

Public Sector Industrial and Employee Relations

Level 4 75 William Street Brisbane QLD 4000

Telephone 32251422 **Facsimile** 32295943

Title Amendments to the *Industrial Relations Act 1999*

Date 10 January 2002 **Circular No.** 1/02

Legislative Change

The *Industrial Relations Amendment Act 2001* was assented to on 3 December 2001. Major areas covered by the new legislation include pay equity for women workers and greater protection and security for long-term casual employees. The new act amends the *Industrial Relations Act 1999* to:

- introduce a work and family package to give casual employees access to unpaid parental leave, carer's leave and bereavement leave after 1 years service (currently, casuals have access to unpaid maternity leave after 2 years service) and to protect all casuals from dismissal on discriminatory grounds or because of their family responsibilities;
- introduce the recommendations of the Pay Equity Inquiry conducted by the Queensland Industrial Relations Commission (QIRC);
- clarify the intention of the transmission of business provisions in relation to unfair dismissal applications;
- correct potential anomalies in the operation of the Act relating to annual leave and the power to declare persons employees;
- introduce provisions relating to the exercise by the QIRC of its arbitration powers in relation to certified agreements;
- specify the circumstances in which legal representation will be permitted before the QIRC; and
- clarify the intention of the Act in relation to the awarding of costs.

The new provisions commenced in the *Industrial Relations Act 1999* on 3 December 2001, except for the changes to section 11 (taken to have commenced on 1 July 1999) and sections 126, 156, 157, 193, 203, 366, 367 and 370 (which commence on 1 May 2002).

Amendment of s 319 (Representation of parties)

The legislation now specifies with greater particularity the circumstances in which legal representation will be permitted in proceedings before the QIRC. Legal representation will be permitted:

- (a) as a matter of right in proceedings under chapter 4 (freedom of association), as is currently the case, except in relation to the union encouragement provisions in section 110;
- (b) by consent of the parties (as is currently the case); or
- (c) by leave of the QIRC in proceedings relating to -
 - dismissals under chapter 3;
 - union encouragement provisions under section 110;
 - the power to declare persons to be employees and employers under section 275;
 - the power to amend or void contracts under section 276;
 - orders about representation rights of employee organisations under section 279;
 - the registration of industrial organisations under chapter 12, part 2; and
 - the deregistration of industrial organisations under chapter 12, part 16.

As at present, in deciding whether to grant leave, the QIRC must be satisfied that there are special circumstances that make legal representation desirable having regard to the matter or that the party or person can be adequately represented only by a lawyer. Legal representation will not be permitted, even with the parties' consent, in proceedings relating to the recovery of wages (as is currently the case).

Title Amendments to the *Industrial Relations Act 1999*

Date 10 January 2002

Circular No. 1/02



Amendment of s 335 (Costs)

The legislation now provides that costs include witness expenses and other expenses incurred by a party to an application. It also clarifies the intention of the legislation that costs include not only the costs of engaging a lawyer but also the costs of engaging a person who is not a lawyer.

Guidelines for Legal Representation in Government Agencies

Agencies are reminded that a new Government requirement has been promulgated that agencies consult with the Department of Industrial Relations prior to engaging the services of external lawyers, consultants or Crown Law for representation in the Industrial Court of Queensland, the Queensland Industrial Relations Commission (QIRC) or the Australian Industrial Relations Commission (AIRC).

Agencies are not required to consult with the Department of Industrial Relations if they merely wish to obtain advice from external lawyers, consultants or Crown Law. Agencies are required, in these circumstances, to apply their own discretion and judgment. However, if such advice leads to the possibility of engaging a lawyer or outside consultant to represent the agency in proceedings in the Industrial Court, QIRC or AIRC, then the Department of Industrial Relations is to be consulted.

Agencies must, however, consult with the Department of Industrial Relations prior to initiating an appeal or application for prerogative relief arising out of a decision of the Industrial Court, QIRC or AIRC. Agencies must also consult with the Department of Industrial Relations prior to initiating proceedings for the recovery of costs in the QIRC, Industrial Court or AIRC.

Further Enquiries

Please ensure when distributing this information within your agency that you nominate your own contact officer to respond to enquiries from staff within your agency.

DENNIS HYDE

A/General Manager

The Division of Public Sector Industrial and Employee Relations provides policy advice and consultancy and training services to Queensland Government departments and agencies. It is part of the Department of Industrial Relations. Enquiries about this circular should be directed to Rod Andersen on telephone 07 322 51422.

- General enquiries about public sector industrial and employee relations matters should be directed to telephone 07 32252342.
- Written enquiries should be addressed to:
 - The General Manager
 - Public Sector Industrial and Employee Relations
 - Department of Industrial Relations
 - GPO Box 69
 - BRISBANE Q 4001

Copies of all current circulars issued by Public Sector Industrial and Employee Relations are available from the department's web site at www.psier.qld.gov.au