

Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015

Amendments during consideration in detail to be moved by

The Honourable the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships

1 After clause 4

Page 7, after line 5—

insert—

4A Amendment of s 71KE (Application of s div 2)

Section 71KE(5)—

omit.

2 Clause 11 (Amendment of s 71NA (Provisions related to Queensland Employment Standards))

Page 8, line 21, before ‘Section’—

insert—

(1)

3 Clause 11 (Amendment of s 71NA (Provisions related to Queensland Employment Standards))

Page 8, after line 22—

insert—

(2) Section 71NA(2)—

omit, insert—

(2) However, subsection (1) applies only to the extent the effect of the provision is no less favourable to an employee than the Queensland Employment Standards.

4 After clause 16

Page 10, after line 17—

insert—

16A Amendment of s 72 (Employees to whom this chapter does not apply)

Section 72(1A)—

omit.

5 After clause 18

Page 11, after line 3—

insert—

18A Amendment of s 142 (Who may make certified agreements)

Section 142(2)—

omit.

6 After clause 23

Page 12, after line 4—

insert—

23A Amendment of s 164 (When a certified agreement is in operation)

Section 164(2)(c) and (3)—

omit.

7 After clause 24

Page 12, after line 8—

insert—

24A Omission of ch 6A (Arrangements for high-income senior employees)

Chapter 6A—

omit.

8 Clause 33 (Insertion of new ch 20, pt 20)

Page 22, after line 3—

insert—

844A Review and variation of resident medical officers' award

- (1) This section applies for the review and variation of the relevant modern award called 'Resident Medical Officers (Queensland Health) Award - State 2014' (the *RMO award*).
- (2) A pre-modernisation health award is, to the extent it covered senior medical officers, taken to be a relevant pre-modernisation award for the RMO award.
- (3) The varied RMO award does not apply to a senior medical officer until an agreement is certified, or an arbitration determination is made, under chapter 6 that covers the senior medical officer.
- (4) In this section—

pre-modernisation health award means—

- (a) the 'District Health Services - Senior Medical Officers and Resident Medical Officers' Award - State 2012'; or
- (b) the 'Medical Superintendents with Right of Private Practice and Medical Officers with Right of Private Practice - Queensland Public Hospitals, Award - State 2012'.

senior medical officer means a senior health service employee within the meaning of the *Hospital and Health Boards Act 2011* who is employed in a position at a classification level mentioned in the *Hospital and Health Boards Regulation 2012*, schedule 1A, part 1.

9 Clause 33 (Insertion of new ch 20, pt 20)

Page 26, line 1, after ‘matters’—

insert—

about industrial instruments

10 Clause 33 (Insertion of new ch 20, pt 20)

Page 28, after line 9—

insert—

854A Effect of repeal of ch 6A on high-income guarantee contract

- (1) This section applies if, immediately before the commencement, an employee was engaged under a high-income guarantee contract (a *continuing contract*).
- (2) From the commencement, the continuing contract continues in effect despite the repeal of chapter 6A.
- (3) The repeal of chapter 6A does not—
 - (a) constitute a termination of the employee’s employment; or
 - (b) entitle the employee to a payment of money or other compensation.
- (4) In this section—

high-income guarantee contract has the meaning given under the pre-amended Act.

Division 5 Other provisions

11 Clause 35 (Amendment of sch 5 (Dictionary))

Page 30, line 2, ‘*employer notice, entry notice*’—

omit, insert—

employee, employer notice, entry notice, excluded provisions, high-income guarantee contract, high-income position, high-income senior employee, high-income threshold, industrial instrument

12 Clause 35 (Amendment of sch 5 (Dictionary))

Page 30, after line 7—

insert—

employee, generally, see section 5.

industrial instrument means an award, certified agreement, industrial agreement, EFA, code of practice under section 400I or order under chapter 5, parts 5 and 6.

13 Clause 35 (Amendment of sch 5 (Dictionary))

Page 30, lines 10 and 11—

omit, insert—

- (3) Schedule 5, definition *remuneration*, paragraph (b)—

omit.

- (4) Schedule 5, definition *remuneration*, paragraph (c)—

renumber as paragraph (b).

14 Part 3, heading (Minor or technical amendments)

Page 30, line 12, ‘Minor or technical’—

omit, insert—

Other

15 After part 3 heading

Page 30, after line 12—

insert—

Division 1 Amendment of Hospital and Health Boards Act 2011

35A Act amended

This division amends the *Hospital and Health Boards Act 2011*.

Note—

See also the amendments in schedule 1.

35B Amendment of s 20 (Powers of Services)

Section 20(3), ‘contracted’—

omit.

35C Amendment of s 51A (Health employment directives)

(1) Section 51A(2)(c), ‘contracted’—

omit.

(2) Section 51A(2)(d)—

omit.

(3) Section 51A(2)(e)—

renumber as section 51A(2)(d).

35D Amendment of s 51C (Relationship between health employment directives and other instruments)

(1) Section 51C(1)—

omit, insert—

(1) If a health employment directive is inconsistent with an industrial instrument,

the industrial instrument prevails to the extent of the inconsistency.

- (1A) Subsection (1) does not apply if the terms and conditions of employment provided for in the health employment directive are more favourable to the employee than the terms and conditions of employment provided for in the industrial instrument.
- (2) Section 51C(3), ‘high-income guarantee contract’, first mention—
omit, insert—
contract entered into with a senior health service employee
- (3) Section 51C(3), ‘high-income guarantee contract’, second mention—
omit, insert—
contract
- (4) Section 51C(4), ‘high-income guarantee contract’—
omit, insert—
contract entered into with a senior health service employee
- (5) Section 51C(6), definition *remuneration*—
omit.

35E Amendment of s 66 (Conditions of employment)

Section 66(3)(f), ‘if the employee is a contracted senior health service employee—’—

omit.

35F Amendment of s 67 (Appointment of health service employees)

Section 67(2), ‘contracted’—

omit.

35G Omission of s 69B (Relationship of high-income guarantee contract with legislation)

Section 69B—

omit.

35H Amendment of s 74A (Meaning of *senior health service employee*)

- (1) Section 74A(1), from ‘position —’—

omit, insert—

position prescribed by regulation as a senior health service employee position.

- (2) Section 74A(3)—

omit.

35I Amendment of s 74B (Terms of contract for contracted senior health service employees)

- (1) Section 74B, heading—

omit, insert—

74B Basis of employment for senior health service employees

- (2) Section 74B(1), ‘contracted’—

omit.

35J Amendment of s 75 (Exclusion of certain matters from review under other Acts)

Section 75(4), definition *excluded matter*, ‘or a senior health service employee’—

omit.

35K Omission of s 80AA (High-income senior employees to be employed by Services)

Section 80AA—

omit.

35L Amendment of s 80C (Matters and proceedings not affected by persons becoming contracted senior health service employees in Service)

Section 80C, ‘contracted’—

omit.

35M Insertion of new pt 13, div 6

Part 13—

insert—

Division 6	Transitional provisions for Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015
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323 Definitions for div 6

In this division—

amending Act means the *Industrial Relations (Restoring Fairness) and Other Legislation Amendment Act 2015*.

commission means the Queensland Industrial Relations Commission.

interim SMO contract means—

- (a) a continuing contract within the meaning of the *Industrial Relations Act 1999*, section 854A(1), under which a senior medical officer is engaged; or
- (b) a contract entered into with a senior medical officer—
 - (i) on or after the commencement; and
 - (ii) before an agreement is certified, or an arbitration determination is made, under the *Industrial Relations Act 1999*, chapter 6 that covers all senior medical officers.

pre-modernisation health agreement means the ‘Medical Officers’ (Queensland Health) Certified Agreement (No. 3) 2012’.

pre-modernisation health award means—

- (a) the ‘District Health Services - Senior Medical Officers and Resident Medical Officers’ Award - State 2012’; or
- (b) the ‘Medical Superintendents with Right of Private Practice and Medical Officers with Right of Private Practice - Queensland Public Hospitals, Award - State 2012’.

pre-modernisation health instruments means each of the following—

- (a) a pre-modernisation health award;
- (b) the pre-modernisation health agreement.

senior medical officer means a senior health service employee employed in a position at

a classification level mentioned in the *Hospital and Health Boards Regulation 2012*, schedule 1A, part 1.

324 Pre-modernisation industrial instruments

- (1) Despite the repeal of the *Industrial Relations Act 1999*, chapter 6A by the amending Act, a pre-modernisation industrial instrument does not apply to a senior medical officer from the commencement.
- (2) Subsection (1) applies subject to section 326.
- (3) On reaching its nominal expiry date, the pre-modernisation health agreement does not become a continuing agreement under the *Industrial Relations Act 1999*, section 827(2).
- (4) In this section—
pre-modernisation industrial instrument
see the *Industrial Relations Act 1999*, schedule 5.

325 Making of order by commission to apply pre-modernisation health instruments to senior medical officers

- (1) This section starts applying on 1 August 2015.
- (2) Subject to subsection (4), a person mentioned in subsection (3) may apply to the commission for an order to apply the pre-modernisation health instruments to senior medical officers.
- (3) The application may be made by—
 - (a) the chief executive; or

- (b) an employee organisation, within the meaning of the *Industrial Relations Act 1999*, that is a party to the pre-modernisation health agreement.
- (4) An application may not be made under subsection (2) if section 327 has started applying to all senior medical officers.
- (5) If an application is made under subsection (2), the commission must make an order declaring that the pre-modernisation health instruments apply to senior medical officers.
- (6) However, subsection (5) does not apply if the applicant withdraws the application before the order is made.

326 Effect of pre-modernisation instrument order

- (1) This section applies if the commission makes an order under section 325(5).
- (2) From the start of a senior medical officer's first full pay period that starts on or after the day the order is made—
 - (a) subject to subsection (3) and section 327(3), the pre-modernisation health instruments apply to the senior medical officer; and
 - (b) the senior medical officer's interim SMO contract is terminated, other than to the extent it provides for the senior medical officer's private practice and employment details.

Note—

While the pre-modernisation health instruments apply to the senior medical officer, the employment conditions under the *Industrial Relations Act 1999*, chapter 2 apply to the officer—see sections 8AA and 71B of that Act.

- (3) Clause 4.11 of the pre-modernisation health agreement does not apply to the senior medical officer despite the making of the order.

Note—

Clause 4.11 of the pre-modernisation health agreement is about private practice arrangements.

- (4) The operation of subsection (2) does not—
- (a) constitute a termination of the senior medical officer's employment; or
 - (b) entitle the senior medical officer to a payment of money or other compensation.
- (5) In this section—

employment details, in relation to an interim SMO contract, means a matter provided for under schedule 2, items 1 to 8 (other than item 8a) of the contract.

327 Making of new certified agreement or determination

- (1) This section applies to a senior medical officer if, after the commencement, a new agreement is certified, or an arbitration determination is made, under the *Industrial Relations Act 1999*, chapter 6 that covers the senior medical officer.
- (2) If immediately before the relevant day the pre-modernisation health instruments do not apply to the senior medical officer under section 326, the senior medical officer's interim SMO contract is terminated on the relevant day.
- (3) If immediately before the relevant day the pre-modernisation health instruments apply

to the senior medical officer under section 326, on the relevant day—

- (a) the senior medical officer's interim SMO contract is terminated to the extent it provided for a matter mentioned in section 326(2)(b); and
 - (b) the pre-modernisation health instruments stop applying to the senior medical officer.
- (4) The operation of subsection (2) or (3) does not—
- (a) constitute a termination of the senior medical officer's employment; or
 - (b) entitle the senior medical officer to a payment of money or other compensation.
- (5) In this section—

relevant day means the day the agreement mentioned in subsection (1) is certified, or the arbitration determination mentioned in subsection (1) is made, as the case may be.

328 Application of amended s 75

Section 75 as amended by the amending Act applies to a decision made, or a matter otherwise arising, on or after the commencement.

329 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) a transitional regulation may do anything necessary to facilitate the operation of section 326 or 327 of the amended Act; and

(b) 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 the commencement.

(6) In this section—

amended Act means this Act as amended by the amending Act.

pre-amended Act means this Act as it was in force immediately before the commencement.

35N Amendment of sch 2 (Dictionary)

Schedule 2, definitions *contracted senior health service employee* and *high-income guarantee contract*—

omit.

Division 2

Minor or technical amendments

16 Schedule 1 (Minor or technical amendments)

Page 31, after line 2—

insert—

Hospital and Health Boards Act 2011

- 1 Section 80(1), ‘, other than a person to whom section 80AA applies’—**

omit.

- 2 Section 80B(1)(a), ‘or 80AA’—**

omit.

Hospital and Health Boards Regulation 2012

- 1 Schedule 5A, section 13, ‘contracted’—**

omit.

17 Schedule 1 (Minor or technical amendments)

Page 31, after line 5—

insert—

- 1A Section 135(1), note—**

omit.

18 Schedule 1 (Minor or technical amendments)

Page 31, after line 9—

insert—

2A Section 140ED(1), note—

omit.

2B Section 147A(5)(b), note, ‘142(1)(b) and (2)’—

omit, insert—

142(b)

19 Schedule 1 (Minor or technical amendments)

Page 31, after line 16—

insert—

1A Part 4A—

omit.

20 Long title

Long title, after ‘amend the’—

insert—

Hospital and Health Boards Act 2011 and the

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