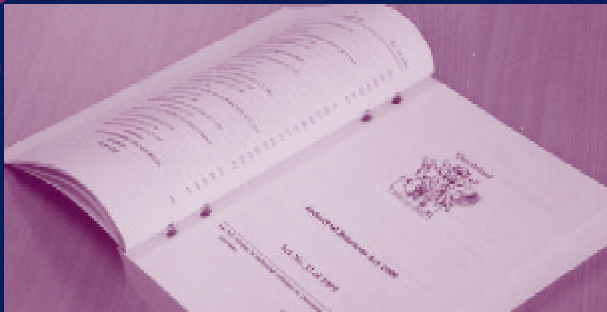


industrial relations act 1999

PUBLIC SECTOR INDUSTRIAL RELATIONS

effective 1 July 1999



foreword

In August 1998 the Government commissioned a review of Queensland's industrial relations legislation. The review, undertaken by the Industrial Relations Taskforce, made 166 recommendations to the Minister for Employment, Training and Industrial Relations, the Hon Paul Braddy MLA. Following further consultation and Government consideration, 150 of the recommendations were adopted in the *Industrial Relations Act 1999* which commenced on 1 July 1999.

Recommendation 133 of the Taskforce Report specifically recognised the desirability where possible of public sector employment conditions being determined in the industrial relations jurisdiction. Prompted by the recommendation and the need to revise government employment policies, the Department of Employment, Training and Industrial Relations and the Office of the Public Service Commissioner undertook a comprehensive review of directives and existing Public Service Management and Employment Regulations and administrative instructions. The review has resulted in the issue of new and revised directives that also commenced on 1 July 1999.

The commencement of the new Act and the directives means public sector managers and human resources and industrial relations staff working with the legislation and directives need to develop a sound understanding of these documents. This booklet aims to assist officers with this task. The booklet highlights the key features of the Act and in particular those features of most relevance to public sector agencies.

Jim McGowan
General Manager
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development of the act

The *Industrial Relations Act 1999* was developed as a result of a review commissioned by the Government in August 1998, into Queensland's industrial relations legislation, to evaluate the advantages and disadvantages of existing legislation and consider a way forward for Queensland.

It was the first review of Queensland industrial relations legislation since the Hanger Report in 1988 which ushered in the *Industrial Relations Act 1990*. Queensland industrial relations legislation underwent further change in 1994 and again in 1997 – changes which followed and mirrored federal legislative changes.

An independent Taskforce was established to undertake the review, comprising representatives of employers (3), unions (3), the Department of Employment, Training and Industrial Relations (1) and other experts (2). Griffith University Pro Vice-Chancellor (Business, Equity), Professor Margaret Gardner, who is a distinguished independent expert on industrial relations, chaired the Taskforce.

The terms of reference required the Taskforce to recommend new legislation that improves the strength of the economy, provides jobs growth and job security, is fair and equitable and is accessible and responsive to Queensland's needs.

A four-part consultation process occurred including an Issues Paper, a call for written submissions, a series of regional consultation meetings and issues workshops.

Some 2,500 Issues Papers were distributed to employer associations, unions, companies, government agencies, parliamentarians, other organisations and individuals. Regional consultations attracted more than 340 people and gave the Taskforce an indication of the range of views and issues arising in different employment sectors and areas of the State. More than 200 submissions were received. Individual employees and employers, particularly small business, provided direct input in a number of these submissions.

Submissions, other investigations and the lengthy deliberations of the Taskforce focused on providing a framework for an industrial relations system that is coherent, balanced and workable.

In December 1998 the Taskforce presented 166 recommendations in its Report to the Minister for Employment, Training and Industrial Relations. Of these recommendations 84% were unanimous – an unusual amount of agreement in an area such as industrial relations. The Report was released for public comment and a further 42 submissions were received and taken into account.

The Taskforce reported that industrial arrangements were needed that took into account the diversity of employment circumstances both now and in the future.

The Taskforce proposed single new legislation to replace both the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997*. The findings and recommendations of the Taskforce set the foundation for the *Industrial Relations Act 1999*.

objects of the act (s.3)

The principal object of the Act is to provide a framework for industrial relations that supports social justice and economic prosperity by:

- (a) providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and
- (b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and
- (c) preventing and eliminating discrimination in employment, and ensuring equal remuneration for men and women; and
- (d) helping balance work and family life; and
- (e) promoting the effective and efficient operation of enterprises and industries; and
- (f) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
- (g) promoting participation in industrial relations by employees and employers; and
- (h) encouraging responsible representation of employees and employers by democratically run organisations and associations; and
- (i) promoting and facilitating the regulation of employment by awards and agreements; and
- (j) meeting the needs of emerging labour markets and work patterns; and
- (k) promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and
- (l) providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes; and
- (m) assisting in giving effect to Australia's international obligations in relation to labour standards.

who is an employee? (s.5)

The definition of an “employee” has been broadened to include pieceworkers, outworkers and “declared employees”. People defined as employees now include:

- ❖ a person employed in a calling (eg a trade, occupation, etc) who works for wages;
- ❖ pieceworkers (ie people whose pay is based on the actual number of items, articles, products etc they produce);
- ❖ a person employed in a calling even though:
 - the person is working under a contract for labour only, or substantially for labour only; or
 - the person is a lessee of tools or other implements of production, or a vehicle used to deliver goods; or
 - the person owns, wholly or partly, a vehicle used to transport goods or passengers.
- ❖ a person who is a member of a class of contractors which has been declared, by the Commission Full Bench, to be employees (see s.275);
- ❖ outworkers (ie people who undertake work at a private residence or non-business premises on behalf of someone else);
- ❖ apprentices or trainees;
- ❖ one of four or more persons who are, or claim to be, partners working in association in a calling or business; or
- ❖ a former employee – for the purposes of proceedings for payment or recovery of amounts.

who is an employer? (s.6)

The definition of an “employer” has been expanded to cover a group training scheme or labour hire agency that arranges for an employee (who is a party to a contract of service with the scheme or agency) to perform work for someone else. Other people defined as employers include:

- ❖ a person employing, or who usually employs, one or more employees for the person or someone else;
- ❖ the chief executive of a government department;
- ❖ a person who is managing director, manager, secretary or member of the managing body (however called) of a corporation, partnership, firm or association of persons;
- ❖ one of four or more people who are or claim to be partners working in association in a calling or a business; or
- ❖ a former employer - for the purposes of proceedings for payment or recovery of amounts.

industrial instruments (schedule 5)

Reference to an industrial instrument includes awards, certified agreements, Queensland Workplace Agreements, industrial agreements, Enterprise Flexibility Agreements and orders setting wages and conditions for apprentices and trainees.

The definition of industrial instruments for public service arrangements may be different – see s.687(1)(b).

general conditions of employment (chapter 2 ss.9 – 71)

General employment conditions included in the Act are more comprehensive than was previously the case, particularly under the Workplace Relations Act. The provision of general employment conditions in the legislation establishes a fair set of employment entitlements for all employees which reflect community standards. This means that non-award workers who are often engaged in low-paid, precarious and non-standard work will enjoy employment entitlements and protections.

It is important for agencies to read Chapter 2 employment conditions with s.686(2) Application of Act to State, which removes public service employees from certain aspects of these employment conditions. Section 686(2) impacts on aspects of working time, annual leave, public holidays and long service leave provisions. Where appropriate, provisions from relevant awards, guidelines, etc should be applied.

Unless otherwise stated, the following entitlements do not apply to casuals and pieceworkers.

working time (s.9)

Working time provisions apply only to employees engaged under an industrial instrument and specify:

- ❖ maximum hours of work (6 days in 7, 40 hours over 6 days, 8 hours a day);
- ❖ overtime rates; and
- ❖ rest pauses.

Section 9(7) states the Act provisions do not apply if an industrial instrument provides otherwise.

The payment rate for overtime (s.9(3)) does not apply to public service employees (see s.686(2) and Directive 6/99).

sick leave (s.10)

Sick leave entitlements under the Act provide for 8 days a year or 1 day for each 6 weeks worked.

The payment of sick leave is subject to the employee promptly advising their employer of their absence and its expected duration.

In cases where an absence is for more than two days, the employee must provide their employer with a doctor's certificate or other acceptable evidence of illness.

Directive 10/99 sets out the sick leave entitlement for public service officers and public sector employees.

annual leave (ss.11 – 14)

Annual leave entitlements under the Act provide for:

- ❖ at least four weeks per year for employees; or
- ❖ at least five weeks per year for shift workers where shifts are worked 24 hours a day, 7 days a week and the employee works a rotating roster that includes each of the shifts.

Section 686(2) excludes public service employees from s.13(2)(b) which requires an employer to pay an employee annual leave at the rate being paid immediately before the leave is taken (see Directive 9/99)

Annual leave is exclusive of public holidays.

The 17.5 per cent leave loading only applies to employees covered by awards or agreements.

On termination of employment, all accrued leave not taken and pro rata entitlements are to be paid at the employee's current ordinary rate.

public holidays (s.15)

Public holidays provisions specify the entitlement and payment when worked and when not worked.

Public service employees are excluded from s.15(4) which specifies the rate of pay for public holidays (see Directive 18/99).

Schedule 5 (definitions) sets out the public holidays.

Section 15(8) is a new provision in the Act and requires an employer and employee to agree on an ordinary working day that is to be treated as a show holiday, in those districts which do not appoint show holidays.

By mutual consent an employee may agree to work on a public holiday and receive their ordinary rates of pay, provided another day on full pay is substituted for the public holiday.

family leave (ss.16 – 41)

Family leave includes parental, adoption, maternity, carer's and bereavement leave.

A 'spouse' of an employee includes a former spouse and a defacto spouse, including a spouse of the same sex as the employee.

Under the Act the 'immediate family' of an employee includes the employee's spouse, a child, ex-nuptial child, stepchild, ex-foster child, parent, grandparent, grandchild or sibling of the employee or employee's spouse.

For the purpose of special responsibility leave, the 'immediate family' for public sector employees is set out in clause 3.1(c)(iii) of the Family Leave Award – Queensland Public Sector.

parental leave (ss.16 – 38)

Employees and their spouse who have worked continuously for their employer for at least 12 months can take up to a combined maximum of 52 weeks unpaid leave for the purposes of having, caring for or adopting a child.

With the exception of one week on the birth of the child and three weeks on adopting a child under five years of age, parental leave is not to be taken simultaneously.

An employee who is seeking to adopt a child is also entitled to a maximum of two days unpaid leave to attend compulsory interviews or examinations as part of the adoption procedure.

An employee can take accrued annual leave or long service leave instead of, or in conjunction with, parental leave. The 52 week period cannot, however, be exceeded.

Parental leave does not break the employee's continuity of service but is not taken into account when determining a period of service other than an entitlement to further parental leave.

Employees have the right to return to their original position at the end of the parental leave.

On becoming aware that an employee or their spouse is pregnant or adopting a child, the employer must advise the employee of their entitlements and obligations in relation to parental leave.

Long term casuals who have worked for an employer on a regular or a systematic basis for several periods of employment over two years or more are entitled to maternity leave.

Other casuals, pieceworkers and seasonal employees are not eligible for parental leave.

bereavement leave (ss.40 – 41)

An employee can take at least two days paid bereavement leave on the death of a member of their immediate family or household in Australia. Proof of the death is to be provided to the employer.

Pieceworkers and casuals are not entitled to paid bereavement leave.

Directive 13/99 includes a definition of 'immediate family' for public service officers, general employees and temporary employees (excluding casual employees).

long service leave (ss.42 – 57)

Employees are entitled to 13 weeks after 15 years service and may then access pro-rata leave after a further five years (ie 20 years employment).

Pro-rata long service leave is available after 10 years in certain circumstances (s.43(3)).

Section 58(2) requires a full bench to review the Act's long service leave entitlement before 30 June 2000.

Long service leave is exclusive of public holidays that fall during the period of leave.

Casual employees are entitled to long service leave provided they have been employed for a period of 15 years by an employer and there has not been a break of more than three months between their contracts with that employer (ss.47 – 49).

See Directive 11/99 for public sector entitlements.

equal remuneration for work of equal or comparable value (ss.59 – 66)

The Act has broadened the equal remuneration provision of the previous Act to include equal remuneration for men and women for work of equal or **comparable** value. DETIR is to review the NSW pay equity decision for potential implications for Queensland.

minimum wages (s.287)

The Commission can make orders setting minimum wages for employees not covered by an award or agreement. Minimum wages at present only apply to employees covered by an award.

continuity of service and employment (ss.67 – 71)

For the purpose of calculating an employee's entitlements, an employee's continuity of service is not broken when:

- ❖ a business changes hands, even if the employee was dismissed within one month prior to transfer and re-employed by the new employer within three months of the dismissal;
- ❖ a current employee commences an apprenticeship with their employer;
- ❖ an employer continues to employ an apprentice or trainee after, or re-employs them within three months of completing their apprenticeship or traineeship;
- ❖ an employee's services are temporarily lent or hired out to another employer;
- ❖ an employee is dismissed due to illness or injury - provided that the employee is re-employed by the employer and has not been employed during the intervening period;
- ❖ an employee is absent on paid or approved unpaid leave, including absences due to illness or injury;
- ❖ an employee is dismissed and re-employed within three months by the employer;

- ❖ an employee is stood down or dismissed due to slackness in business or trade, or as a direct or indirect result of an industrial dispute and is re-employed;
- ❖ an employee is stood down or dismissed to avoid an employer's legislative obligations;
- ❖ an employee works with a corporation and any of its subsidiaries; or
- ❖ an employee works for an employer who becomes a partner in a business or withdraws from a business partnership.

It should be noted that periods of paid leave and interruptions etc due to slackness of trade count as service.

An employee can only claim entitlements once for a period of service.

dismissals (chapter 3 ss.72 – 98)

The Act now includes an exclusion for a three (3) month probationary period (s.72). An employee who is dismissed during this period is excluded from the dismissal provisions of the Act. This exclusion ceases to apply if the employee is dismissed for an invalid reason (eg temporary absence from work, membership or non-membership of an employee organisation).

The probationary period may be shortened by written agreement. There may also be written agreement to have no probationary period. Alternatively, the probationary period may be longer than three months, however this longer period must be pre-determined in a written agreement and must be reasonable having regard to the nature and circumstances of the employment.

In general, government employees have been subject to a 12 month discretionary probation period. It is arguable that some positions do not validly require such a lengthy period of probation e.g. unlikely that a cleaner or security guard should be subject to such a lengthy period of probation. Alternatively, there are other positions for which a 12 month probationary period is reasonable e.g. in professional areas such as social work or teaching.

It is important that agencies/authorities review their current arrangements and look to revise those positions that may presently have unreasonable periods of probation. Where a longer period is required, this must be a pre-determined and written arrangement.

The other forms of exclusions include (s.72):

- ❖ short term casual employees;
- ❖ specific period or task employees (unless the main purpose for engaging the employee in that way is to avoid the employer's obligations);
- ❖ employees not under an industrial instrument and whose wages were more than \$68,000 at the time of the dismissal;
- ❖ apprentices, trainees or employees in a labour market program; and
- ❖ employees covered by federal awards or federally registered agreements.

A dismissal is unfair if it is harsh, unjust or unreasonable or if it is for an invalid reason (s.73). Invalid reasons include:

- ❖ temporary absence from work due to illness or injury;
- ❖ seeking office or acting/having acted as an employee representative;
- ❖ membership of or participation in an employee organisation;
- ❖ non-membership of an employee organisation; and
- ❖ discrimination (discrimination is defined in Schedule 5 and is broader than the previous provision).

A dismissal may be fair if it is a result of the operational requirements of the business or the employee's conduct, capacity or performance. Procedural fairness requirements (such as warnings, opportunity to respond) are included in the Act's dismissal provisions. See s.77.

Section 77 states that when determining whether a dismissal is unfair, the Commission must consider:

- ❖ whether the employee was notified of the reason for dismissal;
- ❖ whether the dismissal is related to the operational requirements of the business; and
- ❖ whether the dismissal is related to the employee's conduct, capacity or performance, and if so, whether the employee had been warned about the conduct, capacity of performance and whether the employee was given an opportunity to respond to the allegation/s.

It is therefore important that agencies/authorities continue to use internal procedures that minimise their risk in unfair dismissals.

An application for unfair dismissal is to be filed within 21 days after the dismissal takes effect; an extension of time provision is included (s.74).

As a new feature the Act empowers the Registrar to reject applications from an excluded class, by written notice. The applicant may, within 21 days of receipt of the Registrar's notice, inform the Registrar in writing that the applicant wishes the application to proceed (s.74(5) & (6)).

A further new feature of the Act, is a stated requirement that the Commission and Registrar must deal with an application as soon as possible (s.74(8)).

A conciliation conference will be held to attempt settlement prior to a formal hearing (s.75).

Should conciliation be unsuccessful, the Commission must issue a certificate to that effect and also inform the parties of the merits of the application and possible consequences of further proceedings e.g. award of costs against a party (s.75(3)). The Commission may also recommend an alternate resolution process, or the discontinuation of the matter (s.75(3)).

An application lapses if the applicant has not, within six (6) months after the conciliation conference taken any further action (s.75(4)).

Sections 78 and 79 make it clear that the remedies for an unfair dismissal are primarily, reinstatement, then re-employment and then compensation.

If the dismissal was for an invalid reason the Commission may award an additional amount of up to \$10,125 (s.80).

freedom of association (chapter 4 ss.101 – 122)

The freedom of association provisions are retained in the Act in a simplified form.

All persons may make their own choice whether to join or not join an industrial organisation or association, free from discrimination or coercion (s.101).

The Act permits clauses in awards and agreements that encourage, but do not coerce, membership of industrial organisation or association (s.110).

right of entry (ss.372 - 373)

An authorised union official may enter a workplace during business hours (where a calling for which the union is registered is being carried out) (s.372). The right of entry is only for the purposes of inspecting time and wages records and discussing matters under the Act (s.373).

The Act allows the official to have reasonable access to employees who are members or are eligible to be members of the union and the employer during working time or during non-working time if the matter pertains to provisions of the Act. Discussion of other matters with a member or an employee eligible to be a member of the union are to be in non-working time (s.373).

awards (chapter 5 ss.123 – 140)

As a significant proportion of Queensland employers and employees continue to rely on the award system to set their wages and conditions of employment, the Act provides for a strong and relevant award system. In order to make certain that awards are relevant and up to date, the Commission is required under s.130 to ensure that awards:

- ❖ do not contain discriminatory provisions;
- ❖ are in plain English and easy to understand;
- ❖ do not contain obsolete provisions;
- ❖ provide secure, relevant and consistent wages and conditions;
- ❖ provide fair living standards;
- ❖ are suited to efficient performance of work;
- ❖ take account of economic issues (eg productivity, inflation); and
- ❖ contain dispute resolution procedures.

Where possible, awards are to also contain three further provisions, which are:

- ❖ facilitative provisions for the making of agreements;
- ❖ provisions enabling the employment of regular part-time employees; and
- ❖ provisions that provide support for training arrangements.

Section 129 enables the Commission to include in an award, provisions that are based on a certified agreement, if the Commission is satisfied that the provisions are:

- ❖ consistent with full bench wages principles; and
- ❖ not contrary to the public interest.

Section 124 states that if an award applies only to a stated employer or stated establishment, the employer or any successor employer is bound by the award.

certified agreements (chapter 6 ss.141 – 186)

An outline of Queensland Workplace Agreements is not included in this summary as s.192(3) of the Act excludes such agreements from being made or entered into by employees of:

- ❖ government departments and Public Service Offices;
- ❖ an agency, authority, Commission, corporation, instrumentality, office or other entity established under an act or under state authorisation for a public or state purpose; and
- ❖ courts and other agencies specifically listed in the Act.

These exclusions are the same as the former Act.

In structure the certified agreements area in the Act is similar to the Workplace Relations Act, in that provisions dealing with the mechanics of agreement making, must also be read in conjunction with the requirements for the Queensland Industrial Relations Commission certification hearing. Agencies/ authorities need to be aware of both areas to ensure that all the statutory requirements have been performed. Rather than one No Disadvantage Test provision, as in the former Act, there are now No Disadvantage Test provisions for certified agreements and for Queensland Workplace Agreements.

A certified agreement may be made between an employer and a group of employees, being either all employees of the employer or a category of the employees of the employer (s.141).

The certified agreement covers all employees in the group whether they were employed before or after the commencement of the agreement (s.141(2)).

Government policy requires that public sector agreements be made with the relevant employee organisations and not directly with employees. In accordance with the statutory provisions, the unions must be entitled to represent the employees.

The Act provides for four types of agreements:

- ❖ single employer;
- ❖ multi-employer;
- ❖ project agreements;
- ❖ new business agreements.

multi-employer agreements

The Act removes former restrictions on the making of multiple business agreements. The Workplace Relations Act required that such agreements be certified by a full bench and be in the public interest.

The Act allows for multi-employer agreements to be made. A multi-employer means two or more associated employers, whether or not they are related corporations, who are engaged in a joint venture or common enterprise, or undertake similar work.

In the case of a proposed multi-employer agreement each person or party who intends to bargain must give written notice of their intention to the proposer within 21 days of receiving advice from the proposer (s.143(5) & (6)). This allows all parties who wish to be involved, to be genuinely involved in the negotiations from the outset. It also clarifies the negotiation process by indicating the scope of the multi-employer agreement being proposed.

Some people could consider that there is a fifth type of agreement available under s.169(2)(b). In this section a “new employer” who gains the approval of its employees and who gains the approval of the other parties to the agreement, may become a party to an existing multi-employer agreement.

project agreements

A project agreement means an agreement for a project or a proposed project.

A project agreement may operate for the life of the project (s.156(1)(e)(i)) and operates to the exclusion of all other agreements during its period of operation (s.165(2)).

Where a project agreement is proposed to be made, all relevant employee organisations must be given the opportunity to participate in negotiations for the agreement and become a party if they elect to do so (s.143(2) and s.156(1)(i)). Negotiations with the employer will take place through a single bargaining unit of all those organisations who indicated they wished to participate in bargaining (s.145).

Schedule 5 of the Act defines “project agreement”, “construction” and “new business”.

agreement making

As a first step, the initiating party (the proposer) gives all other proposed parties at least 14 days written notice of intention to negotiate (s.143(3)). For a project agreement, the advice is to be given to all relevant employee organisations and the Commission (s.143(2)(b)).

For multi-employer agreements the other employers and unions are to send back a notice to the proposer that they want to be a party to the agreement (s.143(5) & (6)). For project agreements the other parties are to notify the proposer and the Commission that they want to be a party to the agreement (s.143(4)). The 21 days in which to send this notice starts from the advice receipt date, not the date the advice is sent out by the proposer.

For project agreements and multi-employer agreements, an agreement cannot be made (ie go to ballot) with this 21 days unless all the notices have come back in (s.143(7)).

A single bargaining unit is used for project agreements and is defined in s.145.

The employer must take reasonable steps to ensure that employees are:

- ❖ given access to the proposed agreement at least 14 days before the employees are asked to approve it; and
- ❖ ensure that the terms and the effect of the terms are explained to every relevant employee, before an approval is given (s.144(2)).

good faith negotiations (s.146)

The Act requires the parties to negotiate in good faith. Section 146 provides examples of good faith in negotiating such as agreeing to meet at reasonable times and disclosing relevant information for the negotiation.

peace obligation period (s.147)

The peace obligation period is the period of 21 days after the proposer advises other proposed parties of the intention to begin negotiations. The peace obligation period ends no earlier than 7 days after the nominal expiry date of an existing certified agreement (s.147).

After the end of the peace obligation period, the Commission may assist the parties if:

- ❖ one of the negotiating parties declares there has been a break down in negotiations and asks for assistance; or
- ❖ the Commission becomes aware damaging or dangerous industrial action is being taken (s.148).

The Commission has the conciliation powers it would have under s.230. The Commission may make orders e.g. to promote the efficient conduct of negotiations (s.148(3) & (4)).

The Commission is also able to arbitrate an agreement. Conciliation must be attempted before accessing this avenue. Section 149 details this arbitration function.

Arbitration may occur if:

- ❖ the Commission considers industrial action has been protracted or is damaging or dangerous to the economy, community, a single enterprise or employees;
- ❖ the Commission considers that further conciliation is unlikely to be successful within a reasonable time; or
- ❖ all negotiating parties ask for it (s.149(1)).

To determine the matter by arbitration, the Commission:

- ❖ has the powers of s.230 (Action on industrial dispute) as if it applied to negotiations for a certified agreement; and
- ❖ may give directions or orders of an interlocutory nature; or
- ❖ may order that s.174 (Protected industrial action) does not apply from the time of making the order until the Commission determines the matter by arbitration (s.149(2)).

The full bench may establish principles concerning arbitration of certified agreements (s.149(4)). Once these principles are established the Commission must exercise its power to arbitrate in a manner that is consistent with the principles (s.149(5)).

file within 21 days (s.153)

Under the Workplace Relations Act the certification application had to be filed within 21 days after the agreement was “approved” (ie ballot date).

Section 153 uses the start date for the 21 days as “the day on which the agreement is signed by or for all the parties”. Since this section refers to “all the parties” this may effectively mean the day that the last party signs the agreement.

The time taken to obtain the signatures of the other industrial parties on the agreement should not be underestimated.

notice of hearing (s.154)

Under s.154 the Registrar must place a notice in the registry at least seven (7) days before the date of the certification hearing, detailing the names of the parties to the agreement, the relevant awards and the hearing date.

notification of relevant employee organisations (s.155)

Section 155 requires the Commission to notify all relevant employee organisations that an application has been made. This must occur “as soon as practicable after the application is made”.

effect

The agreement starts operating from the day it is certified (s.164).

Section 165 provides that a certified agreement, while operating, prevails over another award, industrial agreement or order made under s.137.

There is no longer any provision like the former section 30(1)(b) that stated that a certified agreement had no effect to the extent of any inconsistency with another agreement certified before it, whose expiry date has not passed.

Section 156 states that in certifying an agreement, the Commission must be satisfied that:

- ❖ the agreement was negotiated in accordance with the Act (ie the parties were notified in writing, employees had access to the agreement 14 days before they were asked to approve it);
- ❖ the agreement was approved by a valid majority of employees; and
- ❖ it passes the no disadvantage test.

no disadvantage test (s.160)

The no disadvantage test is not the global “considered as a whole” test of the Workplace Relations Act. The no disadvantage test in the Act is essentially the test that applied in the *Industrial Relations Act 1990*.

Section 160 states that an agreement disadvantages an employee if it results in a reduction in the employees’ entitlements or protections under an award, industrial agreement, order for apprentices or trainees or the general conditions of employment in the Act.

Section 160(4) does enable the Commission to certify an agreement that results in a reduction of employees’ entitlements and protections, when the Commission considers as a whole that the reduction is not against the public interest. The example provided in the Act is an agreement made as part of a strategy to deal with a short-term crisis.

successor or employers bound (s.167)

Section 167 establishes that a successor to the whole or part of a business becomes a party to any certified agreement operating in that business or part of a business. The previous employer stops being bound.

It is appropriate that parties ensure that any new agreement clearly specifies its relationship with any previous agreement/s. e.g. This agreement replaces CAxxx/97, or This agreement is to be read with CAxxx/97.

extending an agreement (s.168)

On or before its nominal expiry date the employer, or the employer and the union/s who are party to the agreement may apply to the Commission to have the agreement extended (s.168(1)).

Any extension cannot exceed the three year limitation and must have the approval of the valid majority of relevant employees who are employed at the time (s.168).

amending an agreement (ss.169 - 171)

The employer, or the employer and the union/s who are party to the agreement may apply to the Commission to amend an agreement. The amendment must have the approval of a valid majority of relevant employees employed at the time (s.169).

A multi-employer agreement may be amended to add a new employer. Such amendments require the approval of the Commission and a valid majority of the relevant employees employed by the new employer and the other parties to the agreement (s.169(3)).

terminating an agreement (ss.172 - 173)

On or before an agreement’s nominal expiry date:

- ❖ the employer, or the employer and the union/unions who are party to the agreement may apply to the Commission to terminate the agreement. The proposal to terminate the agreement must have the approval of a valid majority of relevant employees employed at the time (s.172).

After its nominal expiry date:

- ❖ the employer, a valid majority of relevant employees, or a union who is a party to the agreement and has at least one member who is a relevant employee may apply to the Commission to terminate the agreement (s.173).

There are two instances where the Commission must approve the termination of an agreement.

- ❖ In the case of an agreement that provides that it may be terminated if certain conditions are met, the Commission must terminate that agreement if it is satisfied that those conditions are met (s.173(3)).
- ❖ In the case of an agreement that does not provide for a method of termination - it is in the public interest to terminate the agreement (s.173(4)).

industrial court, queensland industrial relations commission and registry (chapter 8 ss.242 – 339)

The key change is the restructuring of the Queensland system to introduce a President of the Industrial Court, who will also be President of the Commission. This is to be a full time position. Under the new structure there will also be a Vice President and at least six Commissioners, including a Commissioner Administrator.

The Commissioner Administrator is responsible to the President for the administration of the Commission and the registry and the orderly and expeditious exercise of the Commission's jurisdiction and powers.

role of the commission

The expanded functions and powers of the Commission focus on industrial harmony, conciliation and negotiation rather than confrontation as well as delivering and maintaining fair and equitable wage and employment outcomes. This will be achieved through their expanded powers to:

- ❖ make and review awards every three years;
- ❖ conciliate, arbitrate and approve agreements;
- ❖ resolve industrial disputes by conciliation, or if necessary by arbitration;
- ❖ deal with claims for wages, occupational superannuation, etc for amounts not exceeding \$20,000;
- ❖ set minimum wages and employment conditions for employees working under labour market programs;
- ❖ hear, amend or void contracts where the conditions are considered harsh, unconscionable or unfair. In determining whether a contract has been harsh, unjust or unreasonable, the Commission is required to consider:
 - the relative strengths of the bargaining positions of the parties and anyone acting for the parties;
 - whether undue influence or pressure was exerted or unfair tactics were used against one of the parties to the contract; and
 - whether the total remuneration package is less or likely to be less than an employee performing similar work;
- ❖ deal with dismissals and freedom of association matters;
- ❖ attend to the registration of industrial organisations; and
- ❖ declare a class of contractors to be employees.

In addition the Full Bench of the Commission can make general rulings relating to Queensland minimum wages for employees whether they are covered by an industrial instrument or not.

All provisions relating to the determination of wages and conditions of employment for apprentices and trainees and the enforcement of those provisions, have been transferred from the *Vocational Education, Training and Employment Act 1991* to the *Industrial Relations Act 1999*.

industrial magistrates (ss.292 - 293)

Industrial magistrates continue to hear matters relating to the recovery of wages or occupational superannuation.

appeals (chapter 9 ss.340 – 349)

The appeal process has been streamlined. Parties have recourse to only one appeal. The process provides for appeals from decisions of:

- ❖ a single Commissioner, the registrar or an industrial magistrate on matters of law or jurisdiction are to the Industrial Court;
- ❖ a single Commissioner on merit or on merit, law or jurisdiction are to the Full Bench of the Commission;
- ❖ a Full Bench of the Commission on law or jurisdiction are to the Court of Appeal; and
- ❖ a Full Bench of the Commission (not presided over by the President) on law or jurisdiction, are to the Industrial Court.

legal representation (s.319)

The Act provision relating to legal representation is found at s.319. Legal representation is only permitted in the following circumstances:

- ❖ In the Industrial Court if:
 - all parties consent; or
 - the court gives leave; or
 - the proceedings are for the prosecution of an offence.
- ❖ In Commission proceedings if:
 - the proceedings relate to freedom of association; or
 - all parties consent; or
 - the Commission gives leave because there are special circumstances which make legal representation desirable; or the party or person can only be adequately represented by a lawyer. Matters to be taken into account by the Commission include:
 - the amount claimed;
 - the nature and complexity of the matter;
 - the nature of the evidence;
 - the cross examination likely to be required;
 - the capacity of the party/person to represent themselves; and
 - whether the duration or cost of the proceedings will be increased or decreased through allowing legal representation.

- ❖ In an Industrial Magistrates Court if:
 - all parties consent; or
 - the proceedings are for the prosecution of an offence; or
 - the proceedings are brought personally by an employee and relate to a matter that could have been brought before a court other than an Industrial Magistrates Court.
- ❖ Before the registrar (including interlocutory proceedings) if:
 - all parties consent; or
 - the registrar gives leave.

industrial disputes (chapter 7 ss.229 – 241)

The Commission's role in resolving industrial disputes has been expanded to enable it to take appropriate measures to prevent or promptly settle the matter, initially through conciliation and if necessary by arbitration (s.230). It can also act as mediator if requested by the parties directly involved or if mediation appears desirable in the public interest (s.231).

Each party to the dispute is required to provide the registrar with pertinent details of the dispute (s.229).

changes to the *public service act 1996*

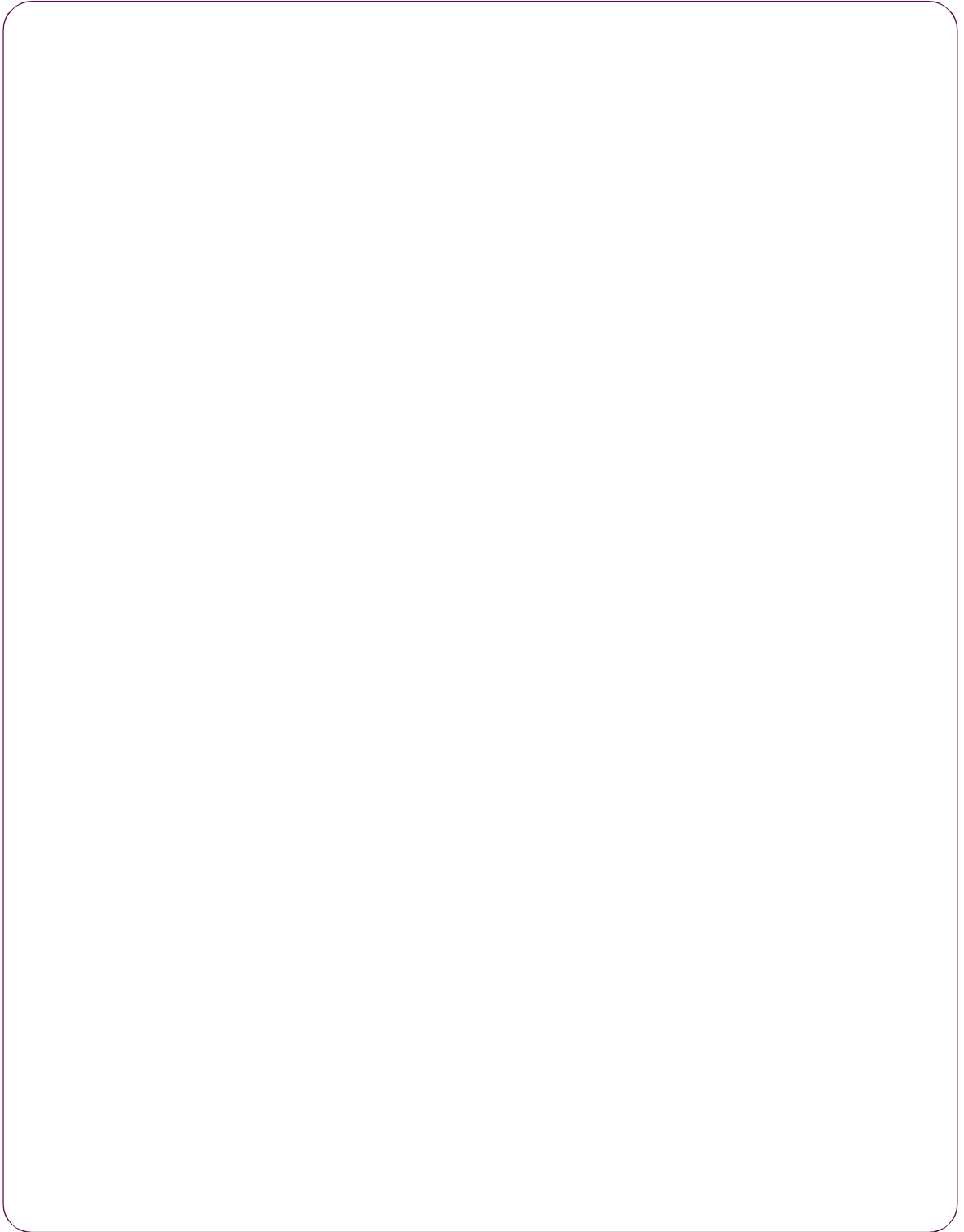
One of the recommendations of the Taskforce Report, Recommendation 133, applied to the public sector. It stated:

“that the Government review the relationship between public service determinations and regulations and other industrial instruments for the public sector, recognising that it is desirable where possible that public sector employment conditions be determined in the industrial relations jurisdiction.”

A review has been undertaken and as a result the *Public Service Act 1996* has been amended and new directives have been issued. The amendments to the *Public Service Act 1996* may be found in the *Industrial Relations Act 1999* (see Chapter 20 ss.733 – 746 and also Schedule 3 page 472 for consequential amendments).

The Public Sector Industrial Relations branch has issued a comprehensive circular (Number 7/99) about the directives and their relationship with the industrial relations jurisdiction. The circular has been distributed to all agencies and is also available at the DETIR web site (www.detir.qld.gov.au/ir/psinfo/psinfo.htm).

notes:



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