

Queensland



INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991

**Reprinted as in force on 30 October 1998
(includes amendments up to Act No. 32 of 1998)**

Reprint No. 1B

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Information about this reprint

This Act is reprinted as at 30 October 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

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**INDUSTRIAL RELATIONS
(PROTECTION FROM INVALIDITIES)
ACT 1991**

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INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991

[as amended by all amendments that commenced on or before 30 October 1998]

An Act to ensure that the registration of an industrial organisation or its actions or those of its officers may not be challenged on certain grounds and for related matters

Short title

1. This Act may be cited as the *Industrial Relations (Protection from Invalidities) Act 1991*.

Application of Act

2. This Act has effect both retrospectively and prospectively.

Application of other Acts

3. This Act is to be read and construed with the *Industrial Organisations Act 1997* and the *Workplace Relations Act 1997* as part of those Acts.

Definitions

4. In this Act—

“**certificate**” means a certificate issued under section 6;

“**commission**” see *Workplace Relations Act 1997*, dictionary.

“**Commonwealth Act**” see *Industrial Organisations Act 1997*, dictionary.

“**counterpart federal body**” see *Industrial Organisations Act 1997*, dictionary.

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“federal organisation” see *Industrial Organisations Act 1997*, dictionary.

“full court” see *Workplace Relations Act 1997*, dictionary.

“invalidity” includes a nullity;

“organisation” see *Industrial Organisations Act 1997*, dictionary.

“previous Act” means the *Industrial Relations Act 1990* or another Act in existence before that Act that provided for the registration of industrial organisations.

“provisional certificate” means a provisional certificate issued under section 10.¹

“registrar” see *Workplace Relations Act 1997*, dictionary.

Certain grounds of challenge excluded

5.(1) In any proceedings, the validity of—

- (a) the legal existence or registration of an industrial organisation; or
- (b) a rule of an industrial organisation; or
- (c) a decision made in relation to an industrial organisation; or
- (d) the operation of a rule or decision referred to in paragraph (b) or (c);

cannot be challenged, impugned or in any way affected by reason only of 1 or more of the grounds specified in subsection (2).

(2) The grounds are—

- (a) that the industrial organisation is also a federal organisation or a branch or part of a federal organisation; or
- (b) that the members of the industrial organisation are also members of a counterpart federal body and—
 - (i) no register of members separate and distinct from the register kept by the counterpart federal body is kept by the industrial organisation; or

¹ Section 10 (Provisional certificate)

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- (ii) no application for membership or membership fee separate from the application made or fee paid to the counterpart federal body has been made or paid to the industrial organisation by any member; or
- (c) that the industrial organisation keeps and maintains no or insufficient records or rules that are separate and distinct from records or rules kept and maintained by a counterpart federal body; or
- (d) that officers of the industrial organisation have been elected or appointed by, or are also officers of, a counterpart federal body; or
- (e) any matter consequent upon or arising out of matters referred to in paragraphs (a) to (d).

Certificate protecting against invalidity

6.(1) Upon application under section 7, the Industrial Commission may issue a certificate declaring that a matter specified in the certificate—

- (a) while the certificate is in force, is not to be challenged, impugned or in any way affected in any proceedings upon the grounds of an invalidity specified in the certificate; or
- (b) is valid notwithstanding the existence of an invalidity specified in the certificate.

(2) An invalidity specified in a certificate is to be 1 specified in subsection (3) or (4).

(3) An invalidity specified in a certificate may be an invalidity that—

- (a) consists of, results from or arises out of a contravention of—
 - (i) a requirement of the *Industrial Organisations Act 1997* or a previous Act; or
 - (ii) a requirement of a rule of an organisation; and
- (b) happened because an organisation or a body or person acted or purported to act for an organisation in reliance on—

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- (i) a provision of the Commonwealth Act applicable to a counterpart federal body of the organisation; or
- (ii) a provision of a rule of a counterpart federal body of the organisation.

(4) An invalidity specified in a certificate may be an invalidity consisting of, resulting from or arising out of the admission by an industrial organisation to its membership of persons not entitled to be so admitted under its eligibility rules.

(5) A certificate may be issued for the purpose of protecting from the invalidity to which it applies—

- (a) an industrial organisation or a branch or part of an industrial organisation; or
- (b) a body of or within an industrial organisation acting or purporting to act on behalf of the industrial organisation; or
- (c) a person acting or purporting to act on behalf of an industrial organisation.

(6) A certificate may apply to a specified invalidity happening—

- (a) before or after the issue of the certificate; or
- (b) before or after the commencement of this Act.

(7) The Industrial Commission may issue a certificate—

- (a) as an interim certificate pending any proceedings; or
- (b) as a provisional certificate under section 10; or
- (c) subject to such conditions as it thinks fit.

Application for certificate

7.(1) An application for a certificate may be made by—

- (a) an industrial organisation; or
- (b) a person who satisfies the Industrial Commission that the person has a sufficient interest in the granting of the certificate; or
- (c) the Minister.

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(2) The Industrial Commission—

- (a) is not bound by the content of an application; and
- (b) may specify a matter in a certificate notwithstanding that it is not included in an application for the purpose of the certificate.

(3) For the purpose of an application, the Industrial Commission may dispense with proof of any matter and rely upon general circumstances in any case where proof of the matter is not reasonably practicable because of the effluxion of time.

Issue of certificate to industrial organisation

8. Upon hearing an application for the issue of a certificate to an industrial organisation, the Commission is to issue the certificate if it is satisfied—

- (a) that an invalidity referred to in section 6(3) or (4) exists or may exist before or after the certificate's issue; and
- (b) that the rules, administrative structure, records and other relevant matters appertaining to the industrial organisation generally provide for, and is likely to continue to provide for, the proper protection and representation of the interests of its members; and
- (c) in the case of a certificate specifying an invalidity referred to in section 6(4)—that the actions of the industrial organisation in admitting to membership the members referred to in the subsection were not carried out or are likely not to be carried out for the purpose of prejudicing the interests of another industrial organisation.

Intervention by interested party

9.(1) The Industrial Commission may, subject to such conditions as it thinks fit, allow to intervene in proceedings relating to an application for the issue of a certificate—

- (a) any person or body that satisfies the Industrial Commission that the person or body has a direct interest in the beneficial welfare of

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the industrial organisation in relation to which the certificate is sought to be issued; and

- (b) in the case of an application for the issue of a certificate specifying an invalidity referred to in section 6(4)—an industrial organisation that claims that the persons referred to in section 6(4) are entitled to be admitted to its membership under its eligibility rules.

(2) Upon intervention, the person or body becomes a party to the proceedings.

(3) This section does not limit the *Workplace Relations Act 1997*, section 322.²

Provisional certificate

10.(1) Upon an application for the issue of a certificate to an industrial organisation, if the Industrial Commission is not satisfied that the rules, administrative structure, records or other relevant matters appertaining to the industrial organisation generally provide for, and are likely to continue to provide for, the proper protection and representation of the interests of its members it may, in its discretion, issue a provisional certificate.

(2) A provisional certificate is to be issued subject to a condition that the industrial organisation is to take steps specified in the certificate to remedy the matters of which the Industrial Commission is not satisfied.

(3) If the Industrial Commission issues a provisional certificate to an industrial organisation, it is to order the industrial organisation to appear before it on or before a date specified in the order or on a date at any time specified by the Industrial Commission—

- (a) to prove to the satisfaction of the Industrial Commission that it has taken the steps specified in the certificate; or
- (b) to show cause why the certificate should not be revoked.

(4) If an industrial organisation, on or before the date specified in the order or by such later date as the Commission may at any time specify—

² *Workplace Relations Act 1997*, section 322 (Reference of matter to Commonwealth official)

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- (a) fails to prove to the satisfaction of the Industrial Commission that it has taken the steps specified in the certificate; and
- (b) fails to show cause or sufficient cause why the certificate should not be revoked;

the Industrial Commission is to revoke the certificate.

(5) Subject to subsection (4), the Industrial Commission upon application by an industrial organisation appearing before it in compliance with the order prescribed by subsection (3), is to order the provisional certificate to be made absolute.

Registrar to give notice

11.(1) If the Industrial Registrar becomes aware of circumstances where the purpose of this Act or the *Industrial Organisations Act 1997* would be furthered by the issue of a certificate with respect of an industrial organisation then the Industrial Registrar is to give a notice in writing to the industrial organisation.

(2) The notice is to—

- (a) specify the matter to which, in the opinion of the Industrial Registrar, the application should relate; and
- (b) require the industrial organisation to make application to the Industrial Commission within 30 days of the receipt of the notice.

Application to revoke notice

12.(1) An application may be made to the Industrial Commission for an order revoking a notice issued under section 11 by the industrial organisation to which the notice is given or by a person that the Industrial Commission considers has sufficient interest.

(2) The application is to be made within 30 days of the receipt of the notice or by such later date as the Industrial Commission may at any time allow.

(3) The Industrial Commission has jurisdiction to hear and determine the application and to—

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- (a) revoke the notice if in its opinion the issue of a certificate is not necessary at that time, in all the circumstances; or
- (b) make a recommendation that an application for a certificate be made in relation to any matter whether or not specified in the notice; or
- (c) make any other recommendation.

Application for deregistration

13.(1) If the Industrial Registrar gives a notice to an industrial organisation under section 11 and—

- (a) the industrial organisation or other person authorised to do so fails to make an application for a certificate in accordance with the notice; and
- (b) the notice is not revoked by the Industrial Commission under section 12;

the Industrial Registrar may apply to the Full Industrial Court under the *Industrial Organisations Act 1997*, section 184(1)³ for an order cancelling the registration of the industrial organisation.

(2) For the purpose of an application under the *Industrial Organisations Act 1997*, section 184(1), the failure referred to in subsection (1)(a) is taken to be conduct of the industrial organisation concerned preventing or hindering the achievement of the objects of the *Industrial Organisations Act 1997*.

Revocation or variation of certificate

14.(1) Subject to subsections (2) and (3), the Industrial Commission at any time may—

- (a) amend a certificate; or
- (b) revoke a certificate; or
- (c) revoke a certificate and in its place issue a fresh certificate.

³ Section 184 (Orders about invalidities)

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(2) The Industrial Commission may exercise the power conferred by subsection (1)—

- (a) if subsection (3) applies—
 - (i) upon its own motion; or
 - (ii) upon application by the Industrial Registrar or by a person the Industrial Commission is satisfied has sufficient interest; or
- (b) in any other case—upon application by a body or person for the protection of which or of whom the certificate was issued.

(3) The Industrial Commission may exercise power under subsection (1) upon being satisfied that the industrial organisation in relation to which the certificate was issued—

- (a) is acting in a way that does not generally provide for the proper protection and representation of the interests of its members; or
- (b) has breached a condition to which the certificate was subject.

(4) If the Industrial Registrar becomes aware that an industrial organisation in relation to which a certificate is issued—

- (a) is acting in a way that does not generally provide for the proper protection and representation of the interests of its members; or
- (b) has breached a condition to which the certificate was subject;

the Industrial Registrar is to exercise the power conferred by subsection (2) to apply to the Industrial Commission for an order revoking the certificate.

Industrial Registrar to have regard to this Act

15. The Industrial Registrar in the performance of functions under the *Industrial Organisations Act 1997* or the *Workplace Relations Act 1997* is not to exercise or refuse to exercise a power conferred by that Act on the grounds of a contravention of a requirement of either Act by an industrial

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organisation if it is unnecessary for the industrial organisation to comply with the requirement by virtue of the provisions of this Act.

Effect upon penalties

16.(1) The Industrial Commission is not competent to issue a certificate so as to authorise, or exclude liability for, an act or omission that constitutes an offence against an Act other than the *Industrial Organisations Act 1997* or the *Workplace Relations Act 1997*.

(2) If the effect of a certificate is to render valid or protect from challenge in any proceedings an act or omission that contravenes the *Industrial Organisations Act 1997* or the *Workplace Relations Act 1997*, the body or person that does the act or makes the omission is not liable to a penalty for the contravention under that Act.

References to certain terms

17.(1) In this Act, a reference to—

- (a) the Full Industrial Court is a reference to the full court; and
- (b) the Industrial Commission is a reference to the commission; and
- (c) an industrial organisation is a reference to an organisation; and
- (d) the Industrial Registrar is a reference to the registrar.

(2) This section expires on the day of the next reprint of the Act produced under the *Reprints Act 1992*, unless it sooner expires under section 18.

Expiry of Act

18. This Act expires on 31 December 1999.

Effect of expiry on certificates

19.(1) A certificate expires when this Act expires.

(2) However, the certificate continues to apply to an invalidity specified in it if the invalidity happened before the expiry.

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(3) In this section—

“**certificate**” includes a provisional certificate and a provisional certificate made absolute under section 10.⁴

Effect of expiry on applications

20.(1) This section applies if—

- (a) an organisation or person applied for a certificate before this Act expires; and
- (b) the commission has not decided the application or has issued a provisional certificate.

(2) The commission may only issue a certificate or make a provisional certificate absolute for an invalidity that happened before the expiry.

⁴ Section 10 (Provisional certificate)

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 October 1998. Future amendments of the Industrial Relations (Protection from Invalidities) Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	27 October 1993
1A	to Act No. 2 of 1997	14 November 1997

5 List of legislation

Industrial Relations (Protection from Invalidities) Act 1991 No. 27

date of assent 5 June 1991

commenced on date of assent

exp 31 December 1999 (see s 18)

as amended by—

Industrial Organisations Act 1997 No. 2 ss 1–2, 304 sch 2

date of assent 14 February 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 29 August 1997 (1997 SL No. 281)

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Workplace Relations Amendment Act 1998 No. 32 ss 1, 2(2) sch

date of assent 3 September 1998

commenced on date of assent

6 List of annotations

Application of other Acts

s 3 sub 1997 No. 2 s 304 sch 2

Definitions

prov hdg sub 1997 No. 2 s 304 sch 2

s 4 amd 1997 No. 2 s 304 sch 2

def “**commission**” ins 1997 No. 2 s 304 sch 2

def “**Commonwealth Act**” sub 1997 No. 2 s 304 sch 2

def “**counterpart federal body**” ins 1997 No. 2 s 304 sch 2

def “**federal organisation**” sub 1997 No. 2 s 304 sch 2

def “**full court**” ins 1997 No. 2 s 304 sch 2

def “**organisation**” ins 1997 No. 2 s 304 sch 2

def “**previous Act**” sub 1997 No. 2 s 304 sch 2

def “**provisional certificate**” ins 1997 No. 2 s 304 sch 2

def “**registrar**” ins 1997 No. 2 s 304 sch 2

Certificate protecting against invalidity

s 6 amd 1997 No. 2 s 304 sch 2

Issue of certificate to industrial organisation

s 8 amd 1997 No. 2 s 304 sch 2

Intervention by interested party

s 9 amd 1997 No. 2 s 304 sch 2

Provisional certificate

s 10 amd 1997 No. 2 s 304 sch 2

Registrar to give notice

s 11 amd 1997 No. 2 s 304 sch 2

Application for deregistration

s 13 amd 1997 No. 2 s 304 sch 2

Industrial Registrar to have regard to this Act

s 15 amd 1997 No. 2 s 304 sch 2

Effect upon penalties

s 16 amd 1997 No. 2 s 304 sch 2

References to certain terms

s 17 ins 1997 No. 2 s 304 sch 2

exp on the day of the next reprint of the Act produced under the Reprints Act 1992, unless it sooner expires under section 18 (see s 17(2))

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Expiry of Act

s 18 ins 1997 No. 2 s 304 sch 2
 sub 1998 No. 32 s 2(2) sch

Effect of expiry on certificates

s 19 ins 1997 No. 2 s 304 sch 2

Effect of expiry on applications

s 20 ins 1997 No. 2 s 304 sch 2