

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

Amendments during consideration in detail to be moved by
The Honourable the Attorney-General and Minister for Justice

1 Clause 7 (Insertion of new ch 2A)

Page 25, lines 10 to 12—

omit, insert—

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).

2 Clause 7 (Insertion of new ch 2A)

Page 55, line 13, ‘71GS’

omit, insert—

71GR

3 Clause 7 (Insertion of new ch 2A)

Page 66, line 20, ‘5 and 6’—

omit, insert—

7 and 8

4 Clause 7 (Insertion of new ch 2A)

Page 69, line 19, ‘2’—

omit, insert—

4

5 Clause 7 (Insertion of new ch 2A)

Page 70, line 11, ‘3’—

omit, insert—

5

6 Clause 7 (Insertion of new ch 2A)

Page 73, lines 1 and 3, ‘4’—

omit, insert—

6

7 Clause 7 (Insertion of new ch 2A)

Page 76, lines 1 and 4, ‘5’—

omit, insert—

7

8 Clause 7 (Insertion of new ch 2A)

Page 78, line 5, ‘6’—

omit, insert—

8

9 Clause 7 (Insertion of new ch 2A)

Page 78, line 11, ‘5’—

omit, insert—

7

10 Clause 7 (Insertion of new ch 2A)

Page 78, line 16, ‘7’—

omit, insert—

9

11 Clause 7 (Insertion of new ch 2A)

Page 83, line 3, after ‘that is’—

insert—

a

12 Clause 7 (Insertion of new ch 2A)

Page 92, lines 2 and 3, ‘at the employee’s base rate of pay’—

omit, insert—

on the basis of the employee’s weeks pay

13 Clause 7 (Insertion of new ch 2A)

Page 96, lines 21 and 22, from ‘written’ to ‘days’—

omit, insert—

28 days’ written notice

14 Clause 17 (Insertion of new ch 5A)

Page 129, lines 10 and 11, from ‘subsection’ to ‘(j)’—

omit, insert—

subsection (2)(a) to (d), (h) and (i)

15 Clause 17 (Insertion of new ch 5A)

Page 132, line 7, ‘A’—

omit, insert—

Subject to section 824, a

16 Clause 17 (Insertion of new ch 5A)

Page 132, lines 12 to 19—

omit.

17 Clause 17 (Insertion of new ch 5A)

Page 132, line 20, '(4)'—

omit, insert

(3)

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

Page 145, line 28, after 'certified agreement'—

insert—

or a determination under subdivision 3

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

Page 145, line 30, after 'agreement'—

insert—

or determination

20 Clause 28 (Replacement of s 149 (Arbitration if conciliation unsuccessful))

Page 153, lines 5 to 8, from 'give' to 'ends.'—

omit, insert—

, 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.

21 Clause 28 (Replacement of s 149 (Arbitration if conciliation unsuccessful))

Page 154, line 32, 'president'—

omit, insert—

vice-president

22 Clause 31 (Replacement of s 155 (Right of employee organisation to be heard))

Page 160, line 8, after ‘entitled’—

insert—

to

23 Clause 42 (Insertion of new ch 6A)

Page 166, lines 5 to 16—

omit, insert—

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*.

24 Clause 42 (Insertion of new ch 6A)

Page 170, line 22, ‘is made’—

omit, insert—

takes effect

25 Clause 42 (Insertion of new ch 6A)

Page 170, line 34, after ‘no effect’—

insert—

in relation to the employee

26 Clause 42 (Insertion of new ch 6A)

Page 172, line 21, ‘Offering high-income guarantee contract’—

omit, insert—

Particular conduct is

27 Clause 42 (Insertion of new ch 6A)

Page 175, line 1, ‘Medical practitioner’s’—

omit, insert—

Employee’s

28 Clause 42 (Insertion of new ch 6A)

Page 175, line 3, ‘a medical practitioner’—

omit, insert—

an employee

29 Clause 42 (Insertion of new ch 6A)

Page 175, lines 5 to 12, from ‘that—’ to ‘practitioner.’

omit, insert—

that recognises the employee’s continuous service.

30 Clause 42 (Insertion of new ch 6A)

Page 175, lines 13 to 18—

omit, insert—

- (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).

31 Clause 61 (Amendment of s 320 (Basis of decisions of the commission and magistrates))

Page 182, lines 5 and 6, from 'the full bench' to 'public interest.'—

omit, insert—

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).

32 After clause 63

Page 182, after line 16—

insert—

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

33 After clause 65

Page 183, after line 20—

insert—

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,

34 After clause 70

Page 184, after line 12—

insert—

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

35 After clause 74

Page 185, after line 31—

insert—

74A Amendment of s 795 (Existing rules of an organisation)

Section 795(3)—

insert—

Note—

See also section 834A in relation to the reference in this subsection to action taken by a court under chapter 12, part 5.

36 Clause 75 (Insertion of new ch 20, pt 18)

Page 195, lines 12 and 13, ‘pre-modernisation certified agreement’—

omit, insert—

continuing agreement or determination

37 Clause 75 (Insertion of new ch 20, pt 18)

Page 195, lines 17 and 18, ‘pre-modernisation certified agreement’—

omit, insert—

continuing agreement or determination

38 Clause 75 (Insertion of new ch 20, pt 18)

Page 195, lines 19 to 30—

omit, insert—

(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.

39 Clause 75 (Insertion of new ch 20, pt 18)

Page 200, after line 16—

insert—

833A 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.

40 Clause 75 (Insertion of new ch 20, pt 18)

Page 200, after line 21—

insert—

**834A 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.

41 Clause 76 (Amendment of sch 2 (Appointments))

Page 201, lines 23 to 27—

omit, insert—

- (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).

42 Clause 78 (Amendment of sch 4 (Provisions for protected action ballots))

Page 202, line 11, ‘*omit,*’—

omit.

43 Clause 78 (Amendment of sch 4 (Provisions for protected action ballots))

Page 202, line 15, ‘a’—

omit.

44 Clause 80 (Amendment of sch 5 (Dictionary))

Page 204, line 20, ‘4’—

omit, insert—

6

45 Clause 80 (Amendment of sch 5 (Dictionary))

Page 205, lines 22 and 23—

omit.

46 Clause 80 (Amendment of sch 5 (Dictionary))

Page 206, after line 17—

insert—

maximum period of parental leave, for chapter 2A, see section 71GG.

47 Clause 80 (Amendment of sch 5 (Dictionary))

Page 210, after line 14—

insert—

(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.

48 Clause 87 (Amendment of s 47 (Health service directives))

Page 212, lines 2 and 3—

omit, insert—

- (1) Section 47(1)(d), after 'employment'—

insert—

matters (other than conditions of employment for health service employees)

49 Clause 88 (Insertion of new pt 3, div 2A)

Page 213, line 1, 'the minimum'—

omit.

50 Clause 88 (Insertion of new pt 3, div 2A)

Page 214, line 3, '1958'—

omit, insert—

2008

51 Clause 94 (Insertion of new pt 5, div 2, sdiv 2 and sdiv 3, hdg)

Page 218, lines 4 to 11—

omit, insert—

- (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.

52 Clause 94 (Insertion of new pt 5, div 2, sdiv 2 and sdiv 3, hdg)

Page 218, line 12, '(3)'—

omit, insert—

(2)

53 Clause 94 (Insertion of new pt 5, div 2, sdiv 2 and sdiv 3, hdg)

Page 218, line 17, 'at the classification level'—

omit, insert—

by persons employed in the position

54 Clause 94 (Insertion of new pt 5, div 2, sdiv 2 and sdiv 3, hdg)

Page 218, line 18, '(4)'—

omit, insert—

(3)

55 Clause 103 (Insertion of new pt 13, div 4)

Page 223, line 13, 'provision'—

omit, insert—

provisions

56 Clause 103 (Insertion of new pt 13, div 4)

Page 223, after line 22—

insert—

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.

57 Clause 119 (Amendment of s 2 (Interpretation))

Page 231, after line 15—

insert—

- (3) Section 2, definition *CEO*, ‘6DA’—

omit, insert—

6A

58 Schedule 1 (Minor and consequential amendments)

Page 249, after line 6—

insert—

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,