonal employees in sugar industry and meat works**

### **71HM Application of sdiv 7**

This subdivision applies to the following seasonal employees—

- (a) an employee employed in seasonal employment in the sugar industry;
- (b) an employee employed in or about meat works in seasonal employment by the meat works owner.

### **71HN Entitlement to long service leave**

- (1) The employee is entitled to long service leave on full pay of at least the number of weeks worked out using the following formula—

$$\text{s 71HB entitlement} \times \frac{\text{actual service}}{10}$$

*Example—*

An employee who worked half of each year, over a 10-year period, is entitled to half the s 71HB entitlement, that is, half of 8.6667 weeks leave ( $8.6667 \times \frac{5}{10} = 4.3334$ ).

- (2) In working out the length of the employee's continuous service—
- (a) service with the employer of the employee engaged in harvesting sugar cane or farm work in the sugar industry before 23 June 1990 must not be taken into account; and

- (b) a period between seasons when the employee is not employed by the employer must be taken into account if—
- (i) in 1 season—the employee’s service with the employer continued until the end of the season or until an earlier day when the employee’s employment was terminated by the employer; and
  - (ii) in the next season—the employee’s service with the same employer started on the season’s opening or on a later day in the season when the employer required the employee to start employment.
- (3) If the employee is employed by the employer between seasons, the part of the period between seasons when the employee is employed must be taken into account in working out the length of the employee’s actual service.
- (4) If the employee is entitled to long service leave other than under this Act, the employee is entitled to leave that is at least as favourable as the entitlement under this section.
- (5) In this section—
- actual service* means the total ordinary time actually worked by the employee during the employee’s period of continuous service.
- s 71HB entitlement* means the employee’s entitlement to long service leave under section 71HB.

### **71HO Taking long service leave**

- (1) The employee may take long service leave between seasons.

- (2) If the employee takes long service leave between seasons, the leave is taken to have started when the employee last ceased employment with the employer.

## **Subdivision 8 Other seasonal employees**

### **71HP Entitlement of other seasonal employees**

The commission may decide the entitlement to long service leave of an employee—

- (a) who is employed in seasonal employment, other than an employee to whom subdivision 7 applies; or
- (b) who is employed in other periodic employment that is not defined as casual employment by a relevant industrial instrument.

## **Subdivision 9 Miscellaneous provisions**

### **71HQ Payment instead of long service leave**

- (1) An employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave under subsection (2) or (3).
- (2) The payment may be made if—
  - (a) a relevant industrial instrument provides for the employee to be paid for all or part of the entitlement; and
  - (b) the employee and employer agree by a signed agreement the payment may be made; and



- (c) the payment is made in accordance with the industrial instrument.
- (3) If no modern industrial instrument provides for the employee to be paid for all or part of the entitlement, the payment may be made only if the payment is ordered by the commission on application by the employee.
- (4) The commission may order the payment only if satisfied it should be made—
  - (a) on compassionate grounds; or
  - (b) on the ground of financial hardship.
- (5) The full bench must not make a general ruling that allows an employee to be paid for an entitlement to long service leave instead of taking the leave.
- (6) In this section—

*employee* includes a registered worker under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

*entitlement to long service leave* includes an entitlement to long service leave under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 57(1).

### **71HR Payment instead of long service leave on death**

- (1) This section applies if an employee entitled to long service leave dies—
  - (a) before taking the leave; or
  - (b) after starting, but before finishing, the leave.
- (2) The employer must pay the employee's legal personal representative any amount payable for the employee's entitlement to long service leave that has not already been paid.

- (3) If the employer does not do so, the employee's legal personal representative or an inspector may recover the amount as unpaid wages.

### **71HS Continuity not broken by service in Reserve Forces**

- (1) An employee's service in the reserve forces is taken to be continuous service with the employer who employed the employee immediately before the employee starting service with the forces.
- (2) In this section—  
*reserve forces* means the Australian Naval Reserve, Australian Army Reserve or Australian Air Force Reserve.

### **71HT Recognition of certain exemptions**

- (1) This part does not apply to an employer if—
  - (a) the commission exempted the employer, under the repealed *Industrial Conciliation and Arbitration Act 1961*, from the application of long service leave provisions in that Act or an award; and
  - (b) the exemption is in force.
- (2) On application, the commission may revoke the exemption.

### **71HU Person who is both employer and employee**

- (1) This section applies to a person who, in performing duties in a calling, is an employee.
- (2) The person is entitled to long service leave under this part despite the person being an employer within the meaning of this Act because of—

- (a) the person's engagement in the calling; or
- (b) the position the person holds in the calling.

## **Division 7      Public holidays**

### **71I Definitions for div 7**

In this division—

*ordinary working day* means a day on which an employee would ordinarily be required to work.

*show holiday* means—

- (a) a public holiday appointed for an annual agricultural, horticultural or industrial show under the *Holidays Act 1983*, section 4; or
- (b) for a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show—the ordinary working day agreed on by the employer and employee that is to be treated as a show holiday for all purposes.

### **71IA Entitlement to be absent on public holiday**

- (1) An employee is entitled to be absent from the employee's employment on a day, or part of a day, that is a public holiday in the place where the employee is based for work purposes.
- (2) However, the employee's employer may ask the employee to work on a public holiday if the request is reasonable.
- (3) If the employer asks the employee to work on a public holiday, the employee may refuse the request if—
  - (a) the request is unreasonable; or
  - (b) the refusal is reasonable.

- (4) In deciding whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account—
- (a) the nature of the employer’s calling or business, including its operational requirements;
  - (b) the nature of the work performed by the employee;
  - (c) the employee’s personal circumstances, including family responsibilities;
  - (d) whether the employee could reasonably expect that the employer might ask the employee to work on the public holiday;
  - (e) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
  - (f) the type of employment of the employee, including, for example, whether the employment is full-time, part-time or casual, or involves shift work;
  - (g) the period of notice given by the employer before the public holiday in making the request;
  - (h) for a refusal of a request—the period of notice given by the employee before the public holiday in refusing the request;
  - (i) any other relevant matter.

### **711B Payment for public holiday**

- (1) Subsection (2) applies if—

- (a) under this part, an employee is absent from his or her employment on a day, or part of a day, that is a public holiday; and
- (b) the employee would ordinarily have been required to work on the day or the part of the day.

*Examples of employees to whom subsection (2) does not apply—*

- an employee who is not rostered on for the public holiday
  - a part-time employee whose part-time hours do not include the day on which the public holiday falls
  - a casual employee or pieceworker
- (2) The employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or the part of the day.
  - (3) An employee, while employed by the same employer, is only entitled to be paid under subsection (2) for a show holiday once in each calendar year.
  - (4) If an employee does work on a public holiday, the employer must pay the employee—
    - (a) if a modern industrial instrument applies to the employee—the penalty rates provided for under the instrument; or
    - (b) otherwise—at the employee's base rate of pay.
  - (5) In this section—

***base rate of pay*** means the rate of pay payable to the employee for the employee's ordinary hours of work, but not including any of the following—

    - (a) incentive-based payments and bonuses;
    - (b) loadings;

- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

## **Division 8      Jury service leave**

### **71J Entitlement**

- (1) If the employee is required to attend for jury service, the employee—
  - (a) is entitled to take leave (*jury service leave*) to perform jury service; and
  - (b) must, as soon as is practicable, tell the employer—
    - (i) the employee is required to attend for jury service; and
    - (ii) about the period for which the employee is required to perform jury service.
- (2) If the employee is given an attendance document in relation to the jury service, the employee must give the employer the document.
- (3) For the period of jury service leave, the employer must pay the employee the difference between the following—
  - (a) the amount stated in the employee's attendance document as the amount received as remuneration and allowances, other than meal allowances;
  - (b) the ordinary rate the employee would have been paid if the employee had not taken jury service leave.

- (4) The amount payable under subsection (3) must be paid on or before the first pay day that is practicable after the employee gives the employer the employee's attendance document.
- (5) Subsection (6) applies if—
  - (a) the employee is not required to serve on a jury for a day or part of a day after attending for jury service; and
  - (b) the employee would ordinarily be working for all or part of the remaining day.
- (6) The employee must, if practicable, present for work at the earliest reasonable opportunity.

- (7) In this section—

***attendance document***, in relation to jury service performed by an employee, means a document, or a copy of a document, stating the following matters under the *Jury Act 1995*—

- (a) the employee's attendance under a requirement to attend for jury service;
- (b) the number of days of attendance;
- (c) the amount received as remuneration and allowances, other than meal allowances.

***required to attend for jury service*** means the employee—

- (a) is given a summons under the *Jury Act 1995*, section 27 requiring the employee to attend for jury service; or
- (b) is instructed under the *Jury Act 1995*, section 38 to attend for jury service.

## **Division 9            Notice of termination and redundancy**

### **Subdivision 1    Notice of termination**

#### **71K Application of sdiv 1**

This subdivision does not apply to any of the following—

- (a) a casual employee;
- (b) an employee engaged by the hour or day;
- (c) an employee engaged for a specific period or task;
- (d) an employee during the first 3 months of employment with an employer (the *probationary period*) unless the employee and employer agree in writing that the employee serve—
  - (i) a period of probation that is shorter than the probationary period; or
  - (ii) no period of probation;
- (e) an employee serving a period of probation that is longer than the probationary period if the period decided by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment;
- (f) an employee—
  - (i) to whom a modern industrial instrument does not apply; and
  - (ii) who is not a public service officer employed on tenure under the *Public Service Act 2008*; and



- (iii) whose annual wages immediately before the dismissal are more than \$68000 or a greater amount stated in, or worked out in a way prescribed under, a regulation;
- (g) an apprentice or trainee;
- (h) an employee participating in a labour market program.

### **71KA What employer must do to dismiss employee**

- (1) An employer may dismiss an employee only if—
  - (a) the employee has been—
    - (i) given the period of notice required by section 71KC; or
    - (ii) paid the compensation required by section 71KD; or
  - (b) the employee engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the notice period.
- (2) For subsection (1)(b), misconduct includes the following—
  - (a) theft;
  - (b) assault;
  - (c) fraud;
  - (d) other misconduct prescribed under a regulation.
- (3) However, subsection (1)(b) does not apply if the employee can show that, in the circumstances, the conduct was not conduct that made it unreasonable to continue the employment during the notice period.

### **71KB Employer's failure to give notice or pay compensation**

- (1) If an employer dismisses an employee to whom section 71KA(1)(a) applies without giving the required notice or paying the required compensation—
  - (a) on an application under section 74—the commission may order the employer to pay the employee the compensation that the employer was required to pay under section 71KD; or
  - (b) otherwise—the commission or a magistrate may order the employer to pay the employee the compensation the employer was required to pay under section 71KD.
- (2) An application for an order under subsection (1)(b) may be made by—
  - (a) the employee who has been dismissed; or
  - (b) with the employee's consent—an organisation whose rules entitle it to represent the employee's industrial interests; or
  - (c) an inspector.
- (3) The application must be made within 6 years after the day on which the employee is dismissed.
- (4) A regulation may exclude from the operation of this section dismissals happening in stated circumstances that relate to the transfer of the employer's business.

### **71KC Minimum period of notice required from employers**

- (1) The minimum period of notice is—
  - (a) if the employee's continuous service is—

- (i) not more than 1 year—1 week; and
- (ii) more than 1 year, but not more than 3 years—2 weeks; and
- (iii) more than 3 years, but not more than 5 years—3 weeks; and
- (iv) more than 5 years—4 weeks; and
- (b) increased by 1 week if the employee—
  - (i) is 45 years old or over; and
  - (ii) has completed at least 2 years of continuous service with the employer.
- (2) A regulation may prescribe matters that must be disregarded when working out continuous service under subsection (1).

### **71KD Minimum amount of compensation required**

- (1) The minimum compensation payable to an employee is at least equal to the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.
- (2) The total must be worked out on the basis of—
  - (a) the ordinary working hours worked by the employee; and
  - (b) the amounts payable to the employee for the hours, including, for example, allowances, loadings and penalties; and
  - (c) any other amounts payable under the employee's employment contract.
- (3) A regulation may prescribe the amount that is taken to be payable, or how to work out the amount, under an employment contract mentioned in subsection (2)(c), to an employee

whose wages before dismissal were decided wholly or partly on the basis of commission or piece rates.

## **Subdivision 2 Redundancy pay**

### **71KE Application of sdiv 2**

- (1) This subdivision applies to an employee if—
  - (a) a modern industrial instrument applies to the employee; and
  - (b) the employee's employment is terminated because the employer no longer requires the job done by the employee to be done by anyone.
- (2) However, this subdivision does not apply if the employee's employment is terminated because of the ordinary and customary turnover of labour.
- (3) Also, this subdivision does not apply to any of the following employees—
  - (a) a casual employee;
  - (b) an employee whose period of continuous service with the employer is less than 1 year;
  - (c) an employee employed for a fixed period, for a fixed task, or for the duration of a particular season;
  - (d) an apprentice or trainee;
  - (e) an employee participating in a labour market program;
  - (f) another employee prescribed under a regulation or a modern industrial instrument as an employee to whom this division does not apply.

*Note—*

In relation to an employee whose employment is terminated due to the transfer of the employer's calling, see part 5.

- (4) Subsection (3)(c) does not prevent this subdivision applying to an employee if a substantial reason for employing the employee as mentioned in the subsection was to avoid the application of this division.
- (5) Except to the extent provided for under subsection (3)(d), a modern industrial instrument must not displace a provision of this subdivision.

### **71KF Entitlement to redundancy pay**

- (1) The employee is entitled to be paid an amount (*redundancy pay*) equal to the total amount payable to the employee for the redundancy pay period worked out using the following table—

Employee's years of continuous service with the employer	Redundancy pay period
at least 1 year but not more than 2 years	4 weeks
more than 2 years but not more than 3 years	6 weeks
more than 3 years but not more than 4 years	7 weeks
more than 4 years but not more than 5 years	8 weeks
more than 5 years but not more than 6 years	9 weeks
more than 6 years but not more than 7 years	10 weeks
more than 7 years but not more than 8 years	11 weeks
more than 8 years but not more than 9 years	12 weeks
more than 9 years but not more than 10 years	13 weeks

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Employee's years of continuous service with the employer	Redundancy pay period
more than 10 years but not more than 11 years	14 weeks
more than 11 years but not more than 12 years	15 weeks
more than 12 years	16 weeks

- (2) The amount of the employee's redundancy pay must be worked out on the basis of the employee's weeks pay for the employee's ordinary hours of work.
- (3) This section applies subject to section 71KG.

### **71KG Variation of redundancy pay by commission**

- (1) This section applies if—
  - (a) an employee is entitled under this division to be paid an amount of redundancy pay; and
  - (b) the employer—
    - (i) obtains other acceptable employment for the employee; or
    - (ii) can not pay the amount.
- (2) On application by the employer, the commission may make an order reducing the amount of the redundancy pay to a stated amount the commission considers appropriate.
- (3) For subsection (2), the amount may be zero.
- (4) The amount of redundancy pay to which the employee is entitled under this division is the amount stated in the order.

## **Part 3                      Content of modern    industrial instruments**

### **Division 1                Preliminary**

#### **71L Meaning of *modern industrial instrument* for pt 3**

In this part—

*modern industrial instrument* does not include a determination made under section 149 as inserted by the modernising Act.

#### **71LA Required or permitted provisions**

- (1) A modern industrial instrument must only include provisions that are required or permitted under—
  - (a) part 2; or
  - (b) division 2, subdivision 1 (required content for all modern industrial instruments); or
  - (c) division 3, subdivision 1 (permitted content for all modern industrial instruments); or
  - (d) for a modern award—
    - (i) division 2, subdivision 2 (required content for a modern award); or
    - (ii) division 3, subdivision 2 (permitted content for a modern award); or
  - (e) for a certified agreement—
    - (i) division 2, subdivision 3 (required content for a certified agreement); or
    - (ii) division 3, subdivision 3 (permitted content for a certified agreement).

- (2) However, a modern award may include matters it is permitted to include, and must include matters it is required to include, only to the extent necessary to achieve the modern awards objectives.
- (3) Subsection (2) applies despite divisions 2 and 3.

### **71LB Non-allowable provisions**

- (1) A modern industrial instrument must not include provisions (*non-allowable provisions*) that contravene any of the following—
  - (a) division 4, subdivision 1 (non-allowable content for all modern industrial instruments);
  - (b) for a modern award—division 4, subdivision 2;
  - (c) for a certified agreement—division 4, subdivision 3.
- (2) However, a provision mentioned in division 2 is not a non-allowable provision.
- (3) Subsection (2) applies despite division 4.

### **71LC Provisions that contravene s 71LA or 71LB of no effect**

A provision of a modern industrial instrument that contravenes section 71LA or 71LB is of no effect.



## **Division 2      Required content**

### **Subdivision 1   Required content—all modern industrial instruments**

#### **71M Consultation—major organisational changes**

A modern industrial instrument must include the provision prescribed under a regulation that requires an employer to consult with employees about the implementation of major organisational changes that are likely to have a significant effect on the employees.

#### **71MA Dispute resolution**

A modern industrial instrument must include the provision prescribed under a regulation for preventing and settling disputes about a matter arising under the instrument or the Queensland Employment Standards.

#### **71MB Individual flexibility arrangements**

- (1) A modern industrial instrument must include the provision prescribed under a regulation enabling an employee and employer to agree to a flexibility arrangement to meet the genuine needs of the employee and employer.
- (2) If an employee and employer agree to a flexibility arrangement under a modern industrial instrument—
  - (a) the industrial instrument has effect in relation to the employee and employer as if it were varied by the arrangement; and

- (b) for this Act, the arrangement is taken to be a provision of the industrial instrument.
- (3) If an employee and employer purportedly agree to a flexibility arrangement under a modern industrial instrument and the arrangement does not meet a requirement provided for in the industrial instrument—
- (a) the arrangement has effect as if it were a flexibility arrangement; and
  - (b) to the extent the industrial instrument requires the employer to ensure the arrangement meets the requirement, the employer contravenes the industrial instrument; and
  - (c) in addition to any method of termination of the arrangement provided for in the industrial instrument, the instrument is taken to provide that the arrangement can be terminated—
    - (i) by either the employee or employer giving 28 days' written notice; or
    - (ii) by the employee and the employer at any time if they agree in writing to the termination.
- (4) In this section—
- flexibility arrangement*** means a written arrangement between an employer and employee that varies the effect of a modern industrial instrument in relation to the employee and the employer.

## **Subdivision 2 Required content—modern awards**

### **71MC Coverage**

- (1) A modern award must include provisions (*coverage provisions*) stating the employers, employees and organisations to which the award applies.
- (2) A modern award must be expressed to apply to—
  - (a) stated employers; and
  - (b) stated employees of employers to whom the award applies.
- (3) A modern award may be expressed to cover 1 or more stated organisations, in relation to all or stated employees or employers to whom the award applies.
- (4) For subsections (2) and (3)—
  - (a) employers may be identified by name or by reference to 1 or more stated classes; and
  - (b) employees must be identified by reference to 1 or more stated classes; and
  - (c) organisations must be identified by name.
- (5) Without limiting the way a class may be described in a coverage provision, the class may be described by reference to—
  - (a) a particular industry or part of an industry;  
or
  - (b) particular kinds of work.

### **Subdivision 3 Required content—certified agreements**

#### **71MD Nominal expiry date**

A certified agreement must specify a nominal expiry date that is—

- (a) for a project agreement—a date no later than the date on which the project ends; or
- (b) otherwise—a date no later than 4 years after the date on which the agreement will come into operation.

#### **71ME Other matters**

A certified agreement must—

- (a) state the persons covered by the certified agreement; and
- (b) include, or be accompanied by, information prescribed under a regulation.

### **Division 3 Permitted content**

#### **Subdivision 1 Permitted content—all modern industrial instruments**

##### **71N General matters**

A modern industrial instrument may include provisions, other than non-allowable provisions, about any of the following matters—

- (a) types of engagement;

- (b) allowances, including for any of the following—
  - (i) expenses incurred in the course of employment;
  - (ii) responsibilities or skills not taken into account in the basic rates of pay;
  - (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
- (c) annualised salary arrangements that—
  - (i) have regard to the patterns of work in the enterprise or industry concerned; and
  - (ii) provide an alternative to the separate payment of wages and other monetary entitlements; and
  - (iii) include appropriate safeguards to ensure individual employees are not disadvantaged;
- (d) overtime rates;
- (e) penalty rates, including for any of the following—
  - (i) employees working unsocial, irregular or unpredictable hours;
  - (ii) employees working on weekends or public holidays;
  - (iii) shift workers;
- (f) arrangements for when work is performed, including hours of work, rostering, weekend work, shift work, meal and rest breaks and variations to working hours;
- (g) superannuation;
- (h) anti-discrimination and equal opportunity.

### **71NA Provisions related to Queensland Employment Standards**

- (1) A modern industrial instrument may include any other provision, other than a non-allowable provision, that—
  - (a) provides for all or part of a matter that is provided for under the Queensland Employment Standards; or
  - (b) is ancillary or incidental to the operation of the entitlement of an employee under the Queensland Employment Standards; or
  - (c) supplements the Queensland Employment Standards.
- (2) However, subsection (1)—
  - (a) applies only to the extent the effect of the provision is no less favourable to an employee than the Queensland Employment Standards; and
  - (b) does not apply to a provision about a matter provided for under part 2, division 9, subdivision 2.

### **71NB Other incidental provisions**

A modern industrial instrument may include provisions, other than non-allowable provisions, that are—

- (a) incidental to a provision that is required or permitted to be included in the instrument; and
- (b) essential for making a particular provision operate in a practical way.

### **71NC Machinery provisions**

A modern industrial instrument may include machinery provisions, including, for example, provisions about the following—

- (a) commencement;
- (b) definitions;
- (c) titles;
- (d) arrangement.

## **Subdivision 2 Permitted content—modern awards**

### **71ND General matters**

A modern award may include provisions, other than non-allowable 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.

### **Subdivision 3 Permitted content—certified agreements**

#### **71NE Provisions about employment relationship**

- (1) A certified agreement may include provisions, other than non-allowable provisions, about the employment relationship.
- (2) Without limiting subsection (1), a certified agreement may include a term about any or all of the following—
  - (a) arrangements for the taking of annual leave, parental leave, personal leave or long service leave;
  - (b) bonuses or incentive-based payments;
  - (c) continuous improvement initiatives;
  - (d) productivity improvement initiatives;
  - (e) salary sacrifice;
  - (f) uniforms, including personal protective equipment;
  - (g) wages.

### **Division 4 Non-allowable content**

#### **Subdivision 1 Non-allowable content—all modern industrial instruments**

##### **71O Contracting provision**

A modern industrial instrument must not contain a provision that—



- (a) directly or indirectly requires, restricts or prohibits the contracting out, or in, of services; or
- (b) is about the terms or conditions on which services may be contracted out or in; or
- (c) is otherwise about the contracting out, or in, of services.

*Examples—*

- 1 The following provisions of pre-modernisation industrial instruments, as in force on 30 July 2012, are examples of contracting provisions—
  - clause 7.3 of the State Government Departments Certified Agreement 2009
  - appendix 22: Queensland Government Policy on the Contracting-out of Services, of the State Government Departments Certified Agreement 2009
  - clauses 4.2 and 4.3 of the Transport and Main Roads Operational Employees' Certified Agreement 2011
  - clauses 2.3(1) and 2.3.2 of the QBuild Field Staff Certified Agreement 8 (2011)
  - clauses 6.2 and 6.3 of the Queensland Public Health Sector Certified Agreement (No. 8) 2011 (EB8)
  - clause 3.1(b) of the Queensland Ambulance Service - Determination 2010.
- 2 Also, clause 63 of the Queensland Rail Customer Service Enterprise Agreement 2011, as in force immediately before the date of assent of the *Queensland Rail Transit Authority Act 2013*, is an example of a contracting provision.

## **710A Employment security provision**

A modern industrial instrument must not contain a provision about job security or maximising permanent employment, including a provision—

- (a) that applies all or part of a government policy about employment security; or

- (b) restricting the number or proportion of employees that may be employed; or
- (c) prescribing levels of staffing or funding; or
- (d) about converting employees from casual or temporary employment to permanent employment.

*Examples—*

- 1 The following provisions of pre-modernisation industrial instruments, as in force on 30 July 2012, are examples of employment security provisions—
  - clauses 7.1 and 7.2 of the State Government Departments Certified Agreement 2009
  - appendix 21 of the State Government Departments Certified Agreement 2009
  - clause 2 contained in Appendix 5 of the State Government Departments Certified Agreement 2009: New Provisions Applicable to Employees Engaged in Operations in Youth Detention Centres
  - clause 4.1.1 of Part 4 of the Transport and Main Roads Operational Employees' Certified Agreement 2011
  - clause 2.3 of the QBuild Field Staff Certified Agreement 8 (2011)
  - clauses 6.1, 6.6 and 6.7 of the Queensland Public Health Sector Certified Agreement (No. 8) 2011 (EB8).
- 2 Also, the following provisions, as in force immediately before the date of assent of the *Queensland Rail Transit Authority Act 2013*, are examples of employment security provisions—
  - clause 40 of the Queensland Rail Customer Service Enterprise Agreement 2011
  - clause 47 of the QR Passenger Pty Limited Traincrew Union Collective Workplace Agreement 2009.

### **710B Encouragement provision**

- (1) A modern industrial instrument must not contain a provision that directly or indirectly—
  - (a) requires a person to encourage another person to join or maintain membership of an industrial association; or
  - (b) requires a person to supply the employer's facilities, resources or premises to an officer, employee or other representative of an industrial association; or
  - (c) requires an employer to facilitate deductions of industrial association membership subscriptions from an employee's wages; or
  - (d) requires a person to give employees information about, or on behalf of, an industrial association; or
  - (e) allows employees to attend the following during the employees' working time—
    - (i) training, conferences or other activities facilitated by an industrial association;
    - (ii) a meeting of members of, or organised by, an industrial association; or
  - (f) requires or permits payment of a bargaining services fee.
- (2) In this section—

***bargaining services***—

  - (a) means services provided by or for an organisation in relation to a certified agreement or a proposed certified agreement; and
  - (b) includes services relating to bargaining for, or the making, certification, operation, variation or termination of, the certified agreement or proposed certified agreement.

***bargaining services fee***—

- (a) means a fee, however described, payable—
- (i) to an organisation or someone in lieu of an organisation; and
  - (ii) wholly or partly for the provision, or purported provision, of bargaining services; but
- (b) does not include membership fees.

*Examples*—

The following provisions of pre-modernisation industrial instruments, as in force on 1 March 2013, are examples of encouragement provisions—

- clause 11.3 of the District Health Services Employees' Award - State 2012
- part 11.5 and 11.6 of the Queensland Health Framework Award - State 2012.

## **710C Organisational change provision**

A modern industrial instrument must not contain a provision that—

- (a) requires the employer to do any of the following before, or in relation to, making a decision about, or implementing, proposed organisational change—
- (i) notify an entity about the proposed organisational change;
  - (ii) consult with an entity about the proposed organisational change;
  - (iii) involve an entity in the decision-making process for the proposed organisational change; or
- (b) is otherwise about organisational change.

*Examples—*

- 1 The following provisions of pre-modernisation industrial instruments, as in force on 1 July 2013, are examples of organisational change provisions—
  - clause 7.3 of the State Government Departments Certified Agreement 2009
  - clauses 3.2, 4.1 and 4.2 of the Queensland Public Health Sector Certified Agreement (No. 8) 2011 (EB8)
  - clause 1.17(vi) and (vii) of the Queensland Public Health Sector Certified Agreement (No. 8) 2011 (EB8).
- 2 Also, the following provisions, as in force immediately before the date of assent of the *Queensland Rail Transit Authority Act 2013*, are examples of organisational change provisions—
  - clause 22 of the Queensland Rail Customer Service Enterprise Agreement 2011
  - clause 41 of the QR Passenger Pty Limited Traincrew Union Collective Workplace Agreement 2009.

### **710D Policy incorporation provision**

A modern industrial instrument must not include a provision that does either or both of the following—

- (a) applies or adopts, or incorporates into the instrument, another document that is a policy;
- (b) provides that another document that is a policy, as it is applied to, adopted for or incorporated into the instrument, can only be amended by agreement between 2 or more parties to the instrument.

*Examples—*

The following provisions of pre-modernisation industrial instruments, as in force on 1 March 2013, are examples of policy incorporation provisions—

- clause 2.5 and schedule 2 of the Queensland Public Health Sector Certified Agreement (No. 8) 2011 (EB8)
- clause 4.13 and schedule 4 of the Queensland Health Framework Award - State 2012
- clause 11 and schedule 5 of the Health Practitioners' (Queensland Health) Certified Agreement (No. 2) 2011 (HPEB2).

### **710E Private practice provision**

A modern industrial instrument must not include a provision about a private practice arrangement for a medical practitioner.

*Example—*

Clause 4.11 of the Medical Officers' (Queensland Health) Certified Agreement (No. 3) 2012 is an example of a private practice provision.

### **710F Resource allocation provision**

A modern industrial instrument must not include a provision that requires an employer to allocate funding to a program or scheme not directly related to entitlements of, or benefits for, the employer's employees.

*Example—*

Clause 2.9.7 of the Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 5) 2011 is an example of a resource allocation provision.

### **710G Right of entry**

- (1) A modern industrial instrument must not include a provision that entitles a representative of an organisation or an associated entity of an organisation to enter premises for a prescribed purpose.

(2) In this section—

*prescribed purpose* means a purpose for which the representative is entitled to enter the premises under this Act or the *Work Health and Safety Act 2011*.

### **710H Discriminatory provisions**

- (1) A modern industrial instrument must not include a provision that discriminates against an employee.
- (2) For subsection (1), 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;
  - (d) a class of employees mentioned in paragraph (a), (b), or (c).

### **710I Particular provisions displacing Queensland Employment Standards**

- (1) A modern industrial instrument must not include a provision that displaces, or is otherwise inconsistent with, a provision of the Queensland Employment Standards.
- (2) Subsection (1) does not apply to a provision mentioned in section 71NA.

### **710J General matters**

A modern industrial instrument must not include a provision—

- (a) that restricts the type of engagements that are available; or
- (b) that restricts flexible rostering arrangements; or
- (c) that is about accident pay or other amounts payable because an employee sustains an injury; or
- (d) that restricts the ability of an employer to offer a high-income guarantee contract to a high-income senior employee.

## **Subdivision 2 Non-allowable content—modern awards**

### **710K General matters**

A modern award must not include provisions about—

- (a) training arrangements; or
- (b) workload management; or
- (c) delivery of services; or
- (d) workforce planning.

## **Subdivision 3 Non-allowable content—certified agreements**

### **710L General matters**

- (1) A certified agreement must not include a provision that—
  - (a) is inconsistent with the provisions for industrial action in chapter 6, divisions 6 to 8; or



- (b) provides for types of engagements or classifications that are inconsistent with the relevant underpinning awards; or
  - (c) requires or permits a contravention of the provisions in chapter 4; or
  - (d) requires an employer to manage workloads in a particular way; or
  - (e) restricts access to training arrangements; or
  - (f) restricts the efficient delivery of services.
- (2) Also, a certified agreement must not include a provision about unfair dismissal or a remedy arising from termination of employment other than as provided for in the provisions of this Act about notice and redundancy pay.

## **Part 4                      Equal remuneration for work of equal or comparable value**

### **71P Definition for pt 4**

In this part—

*equal remuneration for work of equal or comparable value* means equal remuneration for men and women employees for work of equal or comparable value.

### **71PA Orders requiring equal remuneration**

- (1) The commission may make any order it considers appropriate to ensure employees covered by the order receive equal remuneration for work of equal or comparable value.

- (2) An order may provide for an increase in remuneration rates, including minimum rates.

### **71PB Orders only on application**

The commission may make an order under this part only on application by—

- (a) an employee to be covered by the order; or
- (b) an organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order; or
- (c) a State peak council; or
- (d) the Minister; or
- (e) the anti-discrimination commissioner.

### **71PC Requirements about making of order by commission**

The commission must, and may only, make an order if it is satisfied the employees to be covered by the order do not receive equal remuneration for work of equal or comparable value.

### **71PD Immediate or progressive introduction of equal remuneration**

The order may introduce equal remuneration for work of equal or comparable value—

- (a) immediately; or
- (b) progressively in stated stages.

### **71PE Employer not to reduce remuneration**

- (1) An employer must not reduce an employee's remuneration because an application or order has been made under this part.

- (2) If an employer purports to do so, the reduction is of no effect.

#### **71PF Pt 4 does not limit other rights**

- (1) This part does not limit any right a person or organisation may otherwise have to secure equal remuneration for work of equal or comparable value.
- (2) Subsection (1) is subject to section 71PG.

#### **71PG Applications under pt 4**

- (1) An application can not be made under this part for an order to secure equal remuneration for work of equal or comparable value for an employee if there are current proceedings for an alternative remedy under—
  - (a) another provision of this Act; or
  - (b) another Act.
- (2) If an application under this part has been made, a person can not start proceedings for an alternative remedy under a provision or Act mentioned in subsection (1).
- (3) Subsection (2) does not prevent proceedings being started for an alternative remedy if the proceedings under this part have—
  - (a) been discontinued by the party who started the proceedings; or
  - (b) failed for want of jurisdiction.
- (4) In this section—

*alternative remedy* means an alternative remedy—

  - (a) to secure the remuneration for the employee; or

- (b) against unequal remuneration for work of equal or comparable value for the employee.

## **Part 5                      Continuity of service and employment**

### **71Q Definitions for pt 5**

In this part—

*service* includes employment.

*transferred employee* see section 71QB(1).

### **71QA How pt 5 applies**

- (1) This part applies for working out an employee's rights and entitlements under this chapter or a modern industrial instrument by prescribing when the employee's continuity of service is not broken.
- (2) An employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service.
- (3) However, when working out the minimum period of notice required to be given under section 71KC to a transferred employee, a period of notice previously given in relation to the transfer of the calling, whether given before or after the commencement of this subsection, is to be disregarded.

### **71QB Continuity of service—transfer of calling**

- (1) A *transferred employee* is a person who becomes an employee of an employer (the *new employer*) because of the transfer of a calling to the new

employer from another employer (the *former employer*).

- (2) Even if a person is dismissed by the former employer before the transfer of a calling, the person is taken to be a transferred employee if—
  - (a) the person is employed by the new employer after the transfer; and
  - (b) the employee—
    - (i) was dismissed by the former employer within 1 month immediately before the transfer; and
    - (ii) is re-employed by the new employer within 3 months after the dismissal.
- (3) The transfer of the calling is taken not to break the transferred employee's continuity of service.
- (4) A period of service with the former employer, including service before the commencement of this section, is taken to be a period of service with the new employer.
- (5) In relation to the transfer, the transferred employee is not an employee to whom part 2, division 9, subdivision 2 applies, unless a modern industrial instrument mentioned in section 71KE(1)(a) provides otherwise.
- (6) In this section—  
*dismissed* includes stood down.

### **71QC Continuity of service—apprentices or trainees**

- (1) This section applies if—
  - (a) an employee, while employed with the employer, starts an apprenticeship or traineeship; or

- (b) the employer—
  - (i) continues to employ an apprentice or trainee (the *employee*) on the completion of the apprenticeship or traineeship; or
  - (ii) re-employs the employee within 3 months after completion of the employee's apprenticeship or traineeship.
- (2) The period of the apprenticeship or traineeship does not break the employee's continuity of service.

#### **71QD Continuity of service—generally**

- (1) Service with a partnership and an employer who was, or becomes, a member of the partnership is taken to be continuous service with the same employer.
- (2) An employee's continuity of service with an employer is not broken if the employee's service is temporarily lent or let on hire by the employer to another employer.
- (3) An employee's continuity of service with an employer is not broken by an absence, including through illness or injury—
  - (a) on paid leave approved by the employer; or
  - (b) on unpaid leave approved by the employer.
- (4) An employee's continuity of service with an employer is not broken if—
  - (a) the employee's employment is terminated by the employer or employee because of illness or injury; and
  - (b) the employer re-employs the employee; and

- (c) the employee has not been employed in a calling, whether on the employee's own account or as an employee, between the termination and the re-employment.
- (5) An employee's continuity of service with an employer is not broken if—
  - (a) the employee's employment is terminated by the employer or employee; and
  - (b) the employer re-employs the employee within 3 months after the termination.
- (6) An employee's continuity of service with an employer is not broken if—
  - (a) the employee's employment is interrupted or terminated by the employer with intent to avoid an obligation under this part, a modern industrial instrument or employment contract; or
  - (b) the employee's employment is interrupted or terminated by the employer as a direct or indirect result of an industrial dispute, and the employer re-employs the employee.
- (7) An employee's continuity of service is not broken if—
  - (a) the employee's employment is interrupted or terminated by the employer because of slackness of trade or business; and
  - (b) the employer re-employs the employee.
- (8) Service with a corporation and any of its subsidiaries is taken to be continuous service with the same employer.
- (9) However, a period for which the employee is away from work under subsection (3)(b), (4), (5), (6)(b) or (7) is not service under this part unless—

(a) this Act or a modern industrial instrument provides otherwise; or

(b) the commission directs otherwise.

(10) In this section—

*subsidiary* has the meaning given by the Corporations Act.

*terminate* includes stand down.

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

(1) Section 72, heading—

*omit, insert—*

### **72 Employees to whom this chapter does not apply**

(2) Section 72—

*insert—*

(1A) Without limiting subsection (1), section 73(1)(a) does not apply to a high-income senior employee.

(3A) Part 3 does not apply to an employee to whom chapter 2A applies.

## **9 Amendment of s 85A (Application of div 1AA)**

Section 85A—

*insert—*

(2A) Also, this division does not apply to an employee to whom chapter 2A applies.

## **10 Replacement of ch 5, hdg**

Chapter 5, heading—

*omit, insert—*



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## **Chapter 5 Awards (pre-modernisation)**

### **11 Insertion of new ch 5, pt 1AA**

Chapter 5, before part 1—

*insert—*

### **Part 1AA Application of ch 5**

#### **122B Application of ch 5**

This chapter applies to an award other than a modern award.

### **12 Amendment of s 123 (Form, effect and term of award)**

Section 123(1)—

*insert—*

*Note—*

An award that is in force immediately before the commencement of part 8 (Modernisation of awards) may be repealed as a result of an award modernisation process carried out under that part.

### **13 Amendment of s 124 (Persons bound by award)**

(1) Section 124(2), from ‘exemptions’—

*omit, insert—*

exemptions—

- (a) the effect of which are continued under section 823; or
- (b) ordered by the commission under section 234.

(2) Section 124—

*insert—*

- (3) Despite subsection (1), an award does not bind a person in relation to a calling if a modern award applies to the person.

## **14 Replacement of ch 5, pts 2 and 3**

Chapter 5, parts 2 and 3—

*omit, insert—*

### **Part 2 Commission's powers**

#### **125 Repealing awards**

- (1) The commission may repeal an award.

*Note—*

See also part 8 in relation to the modernisation of awards made under this chapter.

- (2) The commission may act under subsection (1)—
  - (a) of its own initiative; or
  - (b) on application by—
    - (i) the Minister; or
    - (ii) an organisation; or
    - (iii) an employer; or
    - (iv) a person who satisfies the commission that the person is not an officer of, or acting for, an eligible association.

## **15 Amendment of s 135 (Inconsistency between awards and contracts)**

Section 135(1)—

*insert—*

*Note—*

However, for a contract of service that is a high-income guarantee contract, see section 194(2).

## 16 Insertion of new ch 5, pt 8

After section 140A—

*insert—*

### **Part 8                      Modernisation of awards**

#### **Division 1              Preliminary**

##### **140B Definitions for pt 8**

In this part—

*pre-modernisation award* means an award—

- (a) either—
  - (i) made under section 125 as in force before the commencement of this part;  
or
  - (ii) continued in force under this Act; and
- (b) in force immediately before the commencement of this part.

##### **140BA Object of modernising awards**

The principal object of this part is to provide for the modernisation of awards so they—

- (a) are simple to understand and easy to apply;  
and
- (b) together with the Queensland Employment Standards, provide for a fair minimum

- safety net of enforceable conditions of employment for employees; and
- (c) are economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and
  - (d) are in a form that is appropriate for a fair and productive industrial relations system; and
  - (e) result in a certain, stable and sustainable modern award system for Queensland.

#### **140BB Commission's award modernisation function**

- (1) The functions of the commission include carrying out a process (*award modernisation process*) to reform and modernise pre-modernisation awards.
- (2) In performing its functions under this part, the commission must have regard to the following factors—
  - (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
  - (b) the need to help prevent and eliminate discrimination in employment;
  - (c) protecting the position in the labour market of young people, employees engaged as apprentices or trainees and employees with a disability;
  - (d) the needs of low-paid employees;

- (e) the need to promote the principle of equal remuneration for work of equal value;
  - (f) the need to help employees balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce;
  - (g) the safety, health and welfare of employees;
  - (h) the Queensland minimum wage;
  - (i) the desirability of reducing the number of awards operating under this Act;
  - (j) the representation rights of organisations and associations under this Act.
- (3) This section does not limit section 140D.

## **Division 2      Award modernisation    process**

### **Subdivision 1   Award modernisation    requests**

#### **140C Minister may make award modernisation    request**

- (1) The Minister may give the commission a written notice (an *award modernisation request*) requesting that an award modernisation process be carried out.
- (2) An award modernisation request must state—
  - (a) details of the award modernisation process that is to be carried out; and
  - (b) the day by which the process must be completed.

- (3) The day stated in the notice under subsection (2)(b) must not be later than 2 years after the day on which the award modernisation request is given to the commission.
- (4) An award modernisation request may state any other matter about the award modernisation process the Minister considers appropriate.
- (5) Without limiting subsection (4), the award modernisation request may—
  - (a) require the commission to—
    - (i) prepare progress reports on stated matters about the award modernisation process; and
    - (ii) make the progress reports available as stated in the request; or
  - (b) state permitted matters about which provisions must be included in a modern award; or
  - (c) direct the commission to include in a modern award terms about particular permitted matters; or
  - (d) give other directions about how, or whether, the commission must deal with particular permitted matters.
- (6) In this section—

*permitted matter* means a matter about which provisions may be included in a modern award under chapter 2A, part 3, division 1 or 2.

#### **140CA Variation of award modernisation request**

- (1) Before an award modernisation process is completed, the Minister may vary the award modernisation request by written notice (a *variation notice*) given to the commission.

- (2) Without limiting subsection (1), a variation notice may extend the day by which the award modernisation process must be completed.
- (3) For subsection (2), the day must not be later than 2 years after the day on which the variation notice is given to the commission.
- (4) The day by which the award modernisation process must be completed may be extended under this section only once.

#### **140CB Publication of award modernisation request or variation notice**

- (1) This section applies if either of the following is given to the commission under this part—
  - (a) an award modernisation request;
  - (b) a variation notice.
- (2) As soon as practicable after the request or notice is given to the commission, the registrar must publish the request or notice on the QIRC website.

### **Subdivision 2 Procedure for modernisation process**

#### **140CC Procedure for carrying out modernisation process**

- (1) The commission must carry out the award modernisation process in accordance with the award modernisation request.
- (2) Subject to subsection (1)—
  - (a) the commission may decide the procedure for carrying out the award modernisation process; and

- (b) without limiting paragraph (a), the commission may inform itself in any way it thinks appropriate, including by consulting with any person, body or organisation in the way the commission considers appropriate.
- (3) To remove any doubt, it is declared that subsection (2) does not limit the powers of the commission under any other provision of this Act.

#### **140CD Deadline for completion of award modernisation process**

- (1) The commission must complete an award modernisation process by—
  - (a) the day stated in the award modernisation request relating to the process; or
  - (b) if a variation notice states a later day by which the process must be completed—the stated day.
- (2) For subsection (1), the award modernisation process is completed when 1 or more modern awards are made to give effect to the outcome of the process.

#### **140CE Making of modern awards and repeal of pre-modernisation awards**

- (1) To give effect to the outcome of an award modernisation process, the commission must—
  - (a) make 1 or more modern awards; and
  - (b) under section 125, repeal the pre-modernisation awards to which the process relates.
- (2) The commission must ensure each relevant class of employees—



- (a) is covered by a modern award; or
  - (b) would be covered by a modern award but for the effect of section 140E(2).
- (3) Subject to chapter 2A, part 3 and chapter 5A, a modern award made for the purposes of subsection (1) must be consistent with the award modernisation request to which the modern award relates.
- (4) In this section—
- relevant class of employees* means a class of employees who were bound by a pre-modernisation award that is repealed to give effect to the outcome of the award modernisation process.

## 17 Insertion of new ch 5A

After chapter 5—

*insert—*

# Chapter 5A Modern awards

## Part 1 Preliminary

### 140D Modern awards objectives

- (1) In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.
- (2) For subsection (1), the commission must have regard to the following—
  - (a) relative living standards and the needs of low-paid employees;

- (b) the need to promote social inclusion through increased workforce participation;
- (c) the need to promote flexible modern work practices and the efficient and productive performance of work;
- (d) the need to ensure equal remuneration for male and female employees for work of equal or comparable value;
- (e) the need to provide penalty rates for employees who—
  - (i) work overtime; or
  - (ii) work unsocial, irregular or unpredictable hours; or
  - (iii) work on weekends or public holidays; or
  - (iv) perform shift work;
- (f) the likely impact of the exercise of the chapter 5A powers on business, including on productivity, employment costs and the regulatory burden;
- (g) the need to ensure the modern award system—
  - (i) is simple and easy to understand; and
  - (ii) is certain, stable and sustainable; and
  - (iii) avoids unnecessary overlap of modern awards;
- (h) the financial position considerations, including the likely impact of the exercise of the chapter 5A powers on those considerations;
- (i) the likely impact of the exercise of the chapter 5A powers on—
  - (i) employment growth and inflation; and

- (ii) the sustainability, performance and competitiveness of the Queensland economy.
- (3) Also, to the extent the commission's chapter 5A powers relate to setting, varying or revoking minimum wages in modern awards, the commission must establish and maintain a minimum safety net of fair minimum wages, having regard to—
  - (a) the matters mentioned in subsection (2)(a) to (d), (h) and (i); and
  - (b) providing a comprehensive range of fair minimum wages to—
    - (i) young employees; and
    - (ii) employees engaged as apprentices or trainees; and
    - (iii) employees with a disability.
- (4) The objectives of the commission under subsections (1) and (2) are the *modern awards objectives*.
- (5) In this section—

*chapter 5A powers* means powers or functions of the commission under this chapter.

*financial position considerations* means—

  - (a) if the modern award or proposed modern award applies to, or will apply to, a public sector entity—
    - (i) the State's financial position and fiscal strategy; and
    - (ii) the financial position of the public sector entity; or
  - (b) if paragraph (a) does not apply—the financial position of the employers the

modern award or proposed modern award applies to or will apply to.

*public sector entity* see section 149D(3).

## **140DA Definitions for ch 5A**

In this chapter—

*employee with a disability* means an employee who—

- (a) is qualified for a disability support pension under the *Social Security Act 1991* (Cwlth), section 94 or 95; or
- (b) would be qualified for a disability support pension but for section 94(1)(e) or 95(1)(c) of that Act.

*work value reasons*, in relation to fixing rates of minimum wages for a particular kind of work, means reasons that—

- (a) justify the amount employees should be paid for doing the work; and
- (b) relate to any of the following—
  - (i) the nature of the work;
  - (ii) the level of skill or responsibility involved in doing the work;
  - (iii) the conditions under which the work is done.

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## Part 2                      Coverage and    operation of modern    awards

### 140E Who a modern award *applies to*

- (1) A modern award *applies to* an employee, employer or organisation if the award is in operation and—
  - (a) the award states that it applies to the employee, employer or organisation; or
  - (b) the award applies to the employee, employer or organisation under any of the following—
    - (i) a provision of this Act;
    - (ii) an order made by the commission under this Act;
    - (iii) an order of a court.
- (2) However, a modern award does not apply to an employee, employer or organisation if a provision of this Act provides that the award does not apply to the employee, employer or organisation.

*Note—*

See, for example, section 824 which provides that a modern award does not apply to an employee who is under a pre-modernisation certified agreement.

- (3) A reference in this Act to a modern award applying to an employee is a reference to the award applying to the employee in relation to particular employment.

### 140EA Significance of application of modern award

- (1) A modern award does not—

- (a) impose obligations on a person; or
  - (b) confer an entitlement on a person;
- unless the award applies to the person.
- (2) A person does not contravene a term of a modern award unless the award applies to the person.

#### **140EB When a modern award operates**

- (1) Subject to section 824, a modern award starts operating on the day stated in the award as the day on which it comes into operation.
- (2) The stated day must not be earlier than the day the modern award is made.
- (3) A modern award continues in effect until it is revoked.

#### **140EC Relationship of modern award with certified agreement**

- (1) A modern award may apply to an employee in relation to particular employment at the same time as a certified agreement applies to the employee in relation to the employment.
- (2) If both a modern award and certified agreement apply to an employee in relation to particular employment, the certified agreement prevails to the extent of any inconsistency.

#### **140ED Relationship of modern award with contract of service**

- (1) A modern award prevails over a relevant contract to the extent of any inconsistency.

*Note—*

However, for a relevant contract that is a high-income guarantee contract, see section 194(2).

- (2) The contract must be interpreted, and takes effect, as if it were amended to the extent necessary to make the inconsistency consistent with the modern award.
- (3) However, there is no inconsistency only because the contract provides for employment conditions more favourable to the employee than the modern award.
- (4) In this section—  
*relevant contract* means a contract of service that is—
  - (a) in force when the award comes into operation; or
  - (b) made while the award continues in operation.

## **Part 3                      Making, varying and    revoking modern    awards**

### **Division 1                Periodic reviews of    modern awards**

#### **140F Periodic reviews of a modern award**

- (1) The commission must review a modern award (a *periodic review*) as soon as practicable after each 4th anniversary of the making of the award.
- (2) The president or vice-president may give a direction about the conduct of a periodic review to the member constituting the commission for conducting the review.

- (3) An industrial commissioner must comply with a direction of the president or vice-president under subsection (2).
- (4) For the purposes of a periodic review, the commission may make any of the following—
  - (a) a determination varying the modern award;
  - (b) a modern award;
  - (c) a determination revoking the modern award.
- (5) Subsection (4)(a) applies subject to section 140FA.

#### **140FA Requirement about variation of minimum wages**

For a periodic review, the commission may make a determination varying the rates of minimum wages in a modern award only if the commission is satisfied the variation is justified by work value reasons.

### **Division 2            Other exercise of powers to make, vary or revoke modern awards**

#### **140G Powers may be exercised to achieve modern awards objectives**

- (1) The commission may, other than for the purposes of a periodic review—
  - (a) make a determination varying a modern award; or
  - (b) make a modern award; or
  - (c) make a determination revoking a modern award.



- (2) The commission may exercise a power under subsection (1) only if the commission is satisfied—
  - (a) that making the determination or modern award other than for the purposes of a periodic review is necessary to achieve the modern awards objectives; and
  - (b) for a variation of the rates of minimum wages in a modern award—the variation is justified by work value reasons.
- (3) The commission may exercise a power under this section—
  - (a) on its own initiative; or
  - (b) on application under section 140GA.

#### **140GA Application to vary, revoke or make modern award under s 140G**

- (1) This section provides for who may apply for the making of a determination varying or revoking a modern award, or for the making of a modern award, under section 140G.
- (2) An application to vary, omit or include provisions, other than coverage provisions, in a modern award or an application to revoke a modern award may be made by—
  - (a) an employer, employee or organisation to which the award applies; or
  - (b) an organisation whose rules entitle it to represent the industrial interests of 1 or more employers or employees to whom the award applies.
- (3) An application to vary or include coverage provisions in a modern award to extend the coverage of the award to include additional

employers, employees or organisations may be made by—

- (a) an employer, employee or organisation that the award would start applying to; or
  - (b) an organisation whose rules entitle it to represent the industrial interests of 1 or more employers or employees whom the award would start applying to.
- (4) An application to vary or omit coverage provisions in a modern award so it stops applying to employers, employees or organisations may be made by—
- (a) an employer, employee or organisation the award would stop applying to; or
  - (b) an organisation whose rules entitle it to represent the industrial interests of 1 or more employers or employees whom the award would stop applying to; or
- (5) An application for the making of a modern award may be made by—
- (a) an employee or employer to whom the award would apply; or
  - (b) an organisation entitled to represent the industrial interests of 1 or more employers or employees to whom the award would apply.
- (6) Subject to subsections (1) to (5), an applicant may make applications for 2 or more related things at the same time.

*Example—*

An applicant may apply for the making of a new modern award and the related revocation of an existing modern award.

- (7) In this section—  
*coverage provisions* see section 71MC.

### **140GB Variation to update or omit name of employer or organisation**

- (1) The commission may make a determination varying a modern award—
- (a) to reflect a change in the name of an employer or organisation; or
  - (b) to omit the name of an employer or organisation from the award, if—
    - (i) the employer or organisation has ceased to exist; or
    - (ii) the organisation has been deregistered under chapter 12, part 16; or
  - (c) to reflect a transfer of a calling from an employer named in the award (the *old employer*) to another employer (the *new employer*).
- (2) The commission may make a determination under this section—
- (a) on its own initiative; or
  - (b) if subsection (1)(a) or (b)(ii) applies—on application by the employer or organisation; or
  - (c) if subsection (1)(c) applies—on application by—
    - (i) the old employer or the new employer; or
    - (ii) a transferring employee to whom the award applied as an employee of the old employer; or

- (iii) an organisation entitled under its rules to represent the industrial interests of a person mentioned in subparagraph (i) or (ii).

#### **140GC Variation to remove ambiguity or uncertainty or to correct error**

- (1) The commission may make a determination varying a modern award to—
  - (a) remove an ambiguity or uncertainty; or
  - (b) correct an error.
- (2) The commission may make a determination under this section—
  - (a) on its own initiative; or
  - (b) on application by—
    - (i) an employer, employee or organisation to which the modern award applies; or
    - (ii) an organisation entitled under its rules to represent the industrial interests of 1 or more employers or employees mentioned in subparagraph (i).

#### **140GD Variation on referral by Anti-Discrimination Commission**

- (1) The Anti-Discrimination Commission may apply to the commission for a review of a modern award on the grounds that it is discriminatory.
- (2) If an application is made under subsection (1), the commission must—
  - (a) review the modern award; and
  - (b) if it considers the award requires a person to do an act that would be unlawful under the *Anti-Discrimination Act 1991* had the act

not been done under the award—make a determination varying the award so it no longer requires the person to do the unlawful act.

### **Division 3            General provisions about exercise of commission's powers**

#### **140H Requirements about revoking a modern award**

The commission must not make a determination revoking a modern award unless the commission is satisfied the award is obsolete or no longer capable of operating.

#### **140HA When variation determination comes into operation**

- (1) This section applies to a determination varying a modern award.
- (2) The determination comes into operation on the day stated in the determination.
- (3) The stated day must not be earlier than the day on which the determination is made, unless—
  - (a) the determination is made under section 140GC; and
  - (b) the commission is satisfied exceptional circumstances justify stating an earlier day; and
  - (c) the determination does not adversely affect an employee.
- (4) The determination does not take effect in relation to a particular employee until the start of the

employee's first full pay period that starts on or after the day the determination comes into operation.

### **140HB Retrospective variation of modern awards**

- (1) This section applies if a determination varying a modern award operates retrospectively under section 140HA.
- (2) If, before the determination was made, a certified agreement or a variation of a certified agreement was approved by the commission, the validity of the approval is not affected by the retrospective operation of the determination.
- (3) Subsection (4) applies if—
  - (a) a person engaged in conduct before the determination was made; and
  - (b) but for the retrospective operation of the determination, the conduct would not have contravened a term of the modern award or a certified agreement.
- (4) The person is taken not to have committed an offence only because the conduct contravened a term of the modern award or certified agreement.

## **Part 4                      Technical matters**

### **140I Definition for pt 4**

In this part—

*relevant instrument* means—

- (a) a modern award; or
- (b) a determination varying or revoking a modern award.

### **140IA Formal requirements of relevant instruments**

- (1) A relevant instrument must—
  - (a) be in writing; and
  - (b) be signed by the member of the commission making the instrument; and
  - (c) state the day on which it is signed.
- (2) Also, a modern award must—
  - (a) have a unique title; and
  - (b) have a table of contents; and
  - (c) be expressed in plain English and be easy to understand in structure and content.

### **140IB Publication of relevant instruments**

- (1) This section applies if the commission makes a relevant instrument.
- (2) As soon as practicable after making the relevant instrument, the commission must give the registrar—
  - (a) a copy of the instrument; and
  - (b) written reasons for the instrument.
- (3) As soon as practicable after the registrar receives a copy of the relevant instrument under subsection (2), the registrar must—
  - (a) give the parties to whom the relevant modern award applies, or will or did apply, notice of the making of the instrument; and
  - (b) ensure a copy of the instrument and the written reasons for the instrument are published on the QIRC website.
- (4) The registrar must give the notice under subsection (3)(a)—

- (a) in the way prescribed under a regulation; or
- (b) if there is no prescribed way—in the way the registrar considers appropriate.

#### **140IC Publication of varied awards**

- (1) This section applies if the commission makes a determination under this part or section 287 varying a modern award.
- (2) The registrar must, as soon as practicable after the determination is made, publish the award as varied on the QIRC website.

#### **140ID Interpretation of relevant instrument**

- (1) A term used in a relevant instrument has the same meaning as it has—
  - (a) in this Act; or
  - (b) subject to paragraph (a), under the *Acts Interpretation Act 1954*.
- (2) Subsection (1) applies subject to a contrary intention in the modern award or determination.

### **18 Replacement of ch 6, div 1, hdg**

Chapter 6, division 1, heading—

*omit, insert—*

#### **Division 1A Preliminary**

#### **140J Application of ch 6**

This chapter applies to—

- (a) employees who are covered by a modern award; and
- (b) employers of employees covered by a modern award.



## 140K Definitions for ch 6

In this chapter—

*arbitration period*, for a matter, means the arbitration period for the matter under section 149A.

*conciliating member*, for a matter, see section 149(2).

*conciliation report*, for a matter, see section 149(2).

*conciliation period*, for a matter, see section 148(2).

*multi-employer agreement* means a certified agreement made with a multi-employer.

*negotiating party* see section 148(1).

*peace obligation period* see section 147(2).

*relevant employee organisation*, for a certified agreement or a proposed certified agreement, means an employee organisation that—

- (a) is bound by an award or industrial agreement that binds an employer under the certified agreement or proposed certified agreement, or would bind the employer apart from an award under the Commonwealth Act; or
- (b) if there is no award or agreement that binds, or would bind, an employer under the certified agreement or proposed certified agreement—is entitled to represent the industrial interests of employees of the employer.

## 19 Amendment of s 141 (Certified agreements)

- (1) Section 141, heading—
-

*omit, insert—*

### **141 Meaning of *certified agreement***

(2) Section 141(1)—

*omit, insert—*

(1) A ***certified agreement*** is a written agreement—

(a) between an employer and a group of employees of the employer (whether all employees or a category of employees) who are covered by a modern award; and

(b) that has been certified under section 156.

## **20 Replacement of s 142 (Who may make certified agreements)**

Section 142—

*omit, insert—*

### **142 Who may make certified agreements**

(1) A certified agreement may be made between—

(a) on the one hand, the employer; and

(b) on the other hand—

(i) 1 or more employee organisations that represent, or are entitled to represent, any employees to whom this chapter applies and who are, or are eligible to be, members of the organisation; or

(ii) the employees, at the time the agreement is made, to whom this chapter applies.

(2) However, subsection (1) does not apply if the employees are high-income senior employees under section 189.

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**21 Insertion of new ch 6, div 1 and sdiv 1, hdgs**

After section 142—

*insert—*

**Division 1 Making agreements**

**Subdivision 1 Negotiation**

**22 Amendment of s 143 (Proposed parties to be advised when agreement is proposed)**

(1) Section 143(2), ‘advise the following persons, in writing,’—

*omit, insert—*

give each of the following persons a written notice (a *notice of intention*)

(2) Section 143(3)—

*omit, insert—*

(3) The proposer must give the notice of intention at least 7 days before the negotiations are proposed to begin.

(3A) If there is an existing certified agreement or a determination under subdivision 3 between the parties, the proposer must not, despite anything to the contrary in the agreement or determination, give the notice of intention more than 60 days before the nominal expiry date.

(3) Section 143(4), ‘advice under subsection (2)’—

*omit, insert—*

a notice of intention

(4) Section 143(5), ‘advice under subsection (2)’—

*omit, insert—*

a notice of intention

(5) Section 143(5), after ‘proposer’—

*insert—*

and the commission

(6) Section 143(8)—

*omit.*

**23 Amendment of s 144 (What is to be done when an agreement is proposed)**

(1) Section 144(2)(a)—

*omit, insert—*

(a) each relevant employee has, or has ready access to, the proposed written agreement or a copy of it during the period starting 7 days before the day the relevant employees are asked to approve the proposed agreement; and

(2) Section 144(2)(c), after ‘relevant employee organisation’—

*insert—*

of which he or she is a member

(3) Section 144(3), after ‘relevant employee organisation’—

*insert—*

of which he or she is a member

(4) Section 144(5)—

*omit.*

**24 Amendment of s 147A (Employer may ask employees to approve proposed agreement being negotiated with employee organisation)**

(1) Section 147A(5)(b)(ii), note—

*omit, insert—*

*Note—*

See section 142(1)(b) and (2).

(2) Section 147A(6)—

*omit, insert—*

(6) For section 156, if, in negotiating a proposed agreement—

- (a) a step was taken by the employer, or an employee organisation mentioned in subsection (1), to comply with a requirement under this Act; and
- (b) the employer or employee organisation, as applicable, complied with the requirement as it applied to the proposed agreement;

the requirement is taken to have been complied with as it applies to the agreement made between the employer and the employees.

*Example—*

For paragraph (a), the step taken was that the employer, or employee organisation, gave a notice of intention under section 143(2).

For section 156, section 143(2) is taken to have been complied with for the agreement made between the employer and the employees.

(3) Section 147A(7), ‘a relevant employee organisation’—

*omit, insert—*

an employee organisation mentioned in subsection (1)

(4) Section 147A(8), ‘commission has jurisdiction to arbitrate the matter under section 149’—

*omit, insert—*

full bench, or the commission, has jurisdiction to arbitrate the matter under subdivision 3

(5) Section 147A(10)—

*omit.*

**25 Insertion of new ch 6, div 1, sdiv 2, hdg**

After section 147A—

*insert—*

**Subdivision 2 Conciliation**

**26 Replacement of s 148 (Assistance in negotiating by conciliation)**

Section 148—

*omit, insert—*

**148 Commission to help negotiating parties**

- (1) After the peace obligation period for negotiations for a proposed certified agreement has ended, the commission must help the parties to the negotiations (each, a *negotiating party*) to make a certified agreement if—
  - (a) all of the negotiating parties jointly ask the commission to help them negotiate the agreement; or
  - (b) 1 negotiating party declares a breakdown in the negotiations and the commission considers further negotiations are unlikely to result in making a certified agreement within a reasonable time; or
  - (c) 1 negotiating party asks the commission for help negotiating the matter and the commission considers that a negotiating party is organising or engaging in, or threatening to organise or engage in, relevant industrial action.
- (2) The negotiating parties must, with the commission's help, try to make a certified agreement during the period (the *conciliation period*)—
  - (a) starting on the day—

- (i) if subsection (1)(a) applies—the commission is asked to help; or
  - (ii) if subsection (1)(b) applies—the commission notifies the parties that it considers further negotiations are unlikely to result in making a certified agreement within a reasonable time; or
  - (iii) if subsection (1)(c) applies—the commission notifies the parties that it considers that 1 of them is engaging, or threatening to engage, in relevant industrial action; and
- (b) ending on—
- (i) the day that is 14 days after the day mentioned in paragraph (a) for the matter; or
  - (ii) if all the negotiating parties agree to end the conciliation period on a later day—the later day.
- (3) In this section—
- relevant industrial action***—
- (a) means industrial action—
    - (i) that has been protracted; or
    - (ii) that has caused, is causing or threatens to cause significant damage to any of the following—
      - (A) the economy or a part of it;
      - (B) the local community or a part of it;
      - (C) a single enterprise;
      - (D) the employees; or
    - (iii) that has endangered, is endangering or threatens to endanger the personal

health, safety or welfare of the community or a part of it; or

- (iv) that affects, or threatens to affect, directly or indirectly, access to, or delivery of, services to the community or a part of it; or
  - (v) the cumulative effect of which has affected, or threatens to affect, directly or indirectly, access to, or delivery of, services to the community or a part of it; but
- (b) does not include the making, by a negotiating party, of an application for a protected action ballot order under schedule 4, part 2, section 3.

*single enterprise* means—

- (a) a business project or undertaking carried on by an employer; or
- (b) the activities carried on by any of the following—
  - (i) the Commonwealth or a State;
  - (ii) a body, association, office or other entity established for a public purpose by, or under, a law of the Commonwealth or a State;
  - (iii) another entity in which the Commonwealth or a State has a controlling interest.

### **148A Commission's conciliation powers**

- (1) In helping negotiating parties make a certified agreement under this subdivision, the commission has the conciliation powers it would have under section 230 if that section applied to



certified agreement negotiations instead of industrial disputes.

- (2) Without limiting subsection (1), the commission may make an order—
  - (a) to promote the efficient conduct of negotiations; or
  - (b) to ensure the parties negotiate in good faith; or
  - (c) if 2 or more employee organisations are involved in the negotiations—that, for conciliating the matter, the organisations be represented by an authorised person; or
  - (d) that otherwise helps the parties to negotiate a certified agreement.
- (3) In deciding what orders to make, the commission must consider the conduct of each of the negotiating parties.
- (4) In this section—

*authorised person*, for 2 or more employee organisations, means a person or a group of persons authorised by the organisations to represent them, whether generally or for particular negotiations.

### **148B Commission can not order wage increase**

The Commission can not, in helping negotiating parties negotiate a certified agreement under this subdivision, order an increase in wages payable to the employees.

## **27 Insertion of new ch 6, div 1, sdiv 3, hdg**

After new section 148B—

*insert—*

### Subdivision 3 Arbitration

#### 28 Replacement of s 149 (Arbitration if conciliation unsuccessful)

Section 149—

*omit, insert—*

##### 149 Arbitration if conciliation unsuccessful

- (1) This section applies if—
  - (a) the commission has helped negotiating parties to try to negotiate a certified agreement; and
  - (b) when the conciliation period for the matter ends, there remain matters at issue between the negotiating parties.
- (2) The commissioner (the *conciliating member*) who conciliated the matter under subdivision 2 must prepare a written report (the *conciliation report*) identifying—
  - (a) the aspects of the matter, if any, on which the negotiating parties agree; and
  - (b) the aspects of the matter (the *issues*) that remain at issue between the negotiating parties; and
  - (c) any issue the conciliating member considers relates, or may relate, to non-allowable content under chapter 2A, part 3, division 4, subdivisions 1 and 3.
- (3) The conciliating member must, on the day that is 14 days after the conciliation period for the matter ends—
  - (a) give the conciliation report to the vice-president; and

- (b) give a copy of the conciliation report to each negotiating party.
- (4) The matter must be determined by arbitration within the arbitration period for the matter.
- (5) However, subsection (4) does not apply if the parties reach agreement on the terms of a proposed certified agreement before the commission makes an arbitration determination for the matter.

### **149A Arbitration period**

- (1) Unless the vice-president otherwise directs, the arbitration period for a matter is the period of 90 days after the day the vice-president receives the conciliation report.
- (2) The vice-president may direct that the arbitration period for a matter be a stated period of more than 90 days only if the vice-president considers that the arbitration can not reasonably be determined within 90 days.
- (3) In deciding whether a matter can not reasonably be determined by arbitration within 90 days, the vice-president must consider all of the circumstances, including the number, scope and complexity of the issues identified in the conciliation report.
- (4) An arbitration period mentioned in subsection (2)—
  - (a) starts on the day after the vice-president receives the conciliation report for the matter; and
  - (b) ends on the day stated in the vice-president's direction; and
  - (c) must not be longer than is reasonably necessary.

- (5) The vice-president may make a direction for a matter under subsection (2) at any time—
  - (a) after the vice-president receives the conciliation report; and
  - (b) before the full bench makes its arbitration determination.

**149B Full bench to determine matters by arbitration unless vice-president directs otherwise**

- (1) The full bench is to determine matters by arbitration under this subdivision.
- (2) However, the vice-president may direct that a matter be determined by arbitration by the commission constituted by a commissioner sitting alone.
- (3) The vice-president may make a direction under subsection (2) only if, having considered all of the circumstances including the number, scope and complexity of the issues identified in the conciliation report, the vice-president considers it would not be appropriate to have the matter determined by arbitration by the full bench.
- (4) If the vice-president makes a direction under subsection (2)—
  - (a) the vice-president must choose a commissioner other than the conciliating member for the matter to constitute the commission for the arbitration; and
  - (b) sections 149A(5)(b) and 149C to 149E apply as if a reference in those sections to the full bench were a reference to the commission constituted by a commissioner sitting alone.

### **149C Arbitration powers of full bench**

- (1) For determining a matter by arbitration under this subdivision, the full bench—
  - (a) has the arbitration powers it would have under section 230 if that section applied to certified agreement negotiations instead of industrial disputes; and
  - (b) may give directions or make orders of an interlocutory nature; and
  - (c) can not order an increase in wages payable to employees before the full bench makes its arbitration determination for the matter.
- (2) An arbitration determination by the full bench—
  - (a) must include the provisions required to be included in a certified agreement under chapter 2A, part 3, division 2; and
  - (b) can not include a provision that can not be included in a certified agreement under chapter 2A, part 3, division 4.

### **149D Issues full bench must consider**

- (1) In determining a matter by arbitration under this subdivision, the full bench—
  - (a) must limit its consideration to the issues identified in the conciliation report for the matter; and
  - (b) in considering the issues, must consider at least the following—
    - (i) the merits of the case;
    - (ii) the likely effect of the proposed arbitration determination, and any matters agreed between the negotiating parties before the arbitration, on employees and employers who will be

- bound by the proposed arbitration determination;
  - (iii) the extent to which the negotiating parties have negotiated in good faith;
  - (iv) the public interest.
- (2) In considering the public interest under subsection (1)(b)(iv), the full bench must consider—
- (a) the objects of this Act; and
  - (b) the likely effect of the proposed arbitration determination on the economy and the community or a part of the economy or community; and
  - (c) the employer's efforts to improve productivity in the enterprise or industry concerned; and
  - (d) the flexibility of work practices to meet the operational requirements of the enterprise or industry concerned; and
  - (e) the employer's ability to enter into high income guarantee contracts with individual employees; and
  - (f) for a matter involving a public sector entity—
    - (i) the State's financial position and fiscal strategy; and
    - (ii) the financial position of the public sector entity; and
    - (iii) the likely effect of the proposed arbitration determination on the matters mentioned in subparagraphs (i) and (ii); and
  - (g) for a matter other than a matter involving a public sector entity—the employer's

financial position and the likely effect of the proposed arbitration determination on it.

(3) In this section—

***high-income guarantee contract*** see section 188.

***public sector entity***—

- (a) includes an entity, or a part of an entity, that is—
  - (i) a department; or
  - (ii) a public service office; or
  - (iii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; but
- (b) does not include—
  - (i) a local government; or
  - (ii) a local government owned corporation, or a subsidiary of a local government owned corporation, under the *Local Government Act 2009*; or
  - (iii) a parents and citizens association formed under the *Education (General Provisions) Act 2006*.

#### **149E Full bench must publish reasons**

- (1) The full bench must publish its reasons when it makes an arbitration determination for a matter under this subdivision.
- (2) The published reasons must address each of the things mentioned in section 149D(1) and (2) and, for each thing, must—

- (a) set out the full bench's findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.

## 29 Amendment of s 150 (Determinations made under s 149)

- (1) Section 150, heading—

*omit, insert—*

### **150 Arbitration determinations**

- (2) Section 150(1)—

*omit, insert—*

- (1) An arbitration determination made under this subdivision must specify a date, no later than 4 years after the date on which the determination is made, as its nominal expiry date.

- (3) Section 150(2), 'The determination'—

*omit, insert—*

Subject to subsection (2A), the arbitration determination

- (4) Section 150—

*insert—*

- (2A) A wage increase, other entitlement or benefit under the arbitration determination can not—

- (a) take effect on a day earlier than the day the arbitration period for the matter started; or
- (b) relate to a period before the day the arbitration period for the matter started.

- (5) Section 150(3)(a) and (b)(ii), (4), (5) and (6), 'commission'—

*omit, insert—*

full bench



(6) Section 150(7), ‘commission’s’—

*omit, insert—*

full bench’s

### **30 Insertion of new ch 6, div 1, sdivs 4 and 5**

After section 150—

*insert—*

#### **Subdivision 4 Industrial action during conciliation and arbitration periods**

##### **150A No protected industrial action during conciliation and arbitration periods**

Industrial action is not protected industrial action under section 174 if it is organised, or engaged in, by or on behalf of a negotiating party for a matter—

- (a) during the conciliation period for the matter;  
and
- (b) if the matter is determined by arbitration under subdivision 3—between the end of the conciliation period and the end of the arbitration period for the matter.

#### **Subdivision 5 Other matters**

### **31 Replacement of s 155 (Right of employee organisation to be heard)**

Section 155—

*omit, insert—*

### **155 Entities that may be heard on application**

- (1) An employee organisation that will be a party to an agreement if it is certified is entitled to be heard on an application for the certification of the agreement.
- (2) As soon as practicable after the application is made, the commission must notify each employee organisation mentioned in subsection (1) that the application has been made and that the organisation is entitled to be heard on it.
- (3) An employee organisation that will not be party to the agreement if it is certified may be heard on the application only by leave of the commission.
- (4) The commission may give leave to an employee organisation mentioned in subsection (3) only if the commission is satisfied there is a reasonable possibility that, if leave is not given, it will not be informed of an issue relevant to its decision to certify, or not to certify, the agreement.
- (5) This section does not affect another right of an employee organisation, or anyone else, to be heard on, or to intervene in, an application.

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

- (1) Section 156(1)(d)—  
*omit, insert—*
  - (d) the agreement complies with chapter 2A, part 3, division 2, subdivisions 1 and 3; and
- (2) Section 156(1)(e) and (f)—  
*omit.*
- (3) Section 156(1)(j), all words after ‘a new business—’—  
*omit, insert—*

each relevant employee organisation is a party to the agreement; and

(4) Section 156(1)(l) and (m)—

*omit.*

(5) Section 156(1)(g) to (k)—

*renumber* as section 156(1)(e) to (i).

(6) Section 156—

*insert*—

(1AA) Subject to section 158, the commission must also refuse to certify an agreement if it is satisfied that the agreement includes non-allowable content under chapter 2A, part 3, division 4, subdivisions 1 and 3.

(7) Section 156(2), from ‘Subsection (1)(j)’ to ‘organisation mentioned in subsection (1)(j)’—

*omit, insert*—

Subsection (1)(h) does not apply if the commission is satisfied a relevant employee organisation

(8) Section 156(3)—

*omit.*

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

Section 157(1)(a)(i) and (5), ‘chapter 2, part 5’—

*omit, insert*—

chapter 2A, part 4

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

Section 158—

*insert*—

- (4) If after doing the things required or allowed by subsection (1), the commission is still required to refuse to certify the agreement only under section 156(1AA), the commission may—
  - (a) conciliate the issue with a view to helping the persons concerned to take the action necessary to enable the commission to certify the agreement; or
  - (b) certify the agreement subject to an order identifying the non-allowable provisions it includes.
- (5) To remove any doubt, if the commission certifies an agreement under subsection (4)(b)—
  - (a) the non-allowable provisions stated in the commission's order have no effect; but
  - (b) each other term of the agreement starts operating when the agreement is certified.
- (6) In this section—

***non-allowable provision*** means a provision about a non-allowable matter under chapter 2A, part 3, division 4, subdivisions 1 and 3.

### 35 Amendment of s 166 (Persons bound)

Section 166(2)(b)—

*omit, insert—*

- (b) the organisation satisfies the commission that it—
  - (i) is a relevant employee organisation; and
  - (ii) has at least 1 member whose employment will be subject to the agreement and who asked the organisation to give the notice.

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**36 Amendment of s 168 (Extending a certified agreement)**

Section 168(2)(b), ‘3 years’—

*omit, insert—*

4 years

**37 Amendment of s 176 (Requirements for other industrial action by an employee organisation or employees)**

(1) Section 176—

*insert—*

(3A) Subsection (3) applies subject to section 176A.

(2) Section 176(4), ‘, within the meaning of section 147,’—

*omit.*

**38 Insertion of new s 176A**

After section 176—

*insert—*

**176A Claims including non-allowable content**

(1) Industrial action is not authorised by a protected action ballot if—

(a) a protected action ballot order has been made by the commission in relation to the proposed action; but

(b) since the order was made, the current claims have been added to, or varied, to include a claim relating to non-allowable content.

(2) In this section—

*current claims* means the claims in support of which it is proposed the industrial action will be organised or engaged in.

*non-allowable content* means non-allowable content under chapter 2A, part 3, division 4, subdivisions 1 and 3.

**39 Amendment of s 177A (Provision about notice of industrial action)**

Section 177A(4)—

*omit.*

**40 Amendment of s 181E (Conciliation of matter during post-industrial action negotiation period)**

Section 181E(2), ‘section 148’—

*omit, insert—*

division 1, subdivision 2

**41 Amendment of s 181F (Determination of matter by commission after post-industrial action negotiation period)**

(1) Section 181F(3)—

*omit, insert—*

(3) For subsection (2), sections 149C to 149E and 150A are taken to apply.

*Note—*

See also section 149B(4)(b).

(2) Section 181F(4), ‘section 149’—

*omit, insert—*

division 1, subdivision 3

**42 Insertion of new ch 6A**

After section 187—

*insert—*

## Chapter 6A Arrangements for high-income senior employees

### Part 1 Preliminary

#### 188 Definitions for ch 6A

In this chapter—

*employee* includes—

- (a) a person who proposes to become an employee; and
- (b) a person whom another person proposes to engage as an employee.

*excluded provisions* see section 194(2).

*high-income guarantee contract* see section 193.

*high-income position* see section 190.

*high-income senior employee* see section 189.

*high-income threshold* see section 191.

*industrial instrument* see the *Public Service Act 2008*, schedule 4.

*remuneration*, of an employee, see section 192.

#### 189 Who is a *high-income senior employee*

A *high-income senior employee* is a person engaged as an employee in a high-income position.

### **190 What is a *high-income position***

A *high-income position* is a position or class of position—

- (a) under which the remuneration of an employee engaged in the position, or a position in the class, is more than the high-income threshold; and
- (b) that—
  - (i) is prescribed under a regulation as a high-income position or class of position; or
  - (ii) is not covered by an award; or
  - (iii) is a position, or a position in the class, in which a senior health service employee is engaged under the *Hospital and Health Boards Act 2011*.

### **191 What is the *high-income threshold***

The *high-income threshold* is—

- (a) \$129,300; or
- (b) if a regulation prescribes an amount greater than \$129,300 for this section—that amount.

### **192 What is an employee's *remuneration***

- (1) An employee's *remuneration* is—
  - (a) the employee's annual wages; and
  - (b) annual superannuation contributions made by the employer for the employee; and
  - (c) any other amount the employee is entitled to receive from the employer on an annual basis; and



*Example—*

an amount to be paid to the employee in lieu of payment for working overtime or on a public holiday

(d) the value of any non-cash benefit the employee is entitled to receive from the employer on an annual basis.

(2) An employee's **remuneration** does not include—

(a) reimbursement for work-related expenses;  
or

(b) superannuation contributions made by the employee but facilitated or paid by the employer on the employee's behalf.

*Example—*

voluntary superannuation contributions made by the employee

(3) If an employee is engaged by an employer for less than a year, the employee's remuneration is taken to be the remuneration the employee would be entitled to receive if the employee were employed by the employer for a whole year at the same rate of remuneration.

(4) If an employee is engaged by an employer on other than a full-time basis, the employee's remuneration is taken to be the remuneration the employee would be entitled to receive if the employee were employed by the employer on a full-time basis at the same rate of remuneration.

(5) For working out an employee's remuneration if there is no full-time equivalent for the employee's position, an employee working on a full-time basis in the position is taken to work 38 hours each week.

(6) In this section—

***non-cash benefit*** means—

- (a) property or services in any form other than money; but
- (b) does not include—
  - (i) a motor vehicle, computer, mobile phone or other electronic device used only or mainly for work purposes; or
  - (ii) subsidised or free accommodation and payment of any expenses relating to the accommodation.

*Example of expenses—*

rates, water and sewerage, electricity

### **193 What is a *high-income guarantee contract***

- (1) A *high-income guarantee contract* is a contract of service—
  - (a) between an employer and an employee whose position, the subject of the contract, is a high-income position; and
  - (b) that takes effect on or after 1 December 2013.
- (2) A regulation may prescribe the form of a high-income guarantee contract.

## **Part 2                      High-income guarantee contracts and high-income positions**

### **194 Effect of engagement under high-income guarantee contract**

- (1) This section applies if an employee is engaged under a high-income guarantee contract.

- (2) The following provisions (the *excluded provisions*) do not apply in relation to the employee from the contract day—
  - (a) section 73(1)(a);
  - (b) chapters 5, 5A, 6 and 7;
  - (c) sections 274A and 276.
- (3) An industrial instrument that applied to the employee immediately before the contract day ceases to apply to the employee from the contract day.
- (4) If the industrial instrument is a pre-modernisation industrial instrument, it can never apply to the employee from the contract day.
- (5) In this section—

*contract day* means the beginning of the day the high-income guarantee contract takes effect.

### **195 Effect of high-income position**

- (1) This section applies to an employee if—
  - (a) either—
    - (i) the employee is engaged by an employer in a high-income position; or
    - (ii) the position in which the employee is engaged by an employer becomes a high-income position; and
  - (b) the employee is not engaged by the employer under a high-income guarantee contract.
- (2) The excluded provisions do not apply in relation to the employee from the high-income position day.
- (3) However, subject to subsections (4) to (6), if an industrial instrument applied to the employee

- immediately before the high-income position day—
- (a) the industrial instrument continues to apply to the employee; and
  - (b) any excluded provision necessary to give effect to the industrial instrument continues to apply.
- (4) The industrial instrument continues to apply to the employee only until the sooner of the following happens—
- (a) a relevant directive takes effect that states it regulates the conditions of the employee's employment to the exclusion of the industrial instrument;
  - (b) the commission orders that the industrial instrument no longer applies.
- (5) If the industrial instrument is a pre-modernisation industrial instrument that no longer applies under subsection (4), it can never apply to the employee after it ceases to apply.
- (6) A term in the industrial instrument that requires the parties to negotiate a replacement industrial instrument is of no effect in relation to the employee from the high-income position day.
- (7) A directive under the *Public Service Act 2008* made by the chief executive of the Public Service Commission prevails over the industrial instrument, unless a regulation provides otherwise.
- (8) The industrial instrument prevails over a directive under the *Public Service Act 2008* made by the Minister administering this Act, unless the directive provides otherwise.
- (9) A health employment directive under the *Hospital and Health Boards Act 2011* prevails

over the industrial instrument, unless a regulation provides otherwise.

(10) In this section—

***high-income position day*** means the beginning of the day—

- (a) the employee is engaged in the high-income position; or
- (b) the position in which the employee is engaged becomes a high-income position.

***relevant directive*** means any of the following—

- (a) a directive under the *Public Service Act 2008* made by the chief executive of the Public Service Commission;
- (b) a directive under the *Public Service Act 2008* made by the Minister administering this Act;
- (c) a health employment directive under the *Hospital and Health Boards Act 2011*.

## **196 Effect of position ceasing to be high-income position**

(1) This section applies if—

- (a) a position or class of position was prescribed under a regulation as a high-income position; and
- (b) the position or class of position is no longer prescribed under a regulation as a high-income position; and
- (c) a pre-modernisation industrial instrument applied to the position or class of position immediately before the position or class ceased to be a high-income position; and

- (d) a modern industrial instrument applies to the position or class of position after the position or class ceased to be a high-income position.
- (2) The pre-modernisation industrial instrument no longer applies to the position or class of position, and can never apply to the position or class.

## **Part 3                      Other matters for high-income senior employees**

### **197 Particular conduct is not prohibited conduct**

- (1) This section applies to the following conduct—
  - (a) conduct by a person to offer, or not to offer, another person (a *proposed employee*) employment under a high-income guarantee contract; or
  - (b) conduct by a person to make, or leading up to or forming part of the process of making, a position a high-income position.
- (2) The conduct by the person does not constitute engagement in conduct of the type mentioned in section 105(2)(a), (c) or (d).

### **198 Inconsistency between awards and high-income guarantee contracts**

- (1) This section applies if—
  - (a) an employee enters into a high-income guarantee contract with an employer; and
  - (b) an award is in force that otherwise would have applied to the position the subject of the high-income guarantee contract.

- (2) To remove any doubt, it is declared that sections 135 and 140ED do not prevent the employee and employer entering into the high-income guarantee contract.

### **199 Private practice provision in industrial instrument**

- (1) This section applies if an industrial instrument applying to a medical practitioner includes a private practice provision within the meaning of section 691C(2).
- (2) The operation of section 691C(1)(f) does not—
- (a) constitute a termination of the medical practitioner's employment; or
  - (b) affect other conditions of the medical practitioner's employment; or
  - (c) entitle the medical practitioner to a payment of money or other compensation.

### **200 Medical practitioner's private practice arrangements in contract of service**

- (1) This section applies if a medical practitioner's contract of service contains a term (a *private practice term*) that entitles the medical practitioner to a private practice arrangement or requires the employer to offer, negotiate, renegotiate, provide or continue to provide a private practice arrangement.
- (2) If the contract of service is in force immediately before the end of 30 June 2014, the private practice term of the contract is of no effect from the beginning of 1 July 2014.
- (3) The operation of subsection (2) does not—

- (a) constitute a termination of the medical practitioner's employment; or
  - (b) affect other conditions of the medical practitioner's employment; or
  - (c) entitle the medical practitioner to a payment of money or other compensation.
- (4) In this section—
- contract* includes an arrangement or understanding.
- private practice arrangement*—
- (a) means an arrangement about the rights of a medical practitioner to engage in private practice and receive a supplementary benefit allowance relating to the engagement; and
  - (b) includes an arrangement referred to as option A, B, E, P or R, offered under clause 4.11 of the Medical Officers' (Queensland Health) Certified Agreement (No. 3) 2012 and in force immediately before the end of 30 June 2014.

## **201 Employee's refusal to accept high-income guarantee contract**

- (1) This section applies if an employee refuses an offer by an employer of employment under a high-income guarantee contract that recognises the employee's continuous service.
- (2) The refusal to accept the high-income guarantee contract does not—
  - (a) constitute a termination of the employee's employment; or
  - (b) entitle the employee to any redundancy payment, severance allowance or other separation benefits (however described).



(3) In this section—  
*continuous service* see section 18(6).

**43 Amendment of s 242D (Appointment of members on full-time or part-time basis)**

(1) Section 242D(1)(a)—

*omit.*

(2) Section 242D(1)(b) and (c)—

*renumber* as section 242D(1)(a) and (b).

**44 Amendment of s 242E (Functions of the president)**

Section 242E(2), from ‘include’—

*omit, insert*—

include—

- (a) managing the administration of the business of the court and the registry under section 242G; and
- (b) preparing, and giving the Minister, the annual report under section 252.

**45 Amendment of s 242F (Functions of the vice-president)**

Section 242F(2), ‘, other than the function mentioned in section 242G’—

*omit.*

**46 Amendment of s 242G (Administration of the court)**

Section 242G, ‘vice-president’—

*omit, insert*—

president

**47 Amendment of s 243 (Appointment of president)**

- (1) Section 243(1), from ‘may appoint’—

*omit, insert—*

may, by gazette notice, appoint a person who is a Supreme Court judge as president of the court.

- (2) Section 243(2) to (8)—

*omit, insert—*

- (2) The person is appointed on a full-time basis unless the gazette notice appointing the president states the appointment is to be on a part-time basis.

**48 Amendment of s 244 (When a Supreme Court judge is appointed as president)**

- (1) Section 244, heading—

*omit, insert—*

**244 Effect of appointment as president**

- (2) Section 244(2) to (5)—

*renumber* as section 244(3) to (6).

- (3) Section 244—

*insert—*

- (2) The president may perform the functions of office of both president and a Supreme Court judge.

**49 Amendment of s 245 (When president holds office)**

- (1) Section 245(1)(a) and (b)—

*omit, insert—*

- (a) the term stated in the gazette notice appointing the president ends; or

- (b) the president resigns by signed notice given to the Governor; or
  - (c) the president stops being a Supreme Court judge.
- (2) Section 245(2)—  
*omit.*
  - (3) Section 245(3), ‘because of subsection (1)(a) or (b)(i) or (ii)’—  
*omit.*
  - (4) Section 245(4), ‘subsection (3)’—  
*omit, insert—*  
subsection (2)
  - (5) Section 245(5), ‘(i)’—  
*omit.*
  - (6) Section 245(3) to (5)—  
*renumber* as section 245(2) to (4).

## 50 Amendment of s 246 (Acting president)

- (1) Section 246(2), from ‘appoint’—  
*omit, insert—*  
appoint a person who is a Supreme Court judge to act as the president.
- (2) Section 246(6) to (9)—  
*renumber* as section 246(7) to (10).
- (3) Section 246—  
*insert—*
  - (6) The acting president may perform the functions of office of both president and a Supreme Court judge.

(4) Section 246(10), as renumbered, ‘(8)’—

*omit, insert—*

(9)

## 51 Amendment of s 248 (Court’s jurisdiction)

Section 248(1)(c)—

*omit, insert—*

- (c) hear and decide an offence against this Act, unless the offence is one for which this Act makes other provision; and

## 52 Amendment of s 256 (Composition)

Section 256(1) and (2)—

*omit, insert—*

(1) The commission consists of the following members—

- (a) the president; and
- (b) the following persons (each a **commissioner**)—
- (i) a person holding office as the vice president;
- (ii) a person holding office as a deputy president;
- (iii) a person holding office as an industrial commissioner.

(2) The full bench of the commission (the **full bench**) is constituted by—

- (a) for chapter 12, part 16 or for the hearing of an appeal—the president and 2 or more other members; or
- (b) otherwise—3 or more members.

---

**53 Amendment of s 258A (Appointment of other deputy presidents of the commission)**

- (1) Section 258A(3) to (7)—  
*renumber* as section 258A(5) to (9).
- (2) Section 258A—  
*insert*—
  - (3) The person is taken to be appointed on tenure unless the appointment is stated, in the instrument of appointment, to be for a fixed term.
  - (4) A person appointed for a fixed term is appointed for the term, of at least 1 year, stated in the instrument of appointment.

**54 Amendment of s 259 (Industrial commissioners)**

- (1) Section 259(3) to (7)—  
*renumber* as section 259(5) to (9).
- (2) Section 259—  
*insert*—
  - (3) The person is taken to be appointed on tenure unless the appointment is stated, in the instrument of appointment, to be for a fixed term.
  - (4) A person appointed for a fixed term is appointed for the term, of at least 1 year, stated in the instrument of appointment.

**55 Amendment of s 260 (When deputy president or industrial commissioner holds office)**

- (1) Section 260(1)(c) to (e)—  
*renumber* as section 260(1)(d) to (f).
- (2) Section 260(1)—  
*insert*—

- (c) if the relevant commissioner is appointed for a fixed term—the term stated in the commissioner’s instrument of appointment ends; or

**56 Amendment of s 273 (Commission’s functions)**

Section 273(1)(a), from ‘that’—

*omit, insert—*

that, together with the Queensland Employment Standards, provide for a fair minimum safety net of enforceable conditions of employment for employees;

**57 Amendment of s 287 (General rulings)**

- (1) Section 287(1)(a), ‘an industrial instrument’—

*omit, insert—*

a pre-modernisation industrial instrument

- (2) Section 287(1)(b)—

*omit.*

**58 Omission of s 288 (Statement of policy)**

Section 288—

*omit.*

**59 Amendment of s 292 (Magistrate’s jurisdiction)**

Section 292(1)(b)(i), from ‘for which’—

*omit, insert—*

, unless the offence is one for which this Act makes other provision;

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

(1) Section 319(2)(b)(ii), ‘section 149’—

*omit, insert—*

chapter 6, division 1, subdivision 3

(2) Section 319—

*insert—*

(3A) For subsection (2)(b)(ii), a reference to the commission includes the commission constituted by the full bench.

**61 Amendment of s 320 (Basis of decisions of the commission and magistrates)**

(1) Section 320(5), ‘section 149’—

*omit, insert—*

chapter 6, division 1, subdivision 3

(2) Section 320(5), note—

*omit, insert—*

*Note—*

For a determination made under chapter 6, division 1, subdivision 3, section 149D(1)(b)(iv) and (2) provide for the matters that must be considered, in relation to the public interest, by the commission (either the full bench or, if the vice-president makes a direction under section 149B(2), the commission constituted by a commissioner sitting alone).

**62 Amendment of s 341 (Appeal from commission, magistrate or registrar)**

Section 341(1), ‘under section 149’—

*omit, insert—*

under chapter 6, division 1, subdivision 3

**63 Amendment of s 342 (Appeal from commission, magistrate or registrar)**

Section 342(1), ‘under section 149’—

*omit, insert—*

under chapter 6, division 1, subdivision 3

**63A Amendment of s 351 (Functions)**

(1) Section 351(2)—

*renumber* as section 351(4).

(2) Section 351—

*insert—*

(2) Also, an inspector’s functions include investigating and monitoring compliance with chapter 12, part 12.

(3) For subsection (2), an investigation may be undertaken regardless of whether—

(a) the registrar has investigated the matter under chapter 12, part 12, division 5; or

(b) a complaint about the matter has been referred to the inspector under section 636G.

(3) Section 351(4), as renumbered, ‘doing so’—

*omit, insert—*

the performance of his or her functions

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

Section 391—

*insert—*

(6) This section is subject to section 391A.



---

**65 Insertion of new s 391A**

After section 391—

*insert—*

**391A Deduction for industrial association membership prohibited**

- (1) An employer must not deduct from an employee's wages an amount for paying the employee's membership subscription for an industrial association.

Maximum penalty—16 penalty units.

- (2) For subsection (1), it does not matter whether the employee has authorised the amount to be paid to the industrial association or to another person.
- (3) A contract or other instrument is void to the extent it provides for a deduction to be made from wages in contravention of this section.
- (4) In this section—

*industrial association* see section 102.

*membership subscription*, for an industrial association, means a subscription, due or other amount payable under the association's rules for membership, or renewal of membership, of the association.

**65A Amendment of s 410 (Meaning of *corporation* for ch 12)**

Section 410(2), 'However'—

*omit, insert—*

Except for the purposes of the *State Penalties Enforcement Act 1999*, parts 3 to 5,

**66 Amendment of s 459 (Powers of court)**

Section 459, 'court'—

*omit, insert—*

commission

**67 Amendment of s 462 (Interim orders)**

Section 462, ‘court’—

*omit, insert—*

commission

**68 Amendment of s 463 (Hearing application)**

Section 463, ‘court’—

*omit, insert—*

commission

**69 Amendment of s 464 (Effect of declaration)**

Section 464, ‘court’—

*omit, insert—*

commission

**70 Amendment of s 465 (Direction must be complied with)**

Section 465, ‘court’—

*omit, insert—*

commission

**70A Amendment of s 532 (Obligation to admit)**

Section 532(1)(b), ‘court’—

*omit, insert—*

commission

**70B Amendment of s 533 (Obligation to give union card)**

Section 533(2), ‘court’—

*omit, insert—*

commission

**71 Amendment of s 535 (Court may decide)**

(1) Section 535, heading, ‘Court’—

*omit, insert—*

**Commission**

(2) Section 535, ‘court’—

*omit, insert—*

commission

**72 Amendment of s 536 (Deciding application)**

Section 536, ‘court’—

*omit, insert—*

commission

**73 Amendment of s 691B (Industrial instruments to which this part applies)**

Section 691B—

*insert—*

(1A) However, this part does not apply to a modern industrial instrument.

**74 Amendment of s 691C (Particular provisions are of no effect)**

(1) Section 691C(1)—

*insert—*

(f) a private practice provision;

(g) a resource allocation provision.

(2) Section 691C(2)—

*insert—*

***private practice provision*** means a provision about a private practice arrangement for a medical practitioner.

*Example—*

Clause 4.11 of the Medical Officers' (Queensland Health) Certified Agreement (No. 3) 2012 is an example of a private practice provision.

***resource allocation provision*** means a provision that requires an employer to allocate funding to a program or scheme not directly related to entitlements of, or benefits for, the employer's employees.

*Example—*

Clause 2.9.7 of the Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 5) 2011 is an example of a resource allocation provision.

## **74A Amendment of s 795 (Existing rules of an organisation)**

Section 795(3)—

*insert—*

*Note—*

See also section 836 in relation to the reference in this subsection to action taken by a court under chapter 12, part 5.

## **75 Insertion of new ch 20, pt 18**

Chapter 20—

*insert—*

## **Part 18**

# **Transitional provisions for Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013**

### **Division 1**

## **Preliminary**

#### **807 Definitions for pt 18**

In this part—

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

*amending Act* means the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

*application day*, in relation to an employee to whom division 2 applies, means the day on which chapter 2A starts applying to the employee.

*commencement* means the day on which the provision in which the term is used commences.

*introduction day* means the day of introduction into the Legislative Assembly of the Bill for the amending Act.

*new*, for a provision of this Act, means the provision as in force on or after the commencement.

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



- (2) For working out the employee's entitlement to the leave during the transitional year, regard must be had to the leave of that type taken during the year under chapter 2 or a pre-modernisation industrial instrument.
- (3) Also, for working out the employee's entitlement to leave, regard must be had to the employee's period of employment with the employer before the application day.
- (4) In this section—  
*transitional year* means the year in which the application day falls.

### **811 Notices etc. given before application day**

- (1) This section applies if—
  - (a) before the application day, the employee or his or her employer gives a notice or document in compliance with a pre-modernisation notice requirement; and
  - (b) the notice or document is relevant to a matter or circumstance occurring on or after the application day; and
  - (c) there is an modern requirement that has substantially the same effect as the pre-modernisation requirement.
- (2) If the context permits, the employee or employer is taken to have complied with the modern requirement.
- (3) In this section—  
*modern requirement* means a requirement under the Queensland Employment Standards or a modern industrial instrument applicable to the employee.

*pre-modernisation notice requirement* means a requirement, under chapter 2 or a pre-modernisation industrial instrument, to give a notice or other document in relation to a matter.

*Example of a pre-modernisation notice requirement—*

a requirement to give a notice or document about parental leave under section 19, 20, 21 or 21A

## **Subdivision 2 Annual leave**

### **812 Order about payment for commission**

- (1) This section applies if, before the application day, the commission made an order in relation to the employee on an application made under section 13(4).
- (2) On and from the application day, the order continues to have effect as if it had been made under section 71EE(4).
- (3) Subsection (2) does not apply if a modern industrial instrument provides that the employee is not entitled to receive an amount representing commission in the employee's annual leave payment.

### **813 Leave loading payments made before application day**

An amount, however described, paid to the employee before the application day in addition to the employee's annual leave entitlement under chapter 2, part 1, division 3 is taken to be an additional leave amount for section 71EF(2).



## **Subdivision 3 Parental leave**

### **814 Parental leave started under ch 2**

- (1) This section applies if, on the application day, the employee is on ch 2 parental leave.
- (2) On and from the application day, the employee is taken to be on the corresponding ch 2A parental leave.
- (3) A reference in chapter 2A to a type of parental leave includes, if the context permits, a reference to the corresponding type of ch 2 parental leave.
- (4) Section 71GM does not apply to the employee in relation to the parental leave.
- (5) The employee may apply under chapter 2A, part 2, division 5, subdivision 4 even if the person started parental leave before the commencement of the subdivision.
- (6) On and from the application day—
  - (a) an extension of the ch 2 parental leave under section 29(1) is taken to be an extension under section 71GZ(1); and
  - (b) if an application was made under section 29A or 29B, but not decided by the employer, before the application day—the application is taken to have been made under chapter 2A, part 2, division 5, subdivision 4; and
  - (c) a notice given to the employee under section 31(2) is taken to have been given to the employee under section 71GZB(2); and
  - (d) if the employee was transferred to a safe job under section 36 before starting maternity leave—for section 71GZF, the employee is

taken to have been transferred to a safe job under section 71GZG.

(7) In this section—

*ch 2 parental leave* means parental leave under chapter 2 or a pre-modernisation industrial instrument.

*corresponding ch 2A parental leave*, in relation to ch 2 parental leave, means—

- (a) for ch 2 parental leave that is maternity leave, adoption leave or surrogacy leave—leave of the same name; or
- (b) for ch 2 parental leave that is long parental leave other than maternity leave—long birth-related leave; or
- (c) for ch 2 parental leave that is short parental leave—short birth-related leave.

### **815 Application of obligation to advise about significant change**

Section 71GQ applies whether or not the decision was made before the commencement of the section if the decision had not been implemented at the commencement.

### **816 Spouses not to take long parental leave at same time**

A reference in section 71GV to the employee's spouse being on parental leave includes a reference to the employee's spouse being on parental leave under chapter 2 or a pre-modernisation industrial instrument.

## **Subdivision 4 Long service leave**

### **817 Agreement or notice under s 45**

- (1) This section applies if, before the application day—
  - (a) the employer and employee made an agreement under section 45(2) in relation to long service leave all or part of which was to be taken on or after the application day; or
  - (b) the employer gave the employee a notice under section 45(3) relating to long service leave all or part of which was required to be taken on or after the application day.
- (2) The agreement or notice is taken to have been made or given under section 71HD.

### **818 Order about payment for commission**

- (1) This section applies if, before the application day, the commission made an order in relation to the employee on an application made under section 46(7).
- (2) On and from the application day, the order continues to have effect as if it had been made under section 71HF(3).
- (3) Subsection (2) does not apply if a modern industrial instrument provides that the employee is not entitled to receive an amount representing commission in the employee's long service leave payment.

### **819 Decision by commission about piecework rates**

- (1) This section applies if the employee is paid piecework rates and, before the application day,

the commission decided under section 46(8) the rate the employee should be paid for long service leave.

- (2) On and from the application day, the decision continues to have effect as if it had been made under section 71HG.

### **820 Existing decisions or agreements about entitlement to, payment for, or taking of, long service leave**

- (1) This section applies to any of the following in effect immediately before the application day—
- (a) an agreement made by an employee and employer, or a decision made by the commission, under section 46(9), (10) or (11);
  - (b) an agreement made under section 48;
  - (c) a decision made by the commission under section 52;
  - (d) an agreement made by an employee and employer, or an order made by the commission, under section 53(2) or (3).
- (2) On and from the application day, the agreement, decision or ruling continues to have effect as if it had been made under the following provision of chapter 2A—
- (a) if subsection (1)(a) applies—section 71HH;
  - (b) if subsection (1)(b) applies—section 71HK;
  - (c) if subsection (1)(c) applies—section 71HP;
  - (d) if subsection (1)(d) applies—section 71HQ.
- (3) Subsection (2) applies subject to a provision in a modern industrial instrument about the payment for, or taking of, the employee's long service leave.

## **Division 3 Provisions about awards**

### **Subdivision 1 Provisions for pre-modernisation awards**

#### **821 Application of new ch 5, pt 2**

- (1) New chapter 5, part 2 is taken to have applied on and from the introduction day.
- (2) An award, or an amendment of an award, made under section 125 on or after the introduction day and before the commencement is of no effect.
- (3) An application made on or after the introduction day under section 125(2) for the making or amendment of an award is, on the commencement, taken to have been withdrawn.

#### **822 Existing matters being heard under s 125 or 130**

- (1) This section applies to either of the following matters being heard by the commission immediately before the commencement—
  - (a) a matter relating to the making or amendment of an award under section 125;
  - (b) a review of an award under section 130.
- (2) The commission must—
  - (a) on commencement, stop dealing with the matter under chapter 5, part 2; and
  - (b) if the commission later receives an award modernisation request under chapter 5, part 8 to which the matter is relevant—consider the matter as part of the award modernisation process.

### **823 Continuation of exemptions under ch 5, pt 3**

- (1) This section applies if an exemption given under chapter 5, part 3 of the pre-amended Act was in effect immediately before the commencement.
- (2) The employer, employee, class of employer or employee, or person who was the subject of the exemption continues, on and after the commencement, not to be bound by the award.

## **Subdivision 2 Provisions for modern awards**

### **824 Modern award does not apply to employee covered by continuing agreement or determination**

- (1) A modern award does not apply to an employee, or to an employer or employee organisation in relation to the employee, at any time when the employee is covered by a continuing agreement or determination.
- (2) In this section—  
*continuing agreement or determination* means either of the following to which section 826 applies—
  - (a) a certified agreement;
  - (b) an arbitration determination under chapter 6.

---

## Division 4      Provisions about certified agreements

### 825 Retrospective operation

This division is taken to have had effect on and from the introduction day.

### 826 Certified agreements and determinations continue

- (1) A certified agreement or determination, in force immediately before the introduction day, continues in force as a certified agreement or determination under this Act.
- (2) In this section—  
*determination* means an arbitration determination under chapter 6.

### 827 Continuing agreements and determinations

- (1) A certified agreement is a *continuing agreement* for this division if its nominal expiry date was a day before the introduction day.
- (2) Also, a certified agreement becomes a *continuing agreement* for this division if—
  - (a) the agreement reaches its nominal expiry date; and
  - (b) the relevant pre-modernisation award for the agreement (or, if there is more than one, each of the relevant pre-modernisation awards for the agreement) has not been modernised under chapter 5 by that time.
- (3) However, subsections (1) and (2) do not apply to a certified agreement to which section 831 or 832 applies.

- (4) If, before the introduction day, a certified agreement reached its nominal expiry date but the parties to the agreement administratively agreed to extend the nominal expiry date to a later day that is after the introduction day, then, for this section, the nominal expiry date is taken to be the later day.
- (5) In this section—  
*certified agreement* includes a determination.  
*pre-modernisation award* see section 140B.

### **828 Extension of nominal expiry date by up to 1 year**

- (1) On the introduction day, the nominal expiry date of a continuing agreement mentioned in section 827(1) becomes—
  - (a) the day that is 1 year after the introduction day; or
  - (b) if an earlier day is prescribed for the agreement under a regulation, the prescribed day.
- (2) On the day that a certified agreement becomes a continuing agreement under section 827(2), its nominal expiry date becomes—
  - (a) the day that is 1 year after that day; or
  - (b) if an earlier day is prescribed for the agreement under a regulation, the prescribed day.

### **829 Continuing agreements can not be dealt with**

- (1) The parties to a continuing agreement can not—
  - (a) apply under section 168 to extend the agreement; or



- (b) apply under section 169 or 170 to amend the agreement; or
  - (c) terminate the agreement.
- (2) Any of the following things done, or purportedly done, on or after the introduction day is, and always was, of no effect—
- (a) a thing that, under subsection (1), can not be done;
  - (b) the making of an order by the commission on an application that, under subsection (1), can not be made.

### **830 Regulation may prescribe a wage increase**

- (1) A regulation may provide that, from a stated day, a stated increase in wages applies to employees covered by a continuing agreement.
- (2) An increase mentioned in subsection (1) does not stop applying to the employees only because the continuing agreement reaches its nominal expiry date under section 828.

### **831 Existing arbitrations**

- (1) This section applies if, before the introduction day—
  - (a) the commission's jurisdiction to determine a matter by arbitration was engaged under section 149 of the pre-amended Act; and
  - (b) the commission had not made a determination for the matter under that section.
- (2) For subsection (1), it does not matter whether or not the commission has starting hearing the matter.

- (3) The commission must determine the matter by arbitration under section 149 of the pre-amended Act.
- (4) However, if the employer and 1 or more parties reach agreement on the terms of a proposed certified agreement to be made between them before the commission makes the arbitration determination for the matter—
  - (a) the parties must take the steps under chapter 6 of the pre-amended Act necessary to have the agreement certified; and
  - (b) if an application is made under section 156 of the pre-amended Act—the commission must deal with the application under that section; and
  - (c) the arbitration ends when the agreement is certified.

### **832 Existing applications for certification**

- (1) This section applies if—
  - (a) before the introduction day, an application had been made to the commission under section 153 of the pre-amended Act to certify an agreement; and
  - (b) immediately before the introduction day, the commission had not—
    - (i) certified the agreement under section 156 of the pre-amended Act; or
    - (ii) refused to certify the agreement under section 157 of the pre-amended Act; or
    - (iii) otherwise finally dealt with the application.

- (2) The commission must decide the application under the provisions of chapter 6, division 2 of the pre-amended Act.

## **Division 5      Other provisions**

### **833 Wage deductions for industrial association membership**

- (1) This section applies if—
  - (a) an authority given by an employee before the commencement provides for a deduction to be made from the employee's wages in contravention of section 391A(1); and
  - (b) before 1 July 2014 an employer makes a deduction from the employee's wages under the authority.
- (2) The employer does not commit an offence under section 391A.

### **834 References to decision by commission of membership disputes**

- (1) This section applies if, before the commencement, an application was made to the court for decision of a question or dispute under chapter 12, part 10, division 2.
- (2) Sections 532 and 533 apply from the commencement as if a reference to—
  - (a) the referral of a question or dispute to the commission included a reference to the referral of the question or dispute to the court; and
  - (b) a decision or order of the commission under chapter 12, part 10, division 2 included a reference to a decision or order of the court

under the division in relation to the application.

- (3) For subsection (2)(b), it does not matter whether the decision or order is made by the court before, on or after the commencement.

### **835 Continued protection from liability for ombudsman and official of QWRO**

Section 702 applies from the commencement as if section 702(3), definition *official* included a reference to the ombudsman and an officer of QWRO.

### **836 Reference to action taken by court under ch 12, pt 5**

Section 795(3) applies from the commencement as if a reference in the section to a court included a reference to the commission.

### **837 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
  - (b) this Act does not make provision or sufficient provision.
- (2) Without limiting subsection (1), 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 commencement.

## 76 Amendment of sch 2 (Appointments)

- (1) Schedule 2, section 3(1)(b)—

*insert—*

(iii) the member is appointed for a fixed term.

- (2) Schedule 2, section 4(3)(a), ‘or a member holding appointment as ombudsman’—

*omit.*

- (3) Schedule 2, section 4A(1), from ‘, the vice president’ to ‘ombudsman’—

*omit.*

- (4) Schedule 2, section 4A—

*insert—*

(1A) The president may grant leave, other than leave mentioned in the pensions Act, section 15, to the vice-president.

- (5) Schedule 2, section 4A(1A) and (2)—

*renumber* as schedule 2, section 4A(2) and (3).

## 77 Amendment of sch 3 (Minimum redundancy payment)

Schedule 3, heading, after ‘payment’—

*insert—*

**under ch 3, pt 4, div 1AA**

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

- (1) Schedule 4, section 4—

*insert—*

- (3) A reference in subsection (2) to an existing certified agreement includes a determination relating to an existing certified agreement.

- (2) Schedule 4, section 8(1)—

*insert—*

- (d) the applicant satisfies the commission that the claims in support of which the proposed action will be organised or engaged in do not include any claim relating to non-allowable content under chapter 2A, part 3, division 4, subdivisions 1 and 3.

- (3) Schedule 4, part 2—

*insert—*

**12A Revocation of protected action ballot order on basis of claim relating to non-allowable content**

- (1) An applicant for a protected action ballot order or a relevant employer for the order may apply to the commission for a declaration as to whether the current claims include a claim relating to non-allowable content.

*Note—*

See section 176A for a consequence of the current claims including a claim relating to non-allowable content.

- (2) If the commission declares that the current claims include a claim relating to non-allowable content, the commission must revoke the protected action ballot order.
- (3) In this section—

*current claims* see section 176A(2).

*non-allowable content* see section 176A(2).

*relevant employer* means an employer of employees who were balloted in relation to the industrial action.

**79 Amendment of sch 4A (Application of this Act to prescribed Hospital and Health Services and their employees)**

- (1) Schedule 4A, part 3, section 6—

*omit.*

- (2) Schedule 4A, part 4, section 13(2), ‘148(5)’—

*omit, insert—*

148A(3)

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

- (1) Schedule 5, definitions *adoption leave, certified agreement, child, employee, equal remuneration for work of equal or comparable value, intended parent, long adoption leave, long parental leave, long surrogacy leave, long term casual employee, maternity leave, negotiating party, owner, non-judicial appointee, parental leave entitlement, period between seasons, relevant industrial instrument, remuneration, season, service, short adoption leave, short parental leave, short surrogacy leave, short term casual employee, surrogacy arrangement and surrogacy leave—*

*omit.*

- (2) Schedule 5—

*insert—*

*adoption leave—*

- (a) for chapter 2, part 2, see section 17; or

(b) for chapter 2A, part 2, division 5, see section 71GB.

*applies to*, in relation to a modern award, see section 140E.

*arbitration period*, for chapter 6, see section 140K.

*award modernisation process* see section 140BB(1).

*award modernisation request*, for chapter 5, part 8, see section 140C(1).

*binds*, in relation to an industrial instrument, includes applies to or covers.

*birth-related leave*, for chapter 2A, part 2, division 5, see section 71GB.

*carer's leave*, for chapter 2A, see sections 71FC(2), 71FD(2) and 71FE(2).

*casual employee*, for chapter 2A, part 2, division 6, subdivision 6, see section 71HI.

*certified agreement* see section 141(1).

*child*—

(a) for chapter 2, part 2, see section 17; or

(b) for chapter 2A, part 2, division 5, see section 71GB.

*conciliating member*, for chapter 6, see section 140K.

*conciliation report*, for chapter 6, see section 140K.

*conciliation period*, for chapter 6, see section 140K.

*employee*—

(a) generally, see section 5; and



(b) for chapter 6A, see section 188.

*employee with a disability*, for chapter 5A, see section 140DA.

*equal remuneration for work of equal or comparable value*—

(a) for chapter 2, part 5, see section 59; or

(b) for chapter 2A, part 4, see section 71P.

*excluded provisions*, for chapter 6A, see section 194(2).

*expected placement date* see section 71GJ(2)(a).

*expected residence date* see section 71GK(2)(a).

*high-income guarantee contract*, for chapter 6A, see section 188.

*high-income position*, for chapter 6A, see section 188.

*high-income senior employee*, for chapter 6A, see section 188.

*high-income threshold*, for chapter 6A, see section 188.

*intended parent*—

(a) for chapter 2, part 2, see section 17; or

(b) for chapter 2A, part 2, division 5, see section 71GB.

*long adoption leave*—

(a) for chapter 2, part 2, see section 17; or

(b) for chapter 2A, part 2, division 5, see section 71GB.

*long birth-related leave*, for chapter 2A, part 2, division 5, see section 71GB.

*long parental leave*—

(a) for chapter 2, part 2, see section 17; or

- (b) for chapter 2A, part 2, division 5, see section 71GB.

***long surrogacy leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***long term casual employee***—

- (a) for chapter 2, part 2, see section 15A; or
- (b) for chapter 2A, see section 71BB.

***maternity leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***maximum period of parental leave***, for chapter 2A, see section 71GG.

***modern award*** means an award made under chapter 5A.

***modern awards objectives***, for chapter 5A, see section 140D.

***modern industrial instrument***—

- (a) generally, see section 71BA; or
- (b) for chapter 2A, part 3, see section 71L.

***modernising Act*** for chapter 2A, see section 71BA.

***multi-employer agreement***, for chapter 6, see section 140K.

***negotiating party***, for chapter 6, see section 148(1).

***ordinary hours of work*** for chapter 2A, see section 71BA.

***ordinary working day***, for chapter 2A, part 2, division 7, see section 71I.

***owner***—

- (a) for chapter 2, part 3, see section 42; or
- (b) for chapter 2A, part 2, division 6, see section 71H.

***non-allowable provisions***, in relation to a modern industrial instrument, see section 71LB.

***parental leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***parental leave entitlement***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***peace obligation period***, for chapter 6, see section 140K.

***period between seasons***—

- (a) for chapter 2, part 3, see section 42; or
- (b) for chapter 2A, part 2, division 6, see section 71H.

***periodic review*** see section 140F.

***pre-modernisation award***, for chapter 5, part 8, see section 140B.

***pre-modernisation industrial instrument*** see section 71BA.

***Queensland Employment Standards*** see section 71C.

***redundancy pay*** see section 71KF(1).

***relevant employee organisation***, for chapter 6, see section 140K.

***relevant industrial instrument***—

- (a) for chapter 2A, see section 71BA; or
- (b) for chapter 15, part 2, see section 691A.

***relevant instrument***, for chapter 5A, part 4, see section 140I.

***remuneration***—

- (a) for a provision relating to work of equal or comparable value, includes—
  - (i) the wage or salary payable to an employee; and
  - (ii) amounts payable or other benefits made available to an employee under a contract of service; and
- (b) of an employee, for chapter 6A, see section 192; and
- (c) of a person, for chapter 12, part 12, see section 551.

***season***—

- (a) for chapter 2, part 3, see section 42; or
- (b) for chapter 2A, part 2, division 6, see section 71H.

***service***—

- (a) for chapter 2, part 6, see section 67; or
- (b) for chapter 2A, part 5, see section 71Q.

***short adoption leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***short birth-related leave***, for chapter 2A, part 2, division 5, see section 71GB.

***short parental leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***short surrogacy leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***short term casual employee***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***show holiday***, for chapter 2A, part 2, division 7, see section 71I.

***special maternity leave***, for chapter 2A, part 2, division 5, see section 71GZC.

***surrogacy arrangement***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***surrogacy leave***—

- (a) for chapter 2, part 2, see section 17; or
- (b) for chapter 2A, part 2, division 5, see section 71GB.

***transferred employee***, for chapter 2A, part 5, see section 71QB(1).

***variation notice***, for chapter 5, part 8, see section 140CA(1).

*work value reasons*, for chapter 5A, see section 140DA.

- (3) Schedule 5, definition *award*, paragraph (a)—

*omit, insert—*

(a) generally, means—

- (i) a modern award; or
- (ii) an award made under chapter 5 or continued in force under this Act, including an award as amended under chapter 5; and

- (4) Schedule 5, definition *continuous service*—

*insert—*

(c) for chapter 2A, part 2, division 6, see section 71H.

- (4A) Schedule 5, definition *industrial instrument*, after paragraph (a)—

*insert—*

(aa) for chapter 6A—see section 188; and

- (4B) Schedule 5, definition *ordinary rate*, from ‘, means’—

*omit, insert—*

, means—

- (a) for sections 71EE(2)(a) and 71HE(1)(b), if the employee is a public service employee—the rate the instrument, award or agreement states is payable for ordinary time in relation to the employee’s substantive position; or
- (b) otherwise—the rate the instrument, award or agreement states is payable for ordinary time.

- (5) Schedule 5, definition *regular part-time employee*, paragraph (c), ‘award’—

*omit, insert—*

industrial instrument

## **Division 2                      Amendment of Hospital and Health Boards Act 2011**

### **81        Act amended**

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

### **82        Amendment of s 10 (Statewide employment and industrial relations arrangements)**

Section 10—

*insert—*

- (4) Under this Act, the chief executive may issue health employment directives to support employment and industrial relations arrangements in the public sector health system.

### **83        Amendment of s 19 (Functions of Services)**

Section 19(2)(c), after ‘directives’—

*insert—*

and health employment directives

### **84        Amendment of s 20 (Powers of Services)**

- (1) Section 20(3), after ‘executives’—

*insert—*

and contracted senior health service employees

- (2) Section 20(4), note—

*omit.*

**85 Amendment of s 45 (Functions of chief executive)**

Section 45(g)—

*omit, insert—*

- (g) to establish the conditions of employment for health service employees, including issuing health employment directives;

**86 Amendment of s 46 (Delegation by chief executive)**

Section 46(2)(c), after ‘directive’—

*insert—*

or health employment directive

**87 Amendment of s 47 (Health service directives)**

(1) Section 47(1)(d), after ‘employment’—

*insert—*

matters (other than conditions of employment for health service employees)

(2) Section 47(2)(c)—

*omit.*

(3) Section 47(2)(d) to (i)—

*renumber* as section 47(2)(c) to (h).

(4) Section 47(4) and (5)—

*omit.*

(5) Section 47(6), definition *delivery*, paragraph (a)(ii)—

*omit, insert—*

- (ii) the provision of training to health professionals or students in public sector health service facilities; and



- (6) Section 47(6)—  
*renumber* as section 47(4).

## **88 Insertion of new pt 3, div 2A**

Part 3—

*insert*—

### **Division 2A Chief executive may issue health employment directives**

#### **51A Health employment directives**

- (1) The chief executive may issue health employment directives about the conditions of employment for health service employees.
- (2) Without limiting subsection (1), a health employment directive may be about the following—
  - (a) remuneration for health executives and senior health service employees;
  - (b) the classification levels at which health executives and senior health service employees are to be employed;
  - (c) the terms of contracts for health executives and contracted senior health service employees;
  - (d) the conditions of employment for senior health service employees, other than contracted senior health service employees;
  - (e) the professional development and training of health service employees in accordance with the conditions of their employment.
- (3) A health employment directive may apply to any or all of the following—

- (a) the department, a Service or all Services;
- (b) health service employees, or a stated type of health service employee.

### **51B Relationship with legislation**

If a health employment directive is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails over the health employment directive.

### **51C Relationship between health employment directives and other instruments**

- (1) If a health employment directive is inconsistent with an industrial instrument, the health employment directive prevails over the industrial instrument, unless a regulation provides otherwise.
- (2) If a health employment directive is inconsistent with a ruling made under the *Public Service Act 2008*, section 53, the health employment directive prevails over the ruling.
- (3) If a health employment directive is inconsistent with a health service employee's contract of employment, the health employment directive prevails over the contract.
- (4) In this section—  
*health employment directive* includes a decision made in the exercise of a discretion under the directive.

### **51D Publication of health employment directives**

A health employment directive must be published in a way that allows the directive to be accessed by health

service employees and members of the public, including, for example, on the internet.

### **51E Health employment directives binding**

- (1) A health employment directive that applies to an employee of the department is binding on the employee and the department.
- (2) A health employment directive that applies to an employee of a Service is binding on the employee and the Service.

*Note—*

A health employment directive may apply to both employees of a department and a Service. See section 51A(3).

### **51F Review of health employment directives**

- (1) The chief executive must complete a review of a health employment directive within 3 years after it is made and afterwards within 3 years after the previous review.
- (2) If a directive is amended as a result of the review, the chief executive must publish the amended directive in a way that allows it to be accessed by members of the public, including, for example, on the internet.

## **89 Amendment of s 66 (Conditions of employment)**

- (1) Section 66(1), after ‘executive’—

*insert—*

or a senior health service employee

- (2) Section 66(1)—

*insert—*

(ab) the *Industrial Relations Act 1999*; and

- (3) Section 66(1)(d), ‘service’—  
*omit, insert—*  
employment
- (4) Section 66(1)(ab) to (e)—  
*renumber* as section 66(1)(b) to (f).
- (5) Section 66(2)—  
*insert—*  
(ab) the *Industrial Relations Act 1999*; and
- (6) Section 66(2)(c), ‘service’—  
*omit, insert—*  
employment
- (7) Section 66(2)(ab) to (d)—  
*renumber* as section 66(2)(b) to (e).
- (8) Section 66—  
*insert—*  
(2A) A senior health service employee’s conditions of employment are governed by—  
(a) this Act; and  
(b) the *Industrial Relations Act 1999*; and  
(c) the applied Public Service law; and  
(d) health employment directives; and  
(e) an industrial instrument that applies to the employee; and  
(f) if the employee is a contracted senior health service employee—the employee’s contract.
- (9) Section 66(3), after ‘in’—  
*insert—*  
a health employment directive or

- (10) Section 66(2A) and (3)—  
*renumber* as section 66(3) and (4).

**90 Amendment of s 67 (Appointment of health service employees)**

- (1) Section 67(2), after ‘executive’—  
*insert*—  
or a contracted senior health service employee
- (2) Section 67(4)(b), after ‘executive’—  
*insert*—  
or a senior health service employee
- (3) Section 67(4)—  
*insert*—  
(e) for an employee who is a senior health service employee—on contract for an indefinite term.

**91 Amendment of s 68 (Contracted health service employees other than health executives)**

- (1) Section 68, heading, after ‘executives’—  
*insert*—  
**or senior health service employees**
- (2) Section 68(1), after ‘executive’—  
*insert*—  
or a senior health service employee

**92 Amendment of pt 5, div 2, hdg (Health executive service)**

- Part 5, division 2, heading, after ‘service’—

*insert—*

**and senior health service employees**

**93 Insertion of new pt 5, div 2, sdiv 1, hdg**

Part 5, division 2, before section 70—

*insert—*

**Subdivision 1 Health executive service**

**94 Insertion of new pt 5, div 2, sdiv 2 and sdiv 3, hdg**

After section 74—

*insert—*

**Subdivision 2 Senior health service employees**

**74A Meaning of *senior health service employee***

- (1) A *senior health service employee* is a health service employee employed in a position—
  - (a) under which the remuneration is more than the high-income threshold; and
  - (b) that is prescribed under a regulation as a senior health service employee position.
- (2) Without limiting the matters to which the Minister may have regard in deciding whether to recommend the making of a regulation under subsection (1), the Minister may have regard to the role, responsibilities and functions performed by persons employed in the position.
- (3) In this section—

*high-income threshold* see the *Industrial Relations Act 1999*, section 191.

*remuneration*, of an employee, see the *Industrial Relations Act 1999*, section 192.

---

### **74B Terms of contract for contracted senior health service employees**

- (1) This section applies to a contracted senior health service employee.
- (2) The employee's contract of employment must be entered into with—
  - (a) for an employee of the department—the chief executive; or
  - (b) for an employee of a Service—the health service chief executive.
- (3) The employee's contract of employment must be in writing and state each of the following—
  - (a) whether the contract is for a fixed term or an indefinite term;
  - (b) if the contract is for a fixed term—the length of the term;
  - (c) the employee's functions;
  - (d) that the employee must meet any performance criteria stated in the contract;
  - (e) the employee's classification level, and the remuneration to which the employee is entitled;
  - (f) the period of notice of resignation or termination that is required to be given before the notice takes effect.

### **Subdivision 3 Excluded matters**

#### **95 Amendment of s 75 (Exclusion of certain matters from review under other Acts)**

- (1) Section 75(2)—  
*omit.*

(2) Section 75(5), definition *excluded matter*, after ‘executive’—  
*insert—*

or a senior health service employee

(3) Section 75(3) to (5)—

*renumber* as section 75(2) to (4).

**96 Omission of s 76 (Fixing of remuneration packages and classification levels for health executives)**

Section 76—

*omit.*

**97 Amendment of s 78 (Transfer of health service employees)**

Section 78(4), ‘for a fixed term’—

*omit.*

**98 Amendment of s 79 (Entitlement on ending of particular employment contracts)**

Section 79(1), after ‘executive’—

*insert—*

or a senior health service employee

**99 Amendment of s 80 (Departmental health service employees to be employed by Services)**

Section 80(1), after ‘that Service’—

*insert—*

, other than a person to whom section 80AA applies

**100 Insertion of new s 80AA**

After section 80—



*insert—*

**80AA High-income senior employees to be employed by Services**

- (1) This section applies to a person—
  - (a) employed in the department who is working for a Service immediately before the prescribed day for that Service; and
  - (b) who becomes a high-income senior employee on the same day as the prescribed day.
- (2) From the prescribed day, the person is taken to be employed by the Service on the conditions that apply to the person under section 66.

*Note—*

See also the *Industrial Relations Act 1999*, sections 194 and 195 regarding the person's conditions of employment.

- (3) The following apply for the person—
  - (a) the person's accruing rights, including to superannuation or recreation, sick, long service or other leave are not affected;
  - (b) continuity of service is not interrupted, except that the person is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;
  - (c) the employment does not constitute a termination of employment or a retrenchment or redundancy;
  - (d) the person is not entitled to a payment or other benefit because the person is no longer employed in the department.
- (4) Subject to this section, the chief executive may issue a direction to a person to facilitate the

transition of employees from the department to a Service.

(5) A person given a direction must comply with the direction.

(6) In this section—

*high-income senior employee* see the *Industrial Relations Act 1999*, section 189.

**101 Amendment of s 80B (Matters and proceedings not affected by persons becoming employees of prescribed Service)**

Section 80B(1)(a), after ‘80’—

*insert—*

or 80AA

**102 Insertion of new s 80C**

Part 5—

*insert—*

**80C Matters and proceedings not affected by persons becoming contracted senior health service employees in Service**

(1) This section applies if—

(a) a person appointed as a contracted senior health service employee in a Service was, immediately before the appointment, employed in the department; and

(b) before the person was appointed in the Service, a proceeding was taken by or against the person or anything else was done in relation to the person as an employee of the department; and

- (c) the proceeding or other thing had not been completed immediately before the person was appointed in the Service.
- (2) The proceeding may be continued and completed after the day the person becomes an employee in the Service by or against the Service instead of the department.
- (3) For anything other than a proceeding, the thing may be continued unaffected by the person becoming an employee of the Service.

*Examples for subsection (3)—*

A recruitment and selection process involving a person employed in the department, started before the day the person becomes an employee in the Service, may continue after the day.

The approval of the annual leave for a person employed in the department before the day the person becomes an employee in the Service is effective after that day.

## 103 Insertion of new pt 13, div 4

Part 13—

*insert—*

### **Division 4                      Transitional provisions for the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013**

#### **320 Senior health service employees**

Section 74A applies to a person appointed as a health service employee, whether the appointment was made before or after the commencement of the section.

### **321 Existing health service directives about conditions of employment**

- (1) This section applies to a health service directive that—
  - (a) is in effect immediately before the commencement of this section under previous section 47; and
  - (b) is about the terms and conditions of employment for health service employees.
- (2) Previous section 47 continues to apply in relation to the health service directive despite the amendment of that section by the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.
- (3) The health service directive continues in effect until the earlier of the following to happen—
  - (a) the chief executive revokes the directive;
  - (b) the directive is replaced by a health employment directive.
- (4) This section expires on 31 December 2014.
- (5) In this section—

*previous section 47* means section 47 as it was in force immediately before the commencement of this section.

### **104 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2—

*insert—*

*contracted senior health service employee* means a senior health service employee appointed on contract under section 67.

*health employment directive* means a health employment directive issued by the chief executive under section 51A.

*senior health service employee* see section 74A.

- (2) Schedule 2, definition *appoint*, paragraph (a), after ‘second’—  
*insert*—  
, enter into a contract with

### Division 3                      **Amendment of Trading (Allowable Hours) Act 1990**

#### 105    **Act amended**

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

#### 106    **Amendment of s 4 (Meaning of terms)**

- (1) Section 4, heading—

*omit, insert*—

#### **4    Dictionary**

- (2) Section 4, definition *commissioner*—

*omit.*

- (3) Section 4—

*insert*—

*full bench*, of the industrial commission, see the *Industrial Relations Act 1999*, section 256(2).

*vice-president* means the vice-president of the industrial commission under the *Industrial Relations Act 1999*.

- (4) Section 4, definitions—

*relocate* to schedule 1, as inserted by this Act.

- (5) Section 4, ‘In this Act—’—

*omit, insert—*

The dictionary in schedule 1 defines particular words used in this Act.

**107 Amendment of pt 5, hdg (Orders concerning non-exempt shops, exhibitions and special displays)**

Part 5, heading, ‘, exhibitions and special displays’—

*omit, insert—*

**and special exhibitions**

**108 Amendment of s 21 (Trading hours orders on non-exempt shops)**

- (1) Section 21(1), ‘A full bench of the’—

*omit, insert—*

The

- (2) Section 21(1A) and (2), ‘full bench’—

*omit, insert—*

industrial commission

- (3) Section 21(3)—

*omit, insert—*

- (3) In this section—

***public holiday*** includes, if another day is substituted for a public holiday under the *Holidays Act 1983*, section 3, the day that would have been the public holiday if the substitution had not happened.

- (4) Section 21(1A) to (3)—

*renumber* as section 21(2) to (4).

---

**109 Replacement of s 22 (Orders on exhibitions etc.)**

Section 22—

*omit, insert—*

**22 Approval of special exhibitions**

- (1) The industrial commission may, by order—
  - (a) approve the holding of a special exhibition of goods, other than goods that a reasonable person would expect to be sold in an exempt shop; and
  - (b) impose conditions on the holding of the exhibition.
- (2) The order may provide for the holding of the special exhibition—
  - (a) on a permanent or temporary basis; or
  - (b) in a shop or elsewhere.
- (3) Without limiting subsection (1)(b), a condition may, for example—
  - (a) fix the following for any day on which a special exhibition may be held—
    - (i) the earliest time the exhibition may open;
    - (ii) the latest time by which the exhibition must close; or
  - (b) permit, prohibit, or impose conditions on, selling, and taking orders for the sale of, goods—
    - (i) exhibited or displayed; or
    - (ii) of a description of the goods exhibited or displayed.

**110 Amendment of s 23 (Powers and procedures relevant to proceedings under ss 21 and 22)**

Section 23, ‘22(1)’—

*omit, insert—*

22

**111 Insertion of new s 23A**

After section 23—

*insert—*

**23A Reference to full bench**

- (1) This section applies to the matter of an order under section 21 or 22.
- (2) The vice-president may refer the matter to the full bench of the industrial commission.
- (3) The referral may be made—
  - (a) at any stage of the proceedings for the matter, including before the hearing of the matter starts; and
  - (b) on the terms the vice-president considers appropriate.
- (4) The full bench may hear and decide the matter referred to it and make the decision it considers appropriate.
- (5) This section does not limit the *Industrial Relations Act 1999*, section 281.

**112 Amendment of s 25 (Leave may be granted by full bench)**

- (1) Section 25, heading, ‘full bench’—

*omit, insert—*

**industrial commission**

- (2) Section 25(1), ‘a full bench of’—



*omit.*

(3) Section 25(3), ‘A full bench of the’—

*omit, insert—*

The

**113 Amendment of s 27 (Summary dismissal of application)**

Section 27, ‘a full bench of’—

*omit.*

**114 Replacement of s 29 (Compliance with conditions for exhibitions etc.)**

Section 29—

*omit, insert—*

**29 Compliance with conditions of special exhibitions order**

- (1) This section applies if an order of the industrial commission made under section 22 imposes conditions on the holding of a special exhibition.
- (2) Each of the following persons must comply with the conditions of the order—
  - (a) a person who holds or organises the special exhibition;
  - (b) a person who occupies an exhibit or display in the special exhibition.

**115 Insertion of new pt 8, div 3**

After section 49—

*insert—*

## **Division 3      Transitional provisions for Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013**

### **50 Definitions for div 3**

In this division—

*commencement* means the commencement of this section.

*commissioner* see the *Industrial Relations Act 1999*, section 256(1)(b).

*new*, for a provision of this Act, means the provision as in force from the commencement.

*previous*, for a provision of this Act, means the provision as in force immediately before the commencement.

### **51 Proceedings started before commencement**

- (1) This section applies to the matter of an order under previous section 21 or 22(1) if, before the commencement, a proceeding for the matter had been started but not decided or otherwise ended.
- (2) The full bench of the industrial commission must hear and decide, or continue to hear and decide, the matter under this Act as in force immediately before the commencement.
- (3) However, if immediately before the commencement the hearing of the matter had not started—

- (a) the vice-president may reallocate the matter to an industrial commission constituted by a commissioner sitting alone; and
- (b) the industrial commission must hear and decide the matter under this Act as in force immediately before the commencement.

## **52 Special exhibition orders**

- (1) This section applies to an order made under previous section 22 by the industrial commission constituted by the full bench or a commissioner sitting alone.
- (2) From the commencement, the order is taken to be an order of the industrial commission made under new section 22.

## **116 Insertion of new sch 1**

After section 52, as inserted by this Act—

*insert—*

### **Schedule 1      Dictionary**

section 4

## **Division 4      Minor and consequential amendments**

## **117 Legislation amended**

Schedule 1 amends the legislation it mentions.

## **Part 3                      Other amendments**

### **Division 1                      Amendment of Superannuation (State Public Sector) Act 1990**

#### **118      Act amended**

This division amends the *Superannuation (State Public Sector) Act 1990*.

#### **119      Amendment of s 2 (Interpretation)**

(1) Section 2, definitions *appropriately qualified*, *AWUQ*, *chairperson*, *disqualified person*, *employer trustee*, *independent director*, *member entity trustee*, *QCU* and *quorum*—

*omit.*

(2) Section 2, definition *alternate trustee*, ‘section 6C’—

*omit, insert—*

    this Act

(3) Section 2, definition *CEO*, ‘6DA’—

*omit, insert—*

    6A

#### **120      Amendment of s 3 (Establishment of board)**

Section 3(6), ‘*Superannuation Industry (Supervision) Act 1993 (Cwlth)*’—

*omit, insert—*

    SIS Act

**121 Replacement of ss 5–6AA**

Sections 5 to 6AA—

*omit, insert—*

**5 Membership of the board**

- (1) The board consists of the number of trustees prescribed under a regulation.
- (2) The trustees are to be appointed by the Minister in the way prescribed under a regulation.

**122 Renumbering of s 6B (Appointment not affected by other laws restricting employment)**

Section 6B—

*renumber* as section 6.

**123 Omission of ss 6C–6DAA**

Sections 6C to 6DAA—

*omit.*

**124 Renumbering of ss 6DA–6F**

Sections 6DA to 6F—

*renumber* as sections 6A to 6C.

**125 Omission of ss 6G–6J**

Sections 6G to 6J—

*omit.*

**126 Replacement of s 31 (Regulations)**

Section 31—

*omit, insert—*

### **31 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about any of the following—
  - (a) the membership of the board;
  - (b) the eligibility requirements for trustees and alternate trustees;
  - (c) the appointment of trustees by the Minister;
  - (d) the appointment of alternate trustees by the board and the functions and powers of trustees that may be performed and exercised by alternate trustees;
  - (e) revoking the appointment of trustees or alternate trustees;
  - (f) filling vacancies in the office of a trustee or an alternate trustee;
  - (g) matters relating to the chairperson and deputy chairperson of the board including—
    - (i) the appointment of a trustee as chairperson; and
    - (ii) the election of a trustee as deputy chairperson;
  - (h) the conduct of the board's business, including providing for the holding of, and attendance and voting at, board meetings.

### **127 Insertion of new pt 6, div 5**

Part 6—

*insert—*

**Division 5**      **Transitional provision for  
Industrial Relations (Fair  
Work Act Harmonisation  
No. 2) and Other  
Legislation Amendment  
Act 2013**

**44 Appointments of existing trustees end**

- (1) This section applies to a trustee holding office immediately before the commencement of this section.
- (2) On the commencement, the trustee's appointment ends and the office is vacated.

**Division 2**      **Amendment of Superannuation  
(State Public Sector) Regulation  
2006**

**128 Regulation amended**

This division amends the *Superannuation (State Public Sector) Regulation 2006*.

**129 Insertion of new pt 1 hdg**

Before section 1—

*insert—*

**Part 1                      Preliminary**

**130 Insertion of new s 2A**

After section 2—

*insert—*

## **2A Interpretation**

The dictionary in schedule 2 defines particular words used in this regulation.

### **131 Insertion of new pt 2**

After new section 2A—

*insert—*

## **Part 2 Board of trustees**

### **2B Membership of the board**

- (1) The Minister must, under section 5 of the Act, appoint—
  - (a) 4 trustees as representing employers (*employer trustees*); and
  - (b) 4 member representative trustees, of whom 1 is to be nominated by—
    - (i) the Queensland Police Union; and
    - (ii) the Queensland Nurses' Union; and
    - (iii) the Queensland Teachers' Union; and
    - (iv) Together Queensland.
- (2) With the board's written consent, the Minister may also appoint 1 other trustee if, when appointed, the person will be an independent director of the board.

### **2C Appointment of trustees**

- (1) A person may be appointed as a trustee only if the person—
  - (a) is eligible to be a trustee; and



*Note—*

See section 2D.

- (b) gives written consent for the appointment.
- (2) An appointment of a trustee must be made by gazette notice.

## **2D Eligibility**

- (1) A person is eligible to be a trustee if the person is—
  - (a) an adult; and
  - (b) not a disqualified person; and
  - (c) appropriately qualified to perform the functions, and exercise the powers, of a trustee.
- (2) If a person holding the office of trustee becomes a disqualified person, the person must immediately give written notice to the board that the person is a disqualified person.
- (3) In this section—  
*trustee* includes an alternate trustee.

## **2E Term of appointment**

- (1) A trustee is appointed for the term, of not more than 3 years, stated in the gazette notice.
- (2) A trustee may be reappointed.
- (3) However, a person must not be appointed if the total of the person's terms of appointment would be more than 9 years.

## **2F Vacancy in the office of trustee**

- (1) The office of a trustee becomes vacant if—

- (a) the Minister revokes the trustee's appointment; or
  - (b) the trustee—
    - (i) resigns by signed notice given to the Minister; or
    - (ii) becomes a disqualified person.
- (2) The Minister must not revoke the appointment of a member representative trustee other than on a request by the board under section 2G.

### **2G Board may ask Minister to revoke trustee's appointment**

- (1) The board may ask the Minister to revoke a trustee's appointment—
  - (a) if the trustee is absent from 3 board meetings in a financial year, of which the trustee has been given notice under procedures approved by the board, without the board's leave and without reasonable excuse; or
  - (b) if the board is satisfied the trustee is unable to perform the trustee's functions because of a physical or mental incapacity; or
  - (c) if the board is satisfied that, if the trustee remains as a trustee, it is likely the board will not meet the prudential standards under the SIS Act, part 3A that apply to it; or
  - (d) in the circumstances prescribed under the SIS Act, section 107(2)(a)(ii)(G).
- (2) Before asking the Minister to revoke a trustee's appointment, the board must—
  - (a) give the trustee a written notice stating—

- (i) that the board proposes to ask the Minister to revoke the trustee's appointment; and
  - (ii) the reason for making the request; and
  - (iii) that the trustee may, within a stated reasonable time of not less than 14 days, give the board a written submission about why the board should not make the request; and
- (b) have regard to any submissions received from the trustee within the stated time.
- (3) Also, before asking the Minister to revoke a member representative trustee's appointment under subsection (1)(a), (b) or (d), the board must obtain the written approval of the entity that nominated the trustee for appointment.
- (4) The Minister must comply with a request from the board under this section.

## **2H Filling a vacancy in the office of a trustee**

- (1) This section applies if the office of a trustee becomes vacant before the end of the term of the trustee's appointment (the *original term*).
- (2) The Minister must—
  - (a) for an employer trustee—appoint another person to the office; or
  - (b) for a member representative trustee—appoint a person nominated by the entity that nominated the trustee whose office has become vacant.
- (3) Subject to subsection (4), the Minister must appoint a trustee to fill a vacancy within 90 days after it happens.

- (4) If the Minister does not receive a nomination for a vacancy in the office of a member representative trustee from the relevant nominating entity in time to fill the vacancy within 90 days after it happens, the Minister must appoint a trustee to fill the vacancy as soon as practicable after receiving the nomination.
- (5) An appointment to fill the vacancy must be for a term ending at the end of the original term.

## **2I Alternate trustees**

- (1) The board may appoint alternate trustees to—
  - (a) act in the office of a trustee during a vacancy in the office; and
  - (b) attend board meetings in the place of trustees who are unable to attend the meetings; and
  - (c) exercise the absent trustees' powers at the meetings.
- (2) However, at any time there must not be more than 2 alternate trustees.
- (3) The board must, if it decides to appoint alternate trustees, publish a policy about the role of alternate trustees.

## **2J Appointment of alternate trustees**

- (1) The board may appoint a person as alternate trustee only if the person—
  - (a) is eligible to be appointed as a trustee; and

*Note—*  
See section 2D.

  - (b) gives written consent to the appointment.

- (2) An alternate trustee must be appointed for a stated term of not more than 3 years.
- (3) The office of an alternate trustee becomes vacant if the trustee—
  - (a) resigns by signed notice given to the chairperson; or
  - (b) becomes a disqualified person.

## **2K Chairperson**

- (1) The Minister must appoint 1 of the trustees as chairperson of the board.
- (2) The Minister may appoint a trustee as chairperson only with the trustee's written consent.
- (3) The Minister must consult with the board before making or revoking an appointment of a chairperson.
- (4) An appointment under this section must—
  - (a) be signed by the Minister; and
  - (b) be for a stated term of not more than 3 years.
- (5) The office of chairperson becomes vacant if—
  - (a) the chairperson's term of appointment as trustee ends; or
  - (b) the chairperson resigns the office of chairperson by signed notice given to the Minister; or
  - (c) the chairperson stops being a trustee.

## **2L Deputy chairperson**

- (1) The trustees may elect one of their number as deputy chairperson of the board if the person consents to the election.

- (2) The person elected must be—
  - (a) if the chairperson is an employer trustee—a member representative trustee; or
  - (b) if the chairperson is a member representative trustee—an employer trustee.
- (3) A person is elected deputy chairperson if at least a quorum of trustees vote for the person to be deputy chairperson.
- (4) The office of deputy chairperson becomes vacant if—
  - (a) the deputy chairperson's term of appointment as trustee ends; or
  - (b) the deputy chairperson resigns the office of deputy chairperson by signed notice given to the board; or
  - (c) the deputy chairperson stops being a trustee; or
  - (d) the deputy chairperson stops being a person who may be elected under subsection (2).

## **2M Conduct of business**

Subject to the Act and this regulation, the board may conduct its business, including its meetings, in the way it considers appropriate.

## **2N Time and place of meetings**

- (1) Board meetings are to be held at the times and places the board decides.
- (2) The chairperson—
  - (a) may call a meeting at any time; and
  - (b) must call a meeting on the written request of at least a quorum of trustees.

## **2O Conduct of meetings**

- (1) Board meetings are to be presided over by—
  - (a) if the chairperson is present—the chairperson; or
  - (b) if the chairperson is not present—the deputy chairperson; or
  - (c) if neither the chairperson nor the deputy chairperson is present—another trustee chosen by the trustees who are present.
- (2) A resolution is passed at a board meeting only if at least a quorum of trustees vote in favour of it.
- (3) A trustee present at a meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or permit trustees to take part in meetings, by telephone, video link, or another form of communication that allows reasonably contemporaneous and continuous communication between the trustees taking part in the meeting.
- (5) A trustee who takes part in a meeting under subsection (4) is taken to be present at the meeting.

## **2P Resolutions other than at meetings**

- (1) A resolution may be made by the board other than at a board meeting if—
  - (a) at least a quorum of trustees give written agreement to the resolution; and
  - (b) notice of the resolution is given under procedures approved by the board.
- (2) The resolution is taken to have been made as soon as the number of trustees who have given written agreement to the resolution is at least a quorum.

## Part 3

## Miscellaneous

### 132 Amendment of s 3 (Units of the State public sector—Act, s 2(1))

Section 3, ‘the schedule’—

*omit, insert—*

schedule 1

### 133 Omission of s 5 (Prescribed number—Act, s 5)

Section 5—

*omit.*

### 134 Insertion of new pt 4

After section 6—

*insert—*

## Part 4

## Transitional provision for Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013

### 7 Particular persons may hold office as trustee for more than 9 years

- (1) This section applies to a person who held office as a trustee immediately before the commencement of this section.
- (2) Despite section 2E(3), the Minister may reappoint the person as a trustee even if—



- (a) the total of the person's terms of appointment as trustee is more than 9 years; or
- (b) the appointment will mean the total of the person's term of appointment will be more than 9 years.

**135 Amendment of schedule (Units of the State public sector)**

Schedule—

*number* as schedule 1.

**136 Insertion of new sch 2**

After schedule 1, as numbered—

*insert*—

## **Schedule 2 Dictionary**

section 2A

*chairperson* means the trustee holding office as the chairperson under section 2K.

*employer trustee* means a trustee mentioned in section 2B(1)(a).

*disqualified person* has the meaning given under the SIS Act, section 120.

*independent director* has the meaning given under the SIS Act, section 10(1) and (2).

*member representative trustee* means a trustee mentioned in section 2B(1)(b).

*quorum*, of trustees, means, at any particular time, the number that is two-thirds of the total number of trustees holding office at the time.

## **Schedule 1      Minor and consequential amendments**

section 117

### **Part 1                      Amendments commencing on assent**

#### **Industrial Relations Act 1999**

**1      Section 164(2)—**

*insert—*

(c) it expires under subsection (3).

**2      Section 164—**

*insert—*

(3) A certified agreement expires at the end of the day that is 3 years after the nominal expiry date for the agreement unless it is sooner replaced by another certified agreement or terminated.

**3      Section 259A—**

*omit.*

**4      Section 259AA(1)—**

*insert—*

*Note—*

Chapter 8A provided for the appointment of the ombudsman. That chapter was repealed by the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

**5 Section 264(4)—**

*insert—*

*Note—*

Chapter 8A provided for the appointment of the ombudsman. That chapter was repealed by the *Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*.

**6 Section 264(5), ‘An industrial commissioner’—**

*omit, insert—*

A commissioner

**7 Chapter 8A—**

*omit.*

**8 Section 353(4), definition *workplace*—**

*omit.*

**9 Section 353(4)—**

*insert—*

***branch***, of an organisation, see section 409.

***workplace***—

- (a) means a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on; and
- (b) includes a place of business used or occupied by an organisation, a branch of an organisation or an associated entity of an organisation.

**10 Section 356(1)(a), ‘instrument—’—**

*omit, insert—*

instrument any of the following persons (each a *relevant person*)—

**11 Section 356(1)(a)(i), ‘or’—**

*omit.*

**12 Section 356(1)(a)(ii), ‘and’—**

*omit.*

**13 Section 356(1)(a)—**

*insert—*

(iii) an officer of an organisation or a branch of an organisation;

(iv) a person who—

(A) is at a place of business used or occupied by an associated entity of an organisation; and

(B) is in control, or appears to the inspector to be in control, of the place; and

**14 Section 356(1)(b) and (2), ‘employer or person’—**

*omit, insert—*

relevant person

**15 Section 356(3), ‘The person’—**

*omit, insert—*

The relevant person

**16 Section 356(5), ‘an employee’—**

*omit, insert—*

a relevant person who is an employee

**17 Section 662(4), definition *official*—**

*omit, insert—*

*official* means—

- (a) an inspector; or
- (b) the registrar.

**18 Section 663(6), definition *official*, paragraphs (d) and (e)—**

*omit.*

**19 Section 702(3), definition *official*, paragraphs (g) and (h)—**

*omit.*

**20 Schedule 5, definitions *ombudsman* and *QWRO*—**

*omit.*

## **Integrity Act 2009**

**1 Schedule 1, entry for *Industrial Relations Act 1999*, ‘the Queensland workplace rights ombudsman’—**

*omit.*

## **Public Service Act 2008**

**1 Schedule 1, entry for Queensland Workplace Rights Office—**

*omit.*

## **Part 2 Amendments commencing on 1 December 2013**

### **Building and Construction Industry (Portable Long Service Leave) Act 1991**

**1 Section 56(3)(b), after ‘53(3)’—**

*insert—*

or 71HQ(3)

**2 Section 61(1)(b), after ‘part 3’—**

*insert—*

, or chapter 2A, part 2, division 6,

**3 Section 61(1)(b), ‘that part’—**

*omit, insert—*

those provisions

**4 Section 61(4), after ‘part 3’—**

*insert—*

or chapter 2A, part 2, division 6,

**5 Section 61(4), after ‘section 56’—**

*insert—*

or 71HT

**6 Section 62(9), from ‘*Industrial*’ to ‘requires’—**

*omit, insert—*

LSL payment provisions

**7 Section 62—**

*insert—*

(10) In this section—

***LSL payment provisions*** means the following provisions of the *Industrial Relations Act 1999*—

- (a) if chapter 2 of that Act applies to the worker—section 46 or 49, as the case requires;
- (b) if chapter 2A of that Act applies to the worker—chapter 2A, part 2, division 6, subdivision 5 or section 71HL, as the case requires.

## **Child Employment Act 2006**

**1 Sections 15A(2)(b) and 15B(3), definition *employment entitlements and protections*, paragraph (b), after ‘Full Bench,’—**

*insert—*

or chapter 2A, part 2,





**8 Section 692D(5), after ‘chapter 2’—**

*insert—*

or 2A

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