Industrial Relations Amendment Bill 2005

Explanatory Notes

General outline

Short Title

Industrial Relations Act Amendment Bill 2005

Policy Objectives

The purpose of the Bill is to ensure that Queensland employees continue to enjoy a fair and balanced industrial relations system regardless of developments at the federal level. This will be achieved by building on the industrial relations framework established under the *Industrial Relations Act 1999* (the Act).

The Bill will amend the Act to:

(a) encourage the adoption of wage structures that encourage the development of employees' skills;

(b) ensure that apprentices who complete their apprenticeships are paid at least the minimum trade rate relevant to their trade;

(c) ensure that the overall pay and conditions for outworkers are fair and reasonable when compared with the pay and conditions of workers who perform the same work at the employer's premises under a relevant award; and

(d) provide particular categories of employees with the following additional minimum entitlements:

  (i) jury service make-up pay;

  (ii) 38 hour ordinary working week;

  (iii) paid overtime;

  (iv) unpaid meal breaks of at least 30 minutes after 5 hours' work;

(v) annual leave loading of 17.5 per cent;

(vi) casual loading of 23 per cent;

(vii) shift loadings of 12.5 per cent for afternoon shift and 15 per cent for night shift;

(viii) overtime rates for working on public holidays;

(ix) weekend penalty rates of 25 per cent for Saturday work and 50 per cent for Sunday work;

(x) redundancy payments; and

(xi) require employees to give at least one week's notice of termination to their employers.

The entitlements in paragraph (d) will only apply to awards and agreements (federal or State) made after 1 September 2005, and only if the award or agreement does not exclude the relevant condition or make alternative provision for it. In other words, these conditions will fill the gaps in future awards and agreements created by the federal Government's proposals, for example the gaps caused by the proposed removal of matters from federal awards. The entitlements will not affect non-award employees.

Reasons for the policy objectives

These amendments are considered necessary in light of the Prime Minister's announcement on 26 May 2005 that the federal Government will remove four conditions from federal awards and remove the nexus between federal awards and federal agreements.

The four conditions to be removed from federal awards are: notice of termination, long service leave, jury service pay and superannuation. The federal Government has justified removing these conditions on the basis that they are enshrined in legislation and therefore superfluous in awards. However, the removal of these matters from federal awards will disadvantage some employees, because some federal awards provide greater entitlements than those provided by statute and employees covered by those awards will lose their superior entitlements. For example, jury service will be removed from federal awards. Queensland provides a statutory allowance to all persons summoned for jury service which varies from $30 to $120 per day. Under many federal awards (about 42 per cent of them), employees are also entitled to jury service make-up pay, being the difference between the statutory allowance and their ordinary wages. Once jury service is removed from federal awards, employees will lose their award entitlement to make-up pay.

The federal Government's proposal to remove the nexus between federal awards and federal agreements is also likely to seriously disadvantage employees. Currently, the federal legislation requires federal agreements to pass the "no disadvantage" test, which involves an independent tribunal (the Australian Industrial Relations Commission) comparing the agreement against the relevant minimum safety net award to ensure that employees on agreements are generally no worse off. Federal awards which operate as this benchmark currently contain up to 20 employment conditions. The federal Government proposes to replace the no disadvantage test with a comparison between federal agreements and five bare minima, which will be determined by the federal Government and the proposed Australian Fair Pay Commission. In other words, federal agreements will be allowed to contain just five bare minimum conditions and these agreements will take legal precedence over federal awards, State awards and State protective legislation, such as the parental leave standards in Queensland's Act. The federal legislation allows these agreements to be presented to prospective employees on a "take it or leave it" basis.

There is no indication, at this stage, whether the above federal proposals will affect employees under State awards and agreements. However, the federal Government has announced that it will attempt to create a national industrial relations system based on the 'corporations power' and, if it is successful, it could attempt to extend the above proposals to all State employees working for 'constitutional corporations'.

The Queensland Government is committed to protecting Queensland workers, regardless of whether they are covered by federal or State awards or agreements.

How the policy objectives will be achieved

To the extent constitutionally possible, the Bill will protect employees who lose entitlements as a result of the federal Government's removal of particular entitlements from awards and the removal of current safeguards in relation to agreement making. The Bill will do this by ensuring that basic employment conditions continue to be available for employees, regardless of whether they work under the Queensland or federal jurisdictions.

The Act contains a set of minimum employment conditions which operate as a fair safety net for employees. These minimum conditions will be extended and improved upon so that they cover Queensland employees who stand to lose employment conditions as a result of the federal Government's policies.

The amendments will not interfere with existing employment arrangements, nor impede the making of awards and agreements to suit the particular circumstances of the relevant workplace or industry. They will apply to awards and agreements that are made after 1 September 2005, but only if the award or agreement is silent with respect to the relevant employment entitlement. For example, if an agreement provides an all-up hourly rate for casual employees and states that no additional loadings or penalties are to apply, then the agreement will override the loadings and penalties applicable to casual employees in the Act.

The only two exceptions to this are new sections 8B, which deals with the development of employees' skills; and 8C, which deals with the pay and conditions of outworkers. These minimum entitlements will apply to all employees, regardless of whether they are covered by an award or agreement or when it was made.

Awards and agreements made after 1 September 2005 will be able to either rely on the statutory entitlements or make alternative provision for them. To protect parties who have negotiated certified agreements before 1 September 2005 but have not had them certified by that date, the Bill provides that the new minimum entitlements (other than those providing for skills development and outworkers) do not apply if the application to certify the agreement was made on or before 1 September 2005.

Alternative means of achieving policy objectives

The options open to the States for responding to the federal Government's proposals are limited, because of the federal Government's ability to override State laws under section 109 of the *Constitution* of the Commonwealth of Australia.

The Queensland Government has repeatedly requested the federal Government to work cooperatively with the States on a harmonised national industrial relations system. However, the federal Government has ignored this request.

Estimated Administrative Cost to Government for Implementation

There are no anticipated increases in costs for government arising from this legislation.

Consistency with Fundamental Legislative Principles

The Bill has been drafted in accordance with the fundamental legislative principles prescribed by the *Legislative Standards Act 1992*.

Consultation

Consultation with government agencies, unions and employer organisations has occurred on the Bill.

Notes On Provisions

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides that the Bill commences on 1 September 2005.

Act amended

Clause 3 provides that the Bill amends the *Industrial Relations Act 1999* (Act).

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

Clause 4 renumbers Chapter 2, Part 1, Division 1A to Chapter 2, Part 1, Division 1AA.

Insertion of ch 2, pt 1, new divs 1AB and 1AC

Clause 5 inserts two new Divisions into the Act which provide minimum entitlements for all employees.

Division 1AB Development of skills of employees

Division 1AB provides minimum entitlements to enhance the development and recognition of the skills of employees.

Section 8B (1) requires employers to structure the wages of employees in a way that encourages the development of the employees' skills, where appropriate to the employer's industry and the relevant employees' calling. For example, this could be done by providing a wage structure based on an employee's attainment of skills and knowledge.

Section 8B (2) provides that an employee, who completes an apprenticeship in a trade and works in that trade, must be paid at least the minimum trade rate specified in the relevant award.

Division 1AC Pay and conditions of particular outworkers

Division 1AC provides minimum entitlements for outworkers who are not covered by an award.

Section 8C(1) provides that the section applies to a person, not covered by an award, who is engaged in the performance of work for someone else's calling or business and performs that work in or about a private residence or some other premises that are not business or commercial premises.

Section 8C(2) provides that the pay and conditions of the persons referred to in 8C(1) 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 premises under a State or federal award. A person who considers their pay and conditions are not fair and reasonable could, for example, seek redress by applying to the commission under section 276 (Power to amend or void contracts) of the Act to have the matter determined.

Amendment of s 9 (Working time)

Clause 6 amends the heading to section 9 (Working time) to clarify that it applies to employees under industrial instruments made on or before 1 September 2005. However, section 9 does not apply to employees under certified agreements where the agreement was made prior to 1 September 2005, but the application to certify the agreement was made after 1 September 2005 (such employees will be subject to section 9A).

Insertion of new s 9A

Clause 7 inserts a new section 9A into the Act to provide minimum entitlements, such as overtime, loadings and penalty rates, for particular employees.

Section 9A applies to employees under state industrial instruments made after 1 September 2005 and federal awards, federal certified agreements and Australian workplace agreements made, varied or approved after 1 September 2005. It does not apply to employees under State awards amended after 1 September 2005. The provision also clarifies that section 9A does not apply to employees under either State or federal certified agreements where the application to certify the agreement was made on or before 1 September 2005.

However, section 9A does not apply if the relevant award, agreement or instrument provides otherwise. For example, if the award, agreement or instrument specifies a different rate for an entitlement to the rate specified in section 9A, the rate in the award, agreement or instrument applies.

Section 9A(2) provides maximum ordinary working hours as follows:

(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.

Work outside these hours must be paid at the overtime rates specified in section 9A(3). These rates are:

(a) for shiftworkers – double time; and

(b) for other workers – time and a half.

Section 9A(4) provides that if an employee is paid at a higher rate than the minimum rate provided for in their award, agreement or instrument then the overtime rate must be worked out on the higher rate.

Section 9A(5) provides rest pauses for employees. The section provides that an employee is entitled to a rest pause of at least 10 minutes in each 4 hours of working time, where practicable.

Section 9A(6) provides that the rest pause is to be counted as part of the employee's working time. Where continuity of work is necessary, the rest pause must be taken when it does not interfere with the continuity of the work.

Section 9A(7) provides meal breaks for employees. The section provides that an employee is entitled to an unpaid meal break of at least 30 minutes

when required to work for more than five hours. The break is to be taken between the fourth and sixth hours of work.

Section 9A(8) provides that if an employee is required to work without a meal break of at least 30 minutes after 5 hours, then the employee is entitled to be paid double the rate they would have been entitled to for the 30 minutes of work.

Section 9A(9) provides rates for shift workers. 'Shift work' is defined in section 9A(12) as a system in which employees perform their ordinary hours of work in separate shifts. The rates are as follows:

(a) for ordinary time worked from Monday to and including Friday –

  (i) at least 12.5% more than the shift worker's ordinary rate if the shift worker works an afternoon shift (a shift finishing after 6 p.m. but at or before midnight if the majority of the ordinary hours worked are between those times); and

  (ii) at least 15% more than the shift worker's ordinary rate if the shift worker works a night shift (a shift finishing after midnight and at or before 8 a.m., or a shift where the majority of ordinary hours worked are between those times); and

(b) for ordinary time worked on Saturdays – at least 25% more than the shift worker's ordinary rate; and

(c) for ordinary time worked on Sundays – at least 50% more than the shift worker's ordinary rate.

Section 9A(10) provides rates for weekend work performed by employees who are not shift workers. The rates are as follows:

(a) for ordinary time worked on Saturdays – at least 25% more than the employee's ordinary rate;

(b) for ordinary time worked on Sundays – at least 50% more than the employee's ordinary rate.

Section 9A(11) provides the ordinary rate and overtime rate for casual employees, as follows:

(a) ordinary rate - at least 123% of the ordinary rate for a permanent employee for the work performed, worked out on an hourly basis.

(b) overtime rate – at least the overtime rate specified in subsection 9A(3), worked out on the rate for casual employees in subsection 9A(11)(a).

The rate in subsection 9A(11)(a) is to be used as the basis for calculating the other rates that might be applicable to an employee under section 9A. For example, if a casual employee's ordinary hours include working on a Saturday, the minimum applicable rate is:

(i) 123% of the ordinary hourly rate of a permanent employee; plus

(ii) 25% more than (i).

Section 9A(12) provides definitions for *afternoon shift*, *night shift, overtime* and *shift work.*

Insertion of new s 13A

Clause 8 inserts a new section 13A into the Act to provide a minimum annual leave loading for employees.

It applies to employees under state industrial instruments made after 1 September 2005 and federal awards, federal certified agreements and Australian workplace agreements made, varied or approved after 1 September 2005. It does not apply to employees under State awards amended after 1 September 2005. The provision also clarifies that section 13A does not apply to employees under either State or federal certified agreements where the application to certify the agreement was made on or before 1 September 2005.

Section 13A does not apply if the relevant award, agreement or instrument provides otherwise.

The annual leave loading provided by section 13A is at least 17.5% of the ordinary rate being paid to the employee immediately before the leave is taken. However, if the employee receives a bonus or similar payment in addition to their annual leave entitlement, and the bonus or similar payment is the same or more than the annual leave loading provided for by section 13A, the employee is not entitled to be paid the annual leave loading specified in section 13A. If the bonus or similar payment is less than the annual leave loading provided by section 13A then, the employee is entitled to also receive the difference between the bonus or similar payment and the annual leave loading specified in 13A.

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

Clause 9 inserts a new Division 3A into the Act to provide jury service leave for employees who are required to be absent from work to perform jury service.

Section 14A(1) provides that jury service leave applies to employees (other than casual employees) under state industrial instruments made after 1 September 2005 and federal awards, federal certified agreements and Australian workplace agreements made, varied or approved after 1 September 2005. It does not apply to employees under State awards amended after 1 September 2005. The provision also clarifies that section 14A does not apply to employees under either State or federal certified agreements if the application to certify the agreement was made on or before 1 September 2005.

Section 14A does not apply if the relevant award, agreement or instrument provides otherwise.

Section 14A(2) provides that if an employee is required to attend for jury service, then the employee is entitled to jury service leave and must tell the employer as soon as practicable, about the requirement to attend and the period for which they are required.

Section 14A(3) provides that an employee who is given a document relating to jury service must give the employer the document or a copy of the document. This document will generally be a juror statement, remittance advice or similar document provided to the employee by the court evidencing the person's attendance for jury service, the number of days the person attended and the amount received for the attendance.

Section 14A(4) provides that the employer must pay the employee the difference between the amount the employee is entitled to receive as remuneration and allowances (other than meal allowances) under the *Jury Act 1995* and the ordinary rate the employee would have been paid if the employee had not taken jury service leave.

Section 14A(5) provides that the employer must pay the amount payable under section 14A(4) on or before the first pay day practicable after the employee gives the employer the document or copy under 14A(3).

Section 14A(6) provides that if an employee is not required to serve on a jury after attending for jury service and the employee would ordinarily be working on that day then the employee must present for work at the earliest reasonable opportunity, if practicable.

Section 14A(7) defines a ***document relating to jury service*** as meaning a document about the employee's attendance 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*** as not including a casual employee; ***jury service leave*** as the leave taken by an employee required to attend for jury service; and ***required to attend for***

jury service as meaning that an employee is given a summons to attend for jury service under section 28 of the *Jury Act 1995* or is instructed to attend for jury service under section 38 of the *Jury Act 1995*.

Amendment of s 15 (Public holidays)

Clause 10 expands the entitlement to public holidays in section 15 of the Act to employees covered by federal awards and agreements made, varied or approved after 1 September 2005. The section does not apply to employees under federal certified agreements if the application to certify the agreement was made on or before 1 September 2005.

Section 15(4), (5) and (10) are amended to refer to a relevant instrument instead of an industrial instrument.

Amendment of s69 (Continuity of service - transfer of calling)

Clause 11 amends section 69 by inserting subsection 4A which clarifies that a transferred employee is not entitled to a redundancy payment, under the new Division 1AA in Part 4 of Chapter 3 of the Act, in relation to the transfer, unless the instrument in section 85A provides otherwise.

Insertion of new ch 2, pt 7

Clause 12 inserts a new part 7 into Chapter 2 of the Act to provide for minimum periods of notice to be given by employees to employers.

Section 71A(1) provides that the section applies to employees under state industrial instruments made after 1 September 2005 and federal awards, federal certified agreements and Australian workplace agreements made, varied or approved after 1 September 2005. It does not apply to employees under State awards amended after 1 September 2005.The provision also clarifies that section 71A does not apply to employees under either State or federal certified agreements where the application to certify the agreement was made on or before 1 September 2005.

Section 71A does not apply if the relevant award, agreement or instrument provides otherwise.

Section 71A(2) provides that an employee must give an employer at least 1 week's notice.

Section 71A(3) provides that if an employee does not give the notice required in section 71A(2), the employer may deduct, from the employees

wages, the amount that would have been payable to the employee at the ordinary rate for the period for which notice was not given.

Amendment of s 84 (Minimum period of notice required)

Clause 13 amends the heading to section 84 of the Act, which currently reads ***Minimum period of notice required***. As amended, the heading will read**, *Minimum period of notice required from employers.***

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

Clause 14 inserts a new Division 1AA into Chapter 3 Part 4 of the Act to provide redundancy payments for employees.

Section 85A(1) provides that redundancy payments must be paid to employees under state industrial instruments made after 1 September 2005 and federal awards, federal certified agreements and Australian workplace agreements made, varied or approved after 1 September 2005. It does not apply to employees under State awards amended after 1 September 2005. The provision also clarifies that section 85A does not apply to employees under either State or federal certified agreements where the application to certify the agreement was made on or before 1 September 2005.

Section 85A does not apply if the relevant award, agreement or instrument provides otherwise.

Section 85A(2) exempts employers from paying redundancy payments if the employer's employees work a total of less than 550 hours a week (Monday to Sunday) excluding overtime, averaged over the previous 12 months.

Section 85A(3) defines an ***employer,*** which is a body corporate, as including each body corporate that is related to the employer (a ***related body corporate***) because of section 50 of the Corporations Act.

Section 85B provides that if an employee is made redundant the employee is entitled to the minimum redundancy payment set out in Schedule 3.

Section 85C provides that an employer may apply to the commission for relief from the obligation to make a redundancy payment to an employee if the employer has contributed to a fund and the contributions will result in the employee receiving a benefit if the employee is made redundant. Section 85C also provides that an employer may apply to the commission for relief from making a redundancy payment if the employer is unable to make such a payment.

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

Clause 15 amends section 160 of the Act to add the entitlement to a redundancy payment to the conditions that must be met for a certified agreement to pass the no-disadvantage test.

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

Clause 16 amends section 290 of the Act to add the entitlement to a redundancy payment to the conditions that must be met for a QWA to pass the no-disadvantage test.

Amendment of s 273 (Commission's functions)

Clause 17 amends section 273 (1)(j)(i) of the Act to give the commission the power to hear matters arising under the new section 85C.

Insertion of new sch 3

Clause 18 inserts a new Schedule 3 to the Act which specifies the minimum redundancy payment for employees covered by the new Division 1AA.

Amendment of sch 5 (Dictionary)

Clause 19 amends the Schedule 5 Dictionary definitions, as follows.

Clause 19(1) deletes the definition of ***Commonwealth award***, which is no longer referred to in the Act. It also deletes the definition of ***ordinary rate***, which is replaced by a new definition.

Clause 19(2) inserts the following new definitions into the Act:

(a) f***ederal agreement*** – means an Australian workplace agreement or a certified agreement within the meaning of the Commonwealth Act;

(b) f***ederal award*** – means an award within the meaning of the Commonwealth Act;

(c) o***rdinary rate*** – for an employee under an industrial instrument, a federal award or federal agreement, means the rate the award, agreement or instrument states is payable for ordinary time;

(d) r***edundancy payment*** – means the redundancy payment in section 85B;

(e) w***eeks pay*** – means the ordinary rate of pay 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 any other ancillary payments.

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