

Queensland



INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991

**Reprinted as in force on 27 October 1993
(Act not amended up to this date)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 27 October 1993.

The opportunity has been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use expressions consistent with current legislative drafting practice as permitted by section 29 of that Act;
- omit provisions that are no longer required as permitted by section 39 of that Act;
- use the renumbering of provisions and references permitted by section 43 of that Act.

See Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991

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INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991

[reprinted as in force on 27 October 1993²]

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*³.

Application of Act

2. This Act has effect both retrospectively and prospectively.

Application of Industrial Relations Act 1990

3. This Act is to be read and construed with the *Industrial Relations Act 1990* and as part of that Act.

Interpretation

4.(1) In this Act—

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

“**Commonwealth Act**” means the *Industrial Relations Act 1988* of the Commonwealth or any previous Act within the meaning of that Act;

“**federal organisation**” means an organisation within the meaning of the Commonwealth Act;

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“invalidity” includes a nullity;

“previous Act”, in relation to the *Industrial Relations Act 1990*, means any Act in existence at any time before that Act that provided for the registration of industrial unions.

(2) For the purpose of this Act, a federal organisation or a branch or part of a federal organisation is a counterpart federal body of an industrial organisation if a substantial number of the members of each are—

- (a) members or eligible to be members of both; or
- (b) engaged in the same work, in aspects of the same work or similar work; or
- (c) employed in the same or similar work by employers engaged in the same industry; or
- (d) engaged in work or in industries in relation to which there is a community of interest.

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

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industrial organisation; or

- (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—

- (a) consisting of, resulting from, or arising out of a contravention of—
 - (i) a requirement of the *Industrial Relations Act 1990* or a previous Act; or
 - (ii) a requirement of a rule of an industrial organisation; and
- (b) occurring because an industrial organisation or a body or person acting or purporting to act on behalf of an industrial organisation,

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in reliance upon—

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

believed that the requirement had been complied with or did not apply.

(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 with respect to a matter whether it occurs—

- (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.

(8) A certificate has effect according to its tenor.

(9) For the purpose of this section—

- (a) a body or person is not taken to purport to act on behalf of an industrial organisation unless the body or person was so acting in good faith; and

- (b) an act is taken to be done in good faith unless the contrary is proved.

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.

(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; and
- (b) that the rules, administrative structure, records and other relevant matters appertaining to the industrial organisation generally 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 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 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 section 85 of the *Industrial Relations Act 1990*.

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 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—

(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 Relations Act 1990* 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—

- (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 section 309(1) of the *Industrial Relations Act 1990* for an order cancelling the registration of the industrial organisation.

(2) For the purpose of an application under section 309(1) of the *Industrial Relations Act 1990*, 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 Relations Act 1990*.

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.

(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 Relations Act 1990* is not to exercise or refuse to exercise a power conferred by that Act on the grounds of a contravention of a requirement of that Act by an industrial 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 Relations Act 1990*.

(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 Relations Act 1990*, the body or person that does the act or makes the omission is not liable to a penalty for the contravention under that Act.

ENDNOTES

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2 **Date to which amendments incorporated**

This is the reprint date mentioned in section 5(c) of the *Reprints Act 1992*. However, no amendments have commenced operation on or before that day. Future amendments of the *Industrial Relations (Protection from Invalidities) Act 1991* may be made in accordance with this reprint under section 49 of the *Reprints Act 1992*.

3 **List of legislation**

Industrial Relations (Protection from Invalidities) Act 1991 No. 27
 date of assent 5 June 1991
 commenced on date of assent