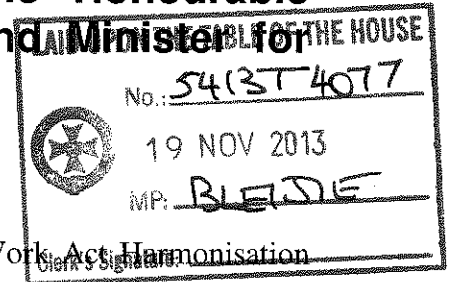


L. J.
19.11.13

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

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice



Short title

The short title of the Bill is the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013.

Policy objectives of the amendments

The amendments to be moved during consideration in detail maintain the policy objectives reported in the explanatory notes accompanying the Bill.

The amendments to be moved during consideration in detail:

- give effect to the Government's response to the recommendations of the Legal Affairs and Community Safety Committee's Report (No. 45) following the Committee's examination of the Bill;
- provide the president of the Industrial Court and Queensland Industrial Relations Commission (QIRC) with the administrative responsibility to grant leave, other than leave mentioned in the pensions Act, section 15, to the vice-president; and
- make a number of minor, technical and consequential amendments to clarify the policy objectives of the Bill or to rectify drafting errors or omissions.

Minor and consequential amendments are also made to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and the *Child Employment Act 2006*.

Achievement of policy objectives

The policy objectives will be achieved by way of amendments to the Bill to be moved during consideration in detail.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved through legislative amendment.

Estimated cost for government implementation

The amendments to be moved during consideration in detail do not add to the estimated costs for government implementation as reported in the explanatory notes accompanying the Bill.

Consistency with fundamental legislative principles

The proposed amendments to the *Industrial Relations Act 1999* and consequential amendments are consistent with fundamental legislative principles.

Consultation

The amendments to be moved in consideration in detail address the recommendations made by the Legal Affairs and Community Safety Committee following its examination of the Bill. During its examination, the Committee received written submissions from stakeholders and conducted a public hearing where the Committee took evidence from a number of invited stakeholders.

The Public Service Commission (PSC); Queensland Treasury and Trade; and Queensland Health (QH) have been consulted about the proposed amendments.

Consistency with legislation of other jurisdictions

The features contained in the proposed industrial relations framework are broadly consistent with provisions contained in the *Fair Work Act 2009* (Cth).

NOTES ON PROVISIONS

Amendment 1 amends clause 7 (*Insertion of new ch 2A*) by inserting a note to provide further clarification and strengthening to section 71CA, so that industrial instruments can only contain provisions inconsistent with the QES if their effect is no less favourable than the QES.

Amendment 2 is a minor technical amendment to clause 7 (*Insertion of new ch 2A*), section 71GT (*Application for extension or part-time*), so the period for which an application can be made is corrected to refer to section 71GR (*Application for extension of parental leave*) instead of section 71GS (*Application to work part-time*).

Amendment 3 is a minor and consequential amendment to correct the numbering of subdivisions noted in clause 7, section 71HB (*Entitlement – employers other than seasonal employees*).

Amendments 4 – 10 are minor technical amendments which renumber clause 7 (*Insertion of new ch 2A*), subdivisions 2 – 7.

Amendment 11 amends clause 7 (*Insertion of new ch 2A*), section 71IB (*Payment for public holiday*) by inserting an inconsequential word.

Amendment 12 amends clause 7 (*Insertion of new ch 2A*), section 71KF (*Entitlement to Redundancy Pay*) to provide that the amount of an employee's redundancy pay is to

be worked out on the basis of the employee's 'weeks pay' (instead of at their 'base rate of pay'). This clarifies and provides consistency with current section 85B (*Minimum redundancy payment*) which provides that an employee's redundancy payment is calculated on the basis of the employee's 'weeks pay'. Schedule 5 defines 'weeks pay' to mean the ordinary rate for the relevant employee for a week.

Amendment 13 amends the wording in clause 7 (*Insertion of new ch 2A*), section 71MB (*Individual flexibility arrangements*) subsection (3)(c) in order to provide clarity about the relevant notice period for termination of individual flexibility arrangements.

Amendment 14 is a minor and technical amendment to clause 17 (*Insertion of new ch 5A*) which corrects the provisions that are referenced in section 140D(3)(a) (*Modern awards objectives*) from section 140D(2) in relation to matters the commission must have regard to when establishing and maintaining a minimum safety net of fair minimum wages. This amendment clarifies and aligns the provisions more closely with section 284(1) (*The minimum wages objective*) of the *Fair Work Act 2009* (Cth).

Amendments 15 – 17 amend clause 17 (*Insertion of ch 5A*), section 140EB (*When a modern award operates*) to clarify when a modern award starts operating.

Amendments 18 and 19 amend clause 22 (*Amendment of s 143 (Proposed parties to be advised when agreement is proposed)*), section 143 subsection (3A) to clarify that this section captures determinations as well as existing certified agreements.

Amendment 20 amends clause 28 (*Replacement of s 149 (Arbitration if conciliation unsuccessful)*), section 149 (*Arbitration if conciliation unsuccessful*) so the conciliating member must give the conciliation report to the vice-president and also give a copy of the report to each negotiating party.

Amendment 21 amends clause 28 (*Replacement of s 149 (Arbitration if conciliation unsuccessful)*), section 149B (*Full bench to determine matters by arbitration unless vice-president directs otherwise*) to clarify that it is the vice-president's responsibility to choose a commissioner to constitute the commission for an arbitration (if it so directs).

Amendment 22 amends clause 31 (*Replacement of s 155 (Right of employee organisation to be heard)*) by inserting an inconsequential word.

Amendments 23 – 30 amend clause 42 (*Insertion of new ch 6A*), section 190 (*What is a 'high-income position'*); section 195 (*Effect of a high-income position*) and section 197 (*Offering high-income guarantee contract not prohibited conduct*) to clarify provisions relating to arrangements for high-income senior employees.

Specifically, amendments 27 - 30 amend clause 42 (*Insertion of new ch 6A*), section 201 (*Medical practitioner's refusal to accept a high-income guarantee contract*) to clarify that the provision extends to all employees and that refusal to accept a high-income guarantee contract does not constitute a termination of employment or give rise to a redundancy claim.

Amendment 31 amends clause 61 (*Amendment of s 320 (Basis of decisions of the commission and magistrates)*) so that the note clarifies that for a determination, matters in relation to the public interest can be considered by either the full bench or a commissioner sitting alone (if so directed by the vice-president).

Amendment 32 inserts a new section 63A (*Amendment of s 351 (Functions)*) to clarify that an inspector's functions include monitoring and investigating compliance with the provisions of chapter 12, part 12 of the IR Act. This amendment also makes minor and consequential amendments to section 351.

Amendment 33 inserts a new section 65A after clause 65 to amend section 410 (*Meaning of 'corporation' for chapter 12*) to clarify that for the purposes of parts 3 to 5 of the *State Penalties Enforcement Act 1999*, an organisation incorporated under section 423 is a corporation for the purposes of Chapter 12 (*Industrial organisations and associated entities*).

Amendments 34 and 35 are minor and consequential amendments as a result of the changes to jurisdictional arrangements for the court and the commission.

Specifically, amendment 34 inserts a new section 70A (*Amendment of s 532 (Obligation to audit)*) and a new section 70B (*Amendment of s 533 (Obligation to give union card)*) after clause 70.

Amendment 35 inserts a new section 74A (*Amendment of s 795 (Existing rules of an organisation)*) to reflect the insertion of a new section 834A (*Reference to action taken by court under ch 12, pt 5*) (Amendment 41).

Amendments 36 – 38 amend clause 75 (*Insertion of new ch 20, pt 18*) to clarify that section 824 (*Modern award does not apply to employee covered by pre-modernisation certified agreement*) applies to continuing agreements and determinations. Amendment 38 provides that for this section, a continuing agreement or determination means either a certified agreement or an arbitration determination under chapter 6 that section 826 (*Certified agreements and determinations continue*) applies to.

Amendments 39 and 40 amend clause 75 (*Insertion of new ch 20, pt 18*) by inserting new sections 833A (*References to decision by commission of membership disputes*) and 834A (*Reference to action taken by court under ch 12, pt 5*). These are consequential amendments as a result of the changes to jurisdictional arrangements for the court and the commission.

Amendment 41 amends clause 76 (*Amendment of sch 2 Appointments*), section 4A (*Other leave*) so that the President can approve the leave of the vice-president (other than leave mentioned in the pensions Act). This amendment also provides for consequential renumbering.

Amendment 42 rectifies a minor drafting error in clause 78 (*Amendment of sch 4 (Provisions of protected action ballots)*).

Amendment 43 omits an inconsequential word in clause 78 (*Amendment of sch 4 (Provisions of protected action ballots)*).

Amendment 44 is a technical amendment which renumbers the subdivision mentioned in the definition of ‘casual employee’ in clause 80 (*Amendment of sch 5 (Dictionary)*).

Amendments 45 and 47 amend clause 80 (*Amendment of sch 5 (Dictionary)*) by omitting the definition of ‘*industrial agreement*’ and instead amending the existing schedule 5 dictionary definition of ‘*industrial instrument*’ to also include as part of its definition ‘for chapter 6A – see section 188’. Amendment 47 also clarifies that the definition of ordinary rate for public service employees means the employee’s substantive rate for the purposes of sections 71EE(2)(a) (*Payment for annual leave*) and 71HE(1)(b) (*Payment for long service leave etc. for employees generally*). Currently, public service employees who are on higher duties immediately prior to taking annual leave or long service leave are paid during their leave at their substantive rate. However, a Directive issued under the *Public Service Act 2008* allows an employee, in certain circumstances, to be paid the higher duties amount during their leave if they have been relieving in the higher duties position for at least 12 months. Amendment 47 allows for this arrangement to continue.

Amendment 46 amends clause 80 (*Amendment of sch 5 (Dictionary)*) by inserting a definition of ‘*maximum period of parental leave*’ for chapter 2A, to refer to section 71GG (*Maximum period of parental leave*).

Amendments 48 and 49 amend clause 87 (*Amendment of s 47 (Health service directives)*) in the *Hospital and Health Boards Act 2011* and clause 88 (*Insertion of new pt 3, div 2A*).

Amendment 48 clarifies that the chief executive may develop and issue health service directives to Hospital and Health Services for employment matters (other than conditions of employment for health service employees).

Amendment 49 clarifies that the chief executive may issue health employment directives about the remuneration for health executives and senior health service employees. It is not necessary to specify *minimum* remuneration as this is set in the QES minimum standards.

Amendment 50 is a minor amendment to clause 88 (*Insertion of new pt 3, div 2A*) to ensure the correct year of the *Public Service Act 2008* is referred to.

Amendments 51 – 54 amend clause 94 (*Insertion of new pt 5, sdiv 2 and sdiv 3, hdg*) to clarify the meaning of a *senior health service employee* (section 74A) to acknowledge that not all positions that will be prescribed as senior health service employees will have classification levels.

Amendment 55 is a minor and technical amendment to the heading of Division 4 (*Transitional provision for the Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013*) in clause 103 (*Insertion of new pt 13, div 4*).

Amendment 56 amends clause 103 (*Insertion of new pt 13, div 4*) by inserting a new section 321 (*Existing health service directives about conditions of employment*) to provide a transitional arrangement for a health service directive that is in effect under previous section 47 before the commencement of this section 321. This section expires on 31 December 2014.

Amendment 57 is a consequential amendment to clause 119 (*Amendment of s 2 (Interpretation)*) as a result of the renumbering of section 6DA of the *Superannuation (State Public Sector) Act 1990* provided by clause 124 (*Renumbering of ss 6DA-6F*).

Amendment 58 amends Schedule 1 (*Minor and consequential amendments*).

Inserts clauses 1 – 7 to amend Schedule 1 (*Minor and consequential amendments*) by amending the *Building and Constructions Industry (Portable Long Service Leave) Act 1991* so that references to long service leave payment provisions in the *Industrial Relations Act 1999* apply in relation to Chapter 2A (*Modern employment conditions*) as well as Chapter 2 (*General employment conditions*).

Inserts clause 1 to amend Schedule 1 (*Minor and consequential amendments*) by amending the *Child Employment Act 2006* so that reference to entitlements or protections under the *Industrial Relations Act 1999* is extended to encompass Chapter 2A, Part 2 (*Queensland Employment Standards*).