

Industrial Relations Bill 2016

Amendments during consideration in detail to be moved by
The Honourable the Minister for Employment and Industrial Relations,
Minister for Racing and Minister for Multicultural Affairs

1 **Clause 31 (Entitlement)**

Page 69, lines 13 and 14, from ‘, unless’ to ‘otherwise’—
omit.

2 **Clause 52 (Entitlement to domestic and family violence leave)**

Page 84, after line 25—
insert—

(9) In this section—

day, for an employee mentioned in subsection (1) who is paid on the basis of the number of hours worked, means 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.

3 **Clause 141 (General requirements for commission exercising powers)**

Page 146, line 17, ‘more favourable than’—
omit, insert—

at least as favourable as

4 **Clause 168 (Definitions for chapter)**

Page 162, line 1, ‘51’—
omit, insert—

213

5 Clause 177 (Referral to arbitration by conciliating member)

Page 171, line 11, ‘or’—

omit, insert—

and

6 Clause 183 (Operation of arbitration determinations)

Page 175, lines 7 to 10, from ‘until—’ to ‘instrument.’—

omit, insert—

until it is terminated under part 7, division 3.

7 Clause 233 (When industrial action is protected industrial action)

Page 203, lines 12 and 13, from ‘, or’ to ‘of,’—

omit.

8 Clause 235 (Approval to engage in industrial action)

Page 204, lines 19 and 20, from ‘, or’ to ‘of,’—

omit.

9 Clause 281 (Action to which this part does not apply)

Page 235, lines 7 and 8, from ‘281’ to ‘(Cwlth)’—

omit, insert—

280 if the Commonwealth Fair Work Act

10 Clause 447 (Commission’s functions)

Page 341, lines 14 and 15, from ‘a fair’ to ‘enforceable’—

omit, insert—

fair and just

11 Clause 457 (Associates)

Page 348, lines 5 and 6—

omit, insert—

an associate to the president.

12 Clause 457 (Associates)

Page 348, before line 7—

insert—

(1A) The president may appoint associates to the vice-president, a deputy president or a commissioner.

13 Clause 481 (Limitations on when order may be made)

Page 365, line 9, ‘mentioned in paragraph (a) or (b)’—

omit, insert—

or representations mentioned in paragraph (a), (b) or (c)

14 Clause 486 (Referring matter to full bench)

Page 368, lines 23 to 25—

omit.

15 Clause 486 (Referring matter to full bench)

Page 369, lines 1 to 3—

omit.

16 Clause 530 (Legal representation)

Page 389, lines 26 to 28 and page 390, lines 1 to 15—

omit, insert—

(1) A party to proceedings, or person ordered or

permitted to appear or to be represented in the proceedings, may be represented by a lawyer only if—

- (a) for proceedings in the court—
 - (i) all parties consent; or
 - (ii) the court gives leave; or
 - (iii) the proceedings are for the prosecution of an offence; or
- (b) for proceedings before the full bench—the full bench gives leave; or
- (c) for proceedings before the commission, other than the full bench, under the *Anti-Discrimination Act 1991*—the commission gives leave; or
- (d) for other proceedings before the commission, other than the full bench—
 - (i) all parties consent; or
 - (ii) for a proceeding relating to a matter under a relevant provision—the commission gives leave; or
- (e) for proceedings before an Industrial Magistrates Court—
 - (i) all parties consent; or
 - (ii) the proceedings are brought personally by an employee and relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court; or
 - (iii) the proceedings are for the prosecution of an offence; or
- (f) for proceedings before the registrar, including interlocutory proceedings—
 - (i) all parties consent; or

- (ii) the registrar gives leave.
- (2) However, the person or party must not be represented by a lawyer—
 - (a) if the party is a negotiating party to arbitration proceedings before the full bench under chapter 4, part 3, division 2; or
 - (b) in proceedings before the commission under section 403 or 475; or
 - (c) in proceedings remitted to the Industrial Magistrates Court under section 404(2) or 475(2).

17 Clause 530 (Legal representation)

Page 390, line 16, ‘Also, despite’—

omit, insert—

Despite

18 Clause 530 (Legal representation)

Page 390, line 24, ‘(c)(i)’—

omit.

19 Clause 530 (Legal representation)

Page 391, lines 20 to 32—

omit, insert—

- (6) In proceedings before the Industrial Magistrates Court for the prosecution of an offence under subsection (1)(e), the person represented can not be awarded costs of the representation.
- (7) In this section—

20 Clause 530 (Legal representation)

Page 392, line 1, after ‘court,’—

insert—

full bench,

21 Clause 530 (Legal representation)

Page 392, after line 5—

insert—

relevant provision, for a proceeding before the commission other than the full bench, means—

(a) chapter 8; or

(b) section 471; or

(c) chapter 12, part 2 or 16.

22 Clause 536 (Interlocutory proceedings)

Page 394, line 16, ‘In an industrial cause,’—

omit, insert—

For conducting proceedings under this Act or another Act,

23 Clause 536 (Interlocutory proceedings)

Page 394, lines 19 and 20, from ‘interlocutory proceedings’ to ‘, including proceedings’—

omit, insert—

interlocutory matters to be taken before the hearing of the proceedings, including matters

24 Clause 554 (Appeal from court or commission in certain circumstances)

Page 407, line 22, ‘under’—

omit, insert—

on a ground mentioned in

25 Clause 557 (Appeal from commission)

Page 408, line 10, ‘A’—

omit, insert—

The Minister or another

26 Clause 557 (Appeal from commission)

Page 408, line 14, ‘a person’—

omit, insert—

the Minister or another person

27 Clause 557 (Appeal from commission)

Page 408, line 24, ‘under’—

omit, insert—

on a ground mentioned in

28 Clause 558 (What court may do)

Page 409, lines 9 and 10, from ‘, an Industrial’ to ‘registrar’—

omit, insert—

or an Industrial Magistrates Court

29 Clause 559 (President must hear and decide appeal from commission)

Page 409, line 25, ‘appeal from commission’—

omit, insert—

particular appeals from full bench

30 Clause 559 (President must hear and decide appeal from commission)

Page 409, line 27, ‘commission’—

omit, insert—

full bench

31 Clause 563 (Definition for div 5)

Page 412, line 4, after ‘court’—

insert—

, full bench

32 Clause 564 (Time limit for appeal)

Page 412, lines 7 and 13, ‘of’—

omit, insert—

to

33 Clause 702 (Definitions for part)

Page 480, line 27, ‘section 680’—

omit, insert—

documents

34 Clause 765 (Reporting guidelines)

Page 516, line 8, ‘785(4)’—

omit, insert—

785(5)

35 Clause 780 (When copy of full report or concise report must otherwise be given)

Page 528, line 22, ‘the period of 5 months starting at’—

omit, insert—

5 months after

36 Clause 782 (Obligation to present to general or committee meeting)

Page 529, lines 19 and 20, ‘financial disclosure statement’—

omit, insert—

general purpose financial report

37 Clause 784 (Reports etc. to be lodged with registrar)

Page 530, line 14, ‘general’—

omit.

38 Clause 810 (References to audit report for pt 11, div 5, sdiv 5)

Page 544, line 28, ‘div 5’—

omit, insert—

div 6

39 Clause 843 (Holding office after amalgamation)

Page 562, line 29, ‘624’—

omit, insert—

organisation

40 Clause 857 (Registration of property transferred under pt 15)

Page 568, line 7, ‘pt 15’—

omit, insert—

this part

41 Clause 1000 (Existing applications for certification)

Page 653, after line 6—

insert—

(2A) If the commission grants the application, the agreement is taken to have been certified under this Act.

42 Clause 1006 (Conditions of employment for continuing employees)

Page 655, line 26 and page 656, line 3, after ‘certified agreement’—

insert—

or arbitration determination

43 Clause 1007 (Continuation of working time provision for an employee under old s 9 or 9A)

Page 656, lines 12 and 21, ‘1007’—

omit, insert—

1006

44 Chapter 18, part 2, division 6, heading (Protected industrial action)

Page 663, line 3—

omit, insert—

**Division 6 Existing collective
bargaining processes**

45 Clause 1021 (Protected industrial action under repealed Act)

Page 663, lines 4 to 8—

omit, insert—

1021 Application of division

This division applies if, before the commencement—

- (a) a notice of intention to negotiate a certified agreement was given under old section 143; and
- (b) an application to certify the agreement was not made to the commission under old section 153; and
- (c) the requirement under old section 149(4) to determine the matter by arbitration had not started to apply.

46 After clause 1021

Page 663, before line 9—

insert—

1021A Continuation of bargaining under this Act

- (1) From the commencement, chapter 4 applies in relation to the negotiations for the proposed agreement.
- (2) For subsection (1), a step taken in relation to the proposed agreement under a provision of the repealed Act has effect, if the context permits, as if the step had been taken under this Act.

Examples of steps taken under the repealed Act—

- the giving of the notice of intention under old section 143
 - the giving of a notice under old section 143(4) or (5) in relation to a project agreement or multi-employer agreement
 - the making of a request by the negotiating parties under old section 148 that the commission help the parties negotiate the agreement
- (3) Subsection (2) does not apply to the making of an agreement with employees under old section

147A.

1021B Taking of protected industrial action under this Act

- (1) This section applies if, immediately before the commencement—
 - (a) a negotiating party was taking protected industrial action under the repealed Act in relation to the proposed agreement; or
 - (b) had a negotiating party taken industrial action in relation to the proposed agreement, the industrial action would have been protected industrial action under the repealed Act.
- (2) From the commencement, the negotiating party is taken to satisfy the requirements under chapter 4, part 8 of this Act for taking protected industrial action in relation to the proposed agreement.
- (3) To remove any doubt, it is declared that old section 150A does not apply to the taking of protected industrial action under this Act.

Note—

Under chapter 4, part 8 of this Act, protected industrial action may be taken during conciliation—see section 233.

- (4) This section does not limit section 1021A.

1021C Continuation of protected action ballot process under repealed Act

- (1) This section applies if—
 - (a) a PABO application was not decided immediately before the commencement; or
 - (b) both of the following apply—

-
- (i) a protected action ballot order was made under the repealed Act in relation to the proposed agreement;
 - (ii) immediately before the commencement, the protected action ballot required to be conducted under the order had not been conducted.
 - (2) Chapter 6 and schedule 4 of the repealed Act continue to apply for—
 - (a) deciding the PABO application mentioned in subsection (1)(a) and, if the application is granted, conducting the protected action ballot; or
 - (b) conducting the protected action ballot mentioned in subsection (1)(b).
 - (3) Protected industrial action may be taken in relation to the proposed agreement under the repealed Act.
 - (4) However, the 30-day period mentioned in section 176(3)(e)(i) of the repealed Act can not be extended under section 176(7) of that Act.
 - (5) This section does not prevent protected industrial action being taken for the proposed agreement under this Act.
 - (6) This section applies despite section 1021A.
 - (7) In this section—

PABO application means an application made under the repealed Act by a negotiating party for the making of a protected action ballot order in relation to proposed industrial action for the proposed agreement.

1021D Continuation of conciliation etc.

- (1) This section applies if, immediately before the commencement, the commission was helping the

parties negotiate under old chapter 6, division 1, subdivision 2.

- (2) From the commencement—
 - (a) the conciliation process continues under chapter 4, part 3 of this Act; and
 - (b) protected industrial action may be taken under chapter 4, part 8 of this Act.
- (3) For section 177, conciliation of the matter started when conciliation started under the repealed Act.
- (4) An order made by the commission before the commencement under old section 148A continues in effect despite the repeal of the repealed Act.
- (5) This section does not limit section 1021A.

47 Clause 1027 (Authorised industrial officers taken to be authorised under this Act)

Page 665, lines 13 and 14, from ‘was, immediately’ to ‘the authority’—

omit, insert—

, immediately before the commencement,

48 Clause 1037 (Provision for old s 428 (Organisation must have complying rules))

Page 669, lines 16 to 20—

omit.

49 Clause 1099 (Replacement of ch 7, pt 2, div 1A (Tribunal’s functions))

Page 688, line 30, after ‘orders’—

insert—

under section 144

50 Clause 1119 (Insertion of new s 49A)

Page 698, line 7, ‘schedule 1’—

omit, insert—

schedule 5

51 After clause 1125

Page 701, after line 25—

insert—

1125A Amendment of s 149 (Review of status of temporary employee)

- (1) Section 149(2), ‘period provided for in a commission chief executive directive’—

omit, insert—

required period

- (2) Section 149(3)—

omit, insert—

- (3) In making the decision, the chief executive must—

- (a) consider any criteria for the decision fixed under—

- (i) a directive by the commission chief executive; and

- (ii) an industrial instrument; and

- (b) if an industrial instrument provides for the way the decision must be made—comply with the industrial instrument.

- (3) Section 149(5)—

insert—

continuously employed as a temporary employee has the meaning given under a

commission chief executive directive or an industrial instrument.

required period, for making a decision under subsection (2), means—

- (a) the period stated in an industrial instrument within which the decision must be made; or
- (b) if paragraph (a) does not apply—the period starting on the last day of the period mentioned in subsection (1)(a) or (b) and ending 28 days later.

52 After clause 1127

Page 703, after line 12—

insert—

1127A Amendment of s 194 (Decisions against which appeals may be made)

- (1) Section 194(1)(e)—

insert—

Note—

A failure by the chief executive to make a decision under section 149 is taken to be a decision that the person's employment in the department is to continue as a temporary employee according to the terms of the existing employment. See section 149(4).

- (2) Section 194(1)—

insert—

- (ea) a decision under section 149A that the employment of a casual employee in a department is to continue as a casual employee (a ***casual employment decision***);

(eb) a decision a public service employee believes is unfair and unreasonable (a *fair treatment decision*);

(3) Section 194(2)—

omit, insert—

(2) However—

(a) if an appeal may be made under this section against a decision, other than under subsection (1)(eb), the appeal can not be made under subsection (1)(eb); and

(b) an appeal can not be made against a decision if section 195 applies to the decision.

53 **Clause 1128 (Amendment of s 195 (Decisions against which appeals can not be made))**

Page 703, after line 14—

insert—

(1) Section 195—

insert—

(3A) A person can not appeal against a fair treatment decision—

(a) made under chapter 5, part 7; or

(b) made under chapter 6, part 2, other than—

(i) a finding under section 187 that a disciplinary ground exists for the person; or

(ii) a decision under section 189 to suspend a person from duty without pay; or

- (c) relating to the recruitment or selection of a public service employee; or
- (d) relating to a person's work performance, other than a decision about the person's work performance that is recorded in a formal way as part of a periodic performance review; or

Example for paragraph (d)—

a decision about performance recorded in a person's performance development agreement as part of the person's 6-monthly or annual performance review

- (e) relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of the grievance; or
- (f) relating to the development or performance management of a chief executive or senior executive.

54 Clause 1128 (Amendment of s 195 (Decisions against which appeals can not be made))

Page 703, line 15, before 'Section'—

insert—

(2)

55 After clause 1128

Page 703, after line 20—

insert—

1128A Amendment of s 196 (Who may appeal)

Section 196—

insert—

(ea) for a casual employment decision—the casual employee the subject of the decision;

(eb) for a fair treatment decision—a public service employee who is aggrieved by the decision;

56 Clause 1135 (Amendment of s 200 (Appeals officer may decline to hear particular appeals))

Page 705, after line 18—

insert—

(1A) Section 200(1)—

omit, insert—

(1) An IRC member may decline to hear an appeal against a decision mentioned in section 194(1)(a), (d) or (eb) unless the IRC member is satisfied the appellant has used procedures required to be used under the employee complaints directive.

(1A) However, the IRC member may hear an appeal against a fair treatment decision under section 194(1)(eb) if the IRC member is satisfied it would be unreasonable to require the employee to comply with the procedures in the circumstances.

57 Clause 1135 (Amendment of s 200 (Appeals officer may decline to hear particular appeals))

Page 705, line 19, ‘200(1), (2)’—

omit, insert—

200(2)

58 Clause 1135 (Amendment of s 200 (Appeals officer may decline to hear particular appeals))

Page 705, after line 21—

insert—

(3) Section 200(5)—

omit.

59 Clause 1144 (Amendment of s 208 (Decision on appeal))

Page 708, line 6, before ‘Section’—

insert—

(1)

60 Clause 1144 (Amendment of s 208 (Decision on appeal))

Page 708, after line 8—

insert—

(2) Section 208(1)(b), ‘or temporary employment decision’—

omit.

61 After clause 1151

Page 709, after line 23—

insert—

1151A Amendment of s 218A (Commission chief executive may make directive about dealing with complaints by officers and employees)

(1) Section 218A, heading, ‘may’—

omit, insert—

must

(2) Section 218A(1), ‘may make a directive’—

omit, insert—

must make a directive (the *employee complaints directive*)

62 Clause 1152 (Insertion of new ch 9, pt 12)

Page 710, after line 24—

insert—

289A Review of status of temporary employees—reviews triggered before commencement

- (1) This section applies in relation to a decision under section 149(2) if—
 - (a) the period mentioned in section 149(1)(a) or (b) ended before the commencement; and
 - (b) immediately before the commencement, the decision had not been made.
- (2) Section 149 and any directive of the commission chief executive mentioned in that section, as in force immediately before the commencement, continue to apply for the making of the decision.

289B Review of status of casual employees

For section 149A, a person's employment as a casual employee on a regular and systematic basis includes employment before the commencement.

63 Clause 1152 (Insertion of new ch 9, pt 12)

Page 710, after line 29—

insert—

- (1A) However, chapter 7, part 1 and any commission chief executive directive mentioned in that part, as in force immediately before the commencement, continue to apply for an appeal against a decision mentioned in section 194(1)(a) or (e) that was made before the commencement.

- (1B) For subsection (1A), a person who, immediately before the commencement, was appointed as an appeals officer under section 88A is taken to be an IRC member.

64 Clause 1153 (Amendment of sch 4 (Dictionary))

Page 711, after line 11—

insert—

casual employment decision see section 194(1)(ea).

employee complaints directive see section 218A(1).

fair treatment decision see section 194(1)(eb).

65 Schedule 5 (Dictionary)

Page 732, line 3—

omit, insert—

act, for chapter 12, part 13, see section 826.

66 Schedule 5 (Dictionary)

Page 732, line 8, ‘636O’—

omit, insert—

870

67 Schedule 5 (Dictionary)

Page 732, line 14, ‘838’—

omit, insert—

595

68 Schedule 5 (Dictionary)

Page 733, line 29—

omit, insert—

audit report, for chapter 12, means a report prepared under section 768.

69 Schedule 5 (Dictionary)

Page 734, lines 24 and 25—

omit.

70 Schedule 5 (Dictionary)

Page 735, line 31, ‘50’—

omit, insert—

121

71 Schedule 5 (Dictionary)

Page 738, lines 3 and 4, from ‘means’—

omit, insert—

see section 508(2)(b).

72 Schedule 5 (Dictionary)

Page 738, line 11, ‘438’—

omit, insert—

627

73 Schedule 5 (Dictionary)

Page 738, line 19—

omit.

74 Schedule 5 (Dictionary)

Page 740, line 1, ‘65(2)(a)’—

omit, insert—

66(2)(a)

75 Schedule 5 (Dictionary)

Page 741, line 5—

omit.

76 Schedule 5 (Dictionary)

Page 741, line 19—

omit.

77 Schedule 5 (Dictionary)

Page 742, line 10, after ‘adopted child,’—

insert—

foster child,

78 Schedule 5 (Dictionary)

Page 742, line 14, ‘297’—

omit, insert—

279

79 Schedule 5 (Dictionary)

Page 742, line 25, ‘637’—

omit, insert—

877

80 Schedule 5 (Dictionary)

Page 743, line 2, ‘393’—

omit, insert—

389

81 Schedule 5 (Dictionary)

Page 743, lines 30 and 31, from ‘see’—

omit, insert—

part 11, see section 731.

82 Schedule 5 (Dictionary)

Page 745, line 6, ‘637’—

omit, insert—

877

83 Schedule 5 (Dictionary)

Page 745, line 27, ‘6’—

omit, insert—

168

84 Schedule 5 (Dictionary)

Page 750, line 13, ‘297’—

omit, insert—

508(2)(a)

85 Schedule 5 (Dictionary)

Page 751, line 9, from ‘see’—

omit, insert—

part 11, see section 731.

86 Schedule 5 (Dictionary)

Page 752, after line 15—

insert—

spouse, of an employee, includes a former spouse
of the employee.

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