



Queensland

# **Industrial Relations Amendment Act 2005**

**Act No. 36 of 2005**





## Queensland

# Industrial Relations Amendment Act 2005

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## Act No. 36 of 2005

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An Act to amend the *Industrial Relations Act 1999*

[Assented to 18 August 2005]

**The Parliament of Queensland enacts—****1 Short title**

This Act may be cited as the *Industrial Relations Amendment Act 2005*.

**2 Commencement**

This Act commences 1 September 2005.

**3 Act amended**

This Act amends the *Industrial Relations Act 1999*.

**4 Replacement of ch 2, pt 1, div 1A hdg**

Chapter 2, part 1, division 1A heading—  
*omit, insert—*

**‘Division 1AA Minimum wage’.****5 Insertion of ch 2, pt 1, new divs 1AB and 1AC**

After section 8A—  
*insert—*

**‘Division 1AB Development of skills of employees****‘8B Wage structuring to develop employee skills**

‘(1) An employer must, if it is appropriate to the employer’s industry and the calling or callings of the employer’s employees, structure the employees’ wages in a way that encourages the development of the employees’ skills.

‘(2) If, after completing an apprenticeship in a trade, an employee works in the trade, the employee must be paid at least the minimum rate payable under the award or federal award applying to the trade.

## **‘Division 1AC      Pay and conditions for particular outworkers**

### **‘8C      Pay and conditions for workers working from home etc. and not covered by award or federal award**

- ‘(1) This section applies to a person—
- (a) who is, for someone else’s calling or business, engaged in or about a private residence or other premises that are not business or commercial premises; and
  - (b) who, when so engaged, is not a person to whom an award or federal award applies.
- ‘(2) The pay and conditions of the person must be fair and reasonable when compared with the pay and conditions of employees who perform the same kind of work at an employer’s business or commercial premises under an award or federal award.’.

### **6      Amendment of s 9 (Working time)**

- (1) Section 9, heading, after ‘time’—  
*insert—*  
‘for an employee under an industrial instrument made on or before 1 September 2005 etc.’.
- (2) Section 9(1), after ‘instrument’—  
*insert—*  
‘, other than a certified agreement if the application to certify the agreement was made after 1 September 2005’.

### **7      Insertion of new s 9A**

- Chapter 2, part 1, division 1—  
*insert—*

**‘9A Working time for an employee under an industrial instrument made after 1 September 2005 etc.**

- ‘(1) This section applies to an employee under any of the following instruments, unless the instrument provides otherwise—
- (a) an industrial instrument made after 1 September 2005, other than a certified agreement if the application to certify the agreement was made on or before 1 September 2005;
  - (b) a federal award made or varied after 1 September 2005;
  - (c) a federal agreement made, varied or approved after 1 September 2005, other than a federal agreement if the application to certify the agreement was made on or before 1 September 2005.
- ‘(2) The periods for which the employee is required to work must not exceed—
- (a) 6 days in any 7 consecutive days; or
  - (b) 38 hours in any 6 consecutive days; or
  - (c) 7.6 hours in any day.
- ‘(3) The employee must be paid overtime at the rate of at least—
- (a) for a calling in which more than 1 shift is worked in a day—double time; and
  - (b) for another calling—time and a half.
- ‘(4) If the employee is paid at a higher rate than the minimum rate provided for in the relevant instrument mentioned in subsection (1), the overtime rate must be worked out on the higher rate.
- ‘(5) If practicable, the employee is entitled to a rest pause of at least 10 minutes in each 4 hours of working time on a day.
- ‘(6) The rest pause—
- (a) is part of the employee’s working time; and
  - (b) if continuity of work is necessary—must be taken when it does not interfere with continuity.

- ‘(7) If the employee is required to work for more than 5 hours, the employee is entitled to an unpaid meal break of at least 30 minutes after the end of the fourth hour of work and before the start of the sixth hour of work.
- ‘(8) If the employee is required to work in a way that is contrary to subsection (7), the employee is entitled to be paid at a rate that is double the rate the employee would have been entitled to for the 30 minutes of work.
- ‘(9) If the employee performs shift work, the employee must be paid as follows—
- (a) for ordinary time worked on Monday, Tuesday, Wednesday, Thursday or Friday—
    - (i) for afternoon shift work—at least 12.5% more than the ordinary rate applicable to the employee; or
    - (ii) for night shift work—at least 15% more than the ordinary rate applicable to the employee;
  - (b) for ordinary time worked on Saturday—at least 25% more than the ordinary rate applicable to the employee;
  - (c) for ordinary time worked on Sunday—at least 50% more than the ordinary rate applicable to the employee.
- ‘(10) If the employee’s ordinary time includes working between midnight Friday and midnight Sunday, other than as part of performing shift work, the employee is entitled to be paid the following—
- (a) for ordinary time worked between midnight Friday and midnight Saturday—at least 25% more than the ordinary rate applicable to the employee;
  - (b) for ordinary time worked between midnight Saturday and midnight Sunday—at least 50% more than the ordinary rate applicable to the employee.
- ‘(11) Without limiting the application of this section to a casual employee, if the employee is a casual employee, the employee is entitled to be paid the following—
- (a) for time other than overtime—an ordinary rate that is at least 123% of the ordinary rate for a permanent employee for the work performed, worked out on an hourly basis;

- (b) for overtime—at least at the relevant overtime rate specified in subsection (3) worked out on the ordinary rate for the casual employee as specified in paragraph (a).

‘(12) In this section—

***afternoon shift work*** means all work performed as part of a shift that finishes after 6.00p.m. and at or before midnight, if the majority of hours for the shift are between 6.00p.m. and midnight.

***night shift work*** means all work performed as part of either of the following—

- (a) a shift finishing after midnight and at or before 8.00a.m.;
- (b) a shift if the majority of hours for the shift are between midnight and 8.00a.m.

***overtime*** means time worked—

- (a) outside any period mentioned in subsection (2); or
- (b) before or after the fixed or recognised times of starting or finishing work on a day in a calling.

***shift work*** means a system in which employees perform ordinary hours of work in separate shifts.’

## 8 Insertion of new s 13A

After section 13—

*insert—*

### ‘13A Annual leave loading

- ‘(1) This section applies to an employee under any of the following instruments, unless the instrument provides otherwise—
- (a) an industrial instrument made after 1 September 2005, other than a certified agreement if the application to certify the agreement was made on or before 1 September 2005;
  - (b) a federal award made or varied after 1 September 2005;

- (c) a federal agreement made, varied or approved after 1 September 2005, other than a federal agreement if the application to certify the agreement was made on or before 1 September 2005.
- ‘(2) In addition to the employee’s annual leave entitlement under this division, the employee is entitled to receive a further amount of at least 17½% of the amount payable under section 13(2)(a).
- ‘(3) However, if the employee’s employer pays the employee an amount (however the amount is described, including, for example, an annual leave bonus or annual leave loading) in addition to the employee’s annual leave entitlement under this division and that amount—
- (a) is less than 17½% of the amount payable under section 13(2)(a)—the employee is entitled to receive a further amount so that the employee receives the amount the employee is entitled to under subsection (2); or
- (b) is at least 17½% of the amount payable under section 13(2)(a)—the employee is not entitled to receive an amount under subsection (2).’.

## 9 Insertion of new ch 2, pt 1, div 3A

After section 14—

*insert—*

### ‘Division 3A Jury service leave

#### ‘14A Jury service leave

- ‘(1) This section applies to an employee under any of the following instruments, unless the instrument provides otherwise—
- (a) an industrial instrument made after 1 September 2005, other than a certified agreement if the application to certify the agreement was made on or before 1 September 2005;
- (b) a federal award made or varied after 1 September 2005;

- (c) a federal agreement made, varied or approved after 1 September 2005, other than a federal agreement if the application to certify the agreement was made on or before 1 September 2005.
- ‘(2) If the employee is required to attend for jury service, the employee—
    - (a) is entitled to take jury service leave; and
    - (b) must, as soon as is practicable, tell the employer about the requirement to attend for jury service and the period the employee is required to perform jury service.
  - ‘(3) If the employee is given a document relating to jury service, the employee must give the document, or a copy of it, to the employer.
  - ‘(4) For the period of jury service leave, the employer must pay the employee the difference between the following—
    - (a) the amount stated in the document relating to jury service, or the copy, as the amount received as remuneration and allowances, other than meal allowances;
    - (b) the ordinary rate the employee would have been paid if the employee had not taken jury service leave.
  - ‘(5) The amount payable under subsection (4) must be paid on or before the first pay day that is practicable after the employee gives the employer the employee’s document relating to jury service or a copy of it.
  - ‘(6) Also, if the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.
  - ‘(7) In this section—

*document relating to jury service*, in relation to an employee, means a document stating the employee’s attendance under a requirement to attend for jury service, the number of days of attendance and the amount received as remuneration and allowances, other than meal allowances, under the *Jury Act 1995*.

*employee* does not include a casual employee.

*jury service leave*, in relation to an employee, means leave taken by an employee required to attend for jury service.

*required to attend for jury service*, in relation to an employee, means the employee—

- (a) is given a summons under the *Jury Act 1995*, section 27<sup>1</sup> requiring the employee to attend for jury service; or
- (b) is instructed under the *Jury Act 1995*, section 38<sup>2</sup> to attend for jury service.’.

## 10 Amendment of s 15 (Public holidays)

- (1) Section 15(4) and (5), ‘an industrial’—

*omit, insert—*

‘a relevant’.

- (2) Section 15(10)—

*insert—*

‘*relevant instrument* means any of the following—

- (a) an industrial instrument;
  - (b) a federal award made or varied after 1 September 2005;
  - (c) a federal agreement made, varied or approved after 1 September 2005, other than a federal agreement if the application to certify the agreement was made on or before 1 September 2005.’.
- (3) Section 15(10), definition *ordinary working hours*, ‘industrial’—
- omit.*

## 11 Amendment of s 69 (Continuity of service—transfer of calling)

Section 69—

1 *Jury Act 1995*, section 27 (Summons for jury service)

2 *Jury Act 1995*, section 38 (Supplementary jurors)

*insert—*

- ‘(4A) In relation to the transfer, the transferred employee is not an employee to whom chapter 3, part 4, division 1AA applies, unless an instrument mentioned in section 85A(1) provides otherwise.’

## **12 Insertion of new ch 2, pt 7**

Chapter 2—

*insert—*

### **‘Part 7 Minimum period of notice by particular employees**

#### **‘71A Minimum period of notice required from employee under particular instrument, federal award or federal agreement**

- ‘(1) This section applies to an employee under any of the following instruments, unless the instrument provides otherwise—
- (a) an industrial instrument made after 1 September 2005, other than a certified agreement if the application to certify the agreement was made on or before 1 September 2005;
  - (b) a federal award made or varied after 1 September 2005;
  - (c) a federal agreement made, varied or approved after 1 September 2005, other than a federal agreement if the application to certify the agreement was made on or before 1 September 2005.
- ‘(2) The minimum period of notice an employee must give to an employer is 1 week.
- ‘(3) If an employee does not give at least the minimum period of notice required under subsection (2), the employer may deduct from the employee’s wages an amount that is not more than the wages, at the ordinary rate, that would have been payable to the employee for the period for which notice was not given.’

**13 Amendment of s 84 (Minimum period of notice required)**

Section 84, heading, after ‘required’—

*insert—*

‘from employers’.

**14 Insertion of new ch 3, pt 4, div 1AA**

Chapter 3, part 4, before division 1—

*insert—*

**‘Division 1AA Redundancy payments****‘85A Application of div 1AA**

- ‘(1) This division applies to an employee (a *prescribed employee*) under any of the following instruments, unless the instrument provides otherwise—
- (a) an industrial instrument made after 1 September 2005, other than a certified agreement if the application to certify the agreement was made on or before 1 September 2005;
  - (b) a federal award made or varied after 1 September 2005;
  - (c) a federal agreement made, varied or approved after 1 September 2005, other than a federal agreement if the application to certify the agreement was made on or before 1 September 2005.
- ‘(2) However, this division does not apply to a prescribed employee if all employees of the prescribed employee’s employer work a total of less than 550 hours a week (Monday to Sunday) excluding overtime, averaged over the previous 12 months.
- ‘(3) In this section—
- employer*, if the employer is a body corporate, includes each body corporate that is a related body corporate to the employer.

*related body corporate*, of an employer that is a body corporate, means a body corporate that is related to the employer because of the Corporations Act, section 50.<sup>3</sup>

### **‘85B Minimum redundancy payment**

‘If an employee is made redundant, the employee is entitled to be paid an amount (a *redundancy payment*) that is at least equal to the employee’s weeks pay multiplied by the number of weeks for the employee’s years of service, as set out in schedule 3.

### **‘85C Employer may apply for relief**

‘The employer of an employee who is made redundant may apply to the commission for relief from the obligation to make the redundancy payment if—

- (a) the employer has contributed to a fund that will provide a benefit to the employee if the employee is made redundant; or
- (b) the employer is unable to pay the redundancy payment.’.

## **15 Amendment of s 160 (When an agreement passes the no-disadvantage test)**

Section 160(6), definition *entitlements or protections*, paragraph (b), ‘bench.’—

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3 Corporations Act, section 9—

*related body corporate*, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

Corporations Act, section 50—

### **50 Related bodies corporate**

Where a body corporate is:

- (a) a holding company of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate; the first-mentioned body and the other body are related to each other.

*omit, insert—*

‘bench, or chapter 3, part 4, division 1AA.<sup>4</sup>’.

**16 Amendment of s 209 (When does a QWA pass the no-disadvantage test)**

Section 209(5), definition *entitlements or protections*, paragraph (c)—

*omit, insert—*

‘(c) chapter 2, including as reviewed by a general ruling of the full bench, or chapter 3, part 4, division 1AA.<sup>5</sup>’.

**17 Amendment of s 273 (Commission’s functions)**

Section 273(1)(j)(i), after ‘section’—

*insert—*

‘85C.’.

**18 Insertion of new sch 3**

After schedule 2—

*insert—*

**‘Schedule 3 Minimum redundancy payment**

section 85B

<b>Years of service</b>	<b>Number of weeks</b>
Less than 1 year . . . . .	0 weeks
1 year but not more than 2 years . . . . .	4 weeks
More than 2 years but not more than 3 years. . . . .	6 weeks

4 Chapter 2 (General employment conditions) and chapter 3 (Dismissals), part 4 (Additional requirements for dismissal), division 1AA (Redundancy payments)

5 Chapter 2 (General employment conditions) and chapter 3 (Dismissals), part 4 (Additional requirements for dismissal), division 1AA (Redundancy payments)

<b>Years of service</b>	<b>Number of weeks</b>
More than 3 years but not more than 4 years. . . . .	7 weeks
More than 4 years but not more than 5 years. . . . .	8 weeks
More than 5 years but not more than 6 years. . . . .	9 weeks
More than 6 years but not more than 7 years. . . . .	10 weeks
More than 7 years but not more than 8 years. . . . .	11 weeks
More than 8 years but not more than 9 years. . . . .	12 weeks
More than 9 years but not more than 10 years. . . . .	13 weeks
More than 10 years but not more than 11 years. . . . .	14 weeks
More than 11 years but not more than 12 years. . . . .	15 weeks
More than 12 years . . . . .	16 weeks.’.

## **19 Amendment of sch 5 (Dictionary)**

- (1) Schedule 5, definitions *Commonwealth award* and *ordinary rate*—

*omit.*

- (2) Schedule 5—

*insert—*

***‘federal agreement*** means an Australian workplace agreement, or a certified agreement, within the meaning of the Commonwealth Act.

***federal award*** means an award within the meaning of the Commonwealth Act.

***ordinary rate***, for an employee under an industrial instrument, federal award or federal agreement, means the rate the instrument, award or agreement states is payable for ordinary time.

***redundancy payment*** see section 85B.

***weeks pay*** means the ordinary rate for the relevant employee for a week, but does not include overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments.’.

