

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Industrial Relations)

**INDUSTRIAL RELATIONS AND OTHER LEGISLATION
AMENDMENT BILL 1995**

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AMENDMENT OF THE INDUSTRIAL RELATIONS LEGISLATION
AMENDMENT ACT (NO. 2) 1994

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Industrial Relations)

A BILL

FOR

An Act to amend the law about industrial relations, and for other purposes

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Industrial Relations and other Legislation Amendment Act 1995*.

5 Commencement

2.(1) Sections 1 to 8 and Schedule 5 commence on the day on which this Act receives the Royal Assent.

(2) The items set out in the Schedules other than Schedule 5 commence on a day or days to be fixed by Proclamation.

(3) If an item referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

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Schedule 1

3. The *Defence Act 1903* is amended in accordance with Schedule 1.

Schedule 2

4. The *Industrial Relations Act 1988* is amended in accordance with the applicable items in Schedule 2 and the other item in Schedule 2 has effect according to its terms.

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Schedule 3

5. The *Safety, Rehabilitation and Compensation Act 1988* is amended in accordance with Schedule 3.

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Schedule 4

6. The *Sex Discrimination Act 1984* is amended in accordance with Schedule 4.

Schedule 5

7. The *Stevedoring Industry Levy Collection Act 1977* is amended in accordance with Schedule 5.

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Schedule 6

8. The *Industrial Relations Legislation Amendment Act (No. 2) 1994* is amended in accordance with Schedule 6.

SCHEDULE 1

Section 3

AMENDMENT OF THE DEFENCE ACT 1903

1. After section 58H:

Insert:

Hearings in relation to discriminatory determinations

“58HA.(1) If a determination is referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*, the Tribunal must hold a hearing to review the determination.

“(2) Unless the hearing takes place before a single member of the Tribunal, subsections 58K(1) to (6) apply to the hearing as if it were a meeting of the Tribunal.

“(3) The Tribunal must decide whether or not the hearing is to be held in public.

“(4) If the Tribunal decides that the hearing is not to be held in public, then, subject to subsection (5) and subsections 58K(9) and 58KB(5), the Tribunal may decide the people who may be present.

“(5) The Sex Discrimination Commissioner is entitled to notice of, and to be present at, the hearing and may make submissions to the Tribunal.

“(6) In this section:

determination includes a variation to a determination.

Tribunal includes a single member conducting the Tribunal’s business under a direction under subsection 58KA(1).

Review of discriminatory determinations

“58HB.(1) If:

- (a) a determination has been referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*; and
- (b) the Tribunal considers that the determination is a discriminatory determination;

the Tribunal must take the necessary action to remove the discrimination, by setting aside the determination, setting aside terms of the determination or varying the determination.

“(2) In this section:

determination has the same meaning as in section 58HA.

discriminatory determination means a determination that:

- (a) has been referred to the Tribunal under section 50E of the *Sex Discrimination Act 1984*; and

SCHEDULE 1—continued

- (b) requires a person to do an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act would be done in direct compliance with the determination.

Tribunal has the same meaning as in section 58HA.

“(3) For the purposes of the definition of *discriminatory determination* in subsection (2), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.”.

SCHEDULE 2

Section 4

AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT 1988

1. Subsection 4(1) (definition of *award*):

Add after paragraph (c):

“but does not include an award made in a consent arbitration conducted under Subdivision C of Division 3 of Part VIA.”.

2. Section 5:

Add at the end:

“(7) If a law of New South Wales or Queensland referred to in subsection (6) (the *relevant State law*) also provides that the provisions of this Act apply, with or without modifications, as a law of the State for the purpose of enabling the Court to perform functions or exercise powers with respect to matters pertaining to the relationship between employers in the coal mining industry in the State and their employees, in connection with:

- (a) awards of the Commission, to the extent that those awards are made in the exercise of the provisions of this Act as applied by the relevant State law; or
- (b) instruments that are taken, under the relevant State law, to have been made by the Commission under those provisions;

then:

- (c) the Court may perform those functions or exercise those powers in connection with those awards or instruments; and
- (d) nothing in this Act or in Division 4 of Part 2 of Schedule 1 to the *Industrial Relations Legislation Amendment Act (No. 2) 1994* affects the operation of the relevant State law.”.

3. Subsection 170CD(4) (definition of *termination of employment*):

Omit “under section 170EA”.

4. Subsection 170DE(2):

After “having regard to” insert “all of the circumstances of the case, including”.

5. Sections 170EA, 170EB, 170EC and 170ED:

Repeal the sections, substitute:

Application to the Commission for conciliation

“170EA.(1) A person (the *employee*) may lodge with the Commission an application for relief in respect of termination of his or her employment.

SCHEDULE 2—continued

“(2) A trade union whose rules entitle it to represent the industrial interests of an employee (the *employee*) may, on the employee’s behalf, lodge with the Commission an application for relief in respect of the termination of the employee’s employment.

“(3) An application under subsection (1) or (2) must be lodged:

- (a) within 14 days after the employee receives written notice of the termination; or
- (b) within such further period as the Commission allows on an application made during or after those 14 days.

“(4) An application so lodged is to be treated by the Commission as a request to attempt to settle the matter by conciliation.

“(5) Unless the Commission otherwise orders, the parties to such a conciliation proceeding are:

- (a) the employer and the employee concerned; and
- (b) if the application is lodged under subsection (2)—the trade union concerned.

The conciliation process

“170EB.(1) When an application is lodged with the Commission, the Commission must inquire into the matter to which the application relates and try to help the parties to the conciliation to agree on terms for settling the matter.

“(2) If the Commission decides that the matter cannot be settled by conciliation, or further conciliation, within a reasonable period, the Commission must:

- (a) inform the parties to the conciliation that it has so decided; and
- (b) invite the parties to elect, by notice in writing given to the Commission, either at once or within a period specified by the Commission, to have the matter dealt with by consent arbitration.

“(3) At any time during the conciliation of a matter, the parties to the conciliation may elect, by notice in writing given to the Commission, to have the matter to which the conciliation relates dealt with by consent arbitration, and, upon their so doing, the conciliation process ends.

“(4) To avoid doubt, the Commission’s functions under this section are additional to its other functions, and are not subject to any implied limitations arising from the existence of any of its other functions.

SCHEDULE 2—continued

Consent arbitration

“170EC.(1) An election under subsection 170EB(2) or (3) by the parties to a conciliation to have the matter to which the conciliation relates dealt with by consent arbitration constitutes an agreement between the parties:

- (a) to submit the matter to the process of consent arbitration; and
- (b) to comply with any requirement of the Commission for the purpose of that arbitration; and
- (c) to comply with any award made by the Commission on that arbitration; and
- (d) if that award is taken on appeal to a Full Bench of the Commission—to comply with the award as confirmed, varied or substituted on that appeal.

“(2) A consent arbitration of a matter that was the subject of a conciliation process must be conducted by a member of the Commission other than the member of the Commission who attempted to settle the matter by conciliation (the *conciliator*), unless the parties electing for the consent arbitration agree to the arbitration being conducted by the conciliator.

“(3) The procedures to be followed and the powers to be exercised by the Commission in conducting a consent arbitration are such procedures and such powers, consistent with the terms of the Termination of Employment Convention, as are prescribed.

“(4) The Commission may, on completion of a consent arbitration, make an award:

- (a) that provides for a remedy of the kind able to be granted by the Court under section 170EE; or
- (b) that provides that there is no entitlement to any such remedy.

“(5) The parties to the consent arbitration of a matter are the parties to the conciliation of that matter.

“(6) Subject to any right of appeal to a Full Bench of the Commission under section 170ECA, the award of the Commission is final and binding as between the parties.

Appeal to a Full Bench of the Commission

“170ECA.(1) If:

- (a) the parties to a conciliation elect under subsection 170EB(2) or (3) to have the matter to which the conciliation relates dealt with by consent arbitration; and

SCHEDULE 2—continued

- (b) there are in force, at the time of the election, regulations prescribing grounds for an appeal to a Full Bench of the Commission from an award of a single member of the Commission in a consent arbitration;

the parties may, with the leave of the Commission, appeal to a Full Bench from such an award on the grounds specified in the regulations as so in force.

“(2) On the hearing of an appeal from an award of a single member of the Commission in a consent arbitration, a Full Bench may:

- (a) confirm the award; or
- (b) vary the award; or
- (c) quash the award and substitute a different award.

“(3) If the Commission varies an award, or quashes an award and substitutes a different award, the award as varied or the substituted award must be an award of the kind referred to in subsection 170EC(4).

Enforcement of consent arbitration awards by the Court

“170ECB.(1) The Court may, on application by a party to a consent arbitration, take such action as the Court considers necessary to enforce the agreement of the parties to comply with the terms of an award made in a consent arbitration of a matter.

“(2) The powers that the Court can exercise under subsection (1) include the power to grant an injunction enforcing the reinstatement of an employee.

“(3) The reference in subsection (1) to an award made in a consent arbitration of a matter is, in a case where there is an appeal to a Full Bench of the Commission from an award of a single member of a Commission, a reference to the award as confirmed, varied or substituted.

Referral to the Court

“170ED.(1) If any of the parties to a conciliation who are invited, under subsection 170EB(2), to elect to have the matter to which the conciliation relates dealt with by consent arbitration do not make that election, the Commission must refer the application relating to the matter to the Registrar of the Court accompanied by a certificate:

- (a) that specifies the matter; and
- (b) that states that the Commission has been unable to settle the matter by conciliation within a reasonable period and that the parties have not so elected.

SCHEDULE 2—continued

“(2) When the Commission refers the application and certificate to the Registrar, the application is taken to have been duly lodged with the Court as an application for a remedy in respect of the termination.

“(3) The Court must not consider the merits of an application unless it has been referred by the Commission in accordance with subsection (1).

“(4) The Court must decline to consider or determine an application referred to it by the Commission if it is satisfied that the employee by whom, or on whose behalf, the application was lodged is entitled to apply for an alternative remedy in respect of the termination under a law of the Commonwealth, a State or a Territory that satisfies the requirements of Articles 4 to 11 of the Termination of Employment Convention.

“(5) Without, by implication, limiting the circumstances in which a law of the Commonwealth, a State or a Territory will be taken to satisfy the requirements of Articles 4 to 11 of the Termination of Employment Convention, such a law satisfies those requirements if:

- (a) it expressly requires the body determining applications for a remedy in respect of termination of employment to give effect to those Articles; and
- (b) that body has sufficient jurisdiction and appropriate powers to so determine those applications.

“(6) For the purposes of subsection (4), an employee does not cease to be entitled to apply for an alternative remedy under a law of the Commonwealth, a State or a Territory because the employee requires an extension of time within which to make such an application if the body to which the application is to be made:

- (a) is required to grant such an extension if the extension is sought:
 - (i) within a reasonable period after the Court declines to consider the application made to it; or
 - (ii) within a specified period after the Court so declines that is reasonable within the meaning of the Termination of Employment Convention; or
- (b) has a general discretion to grant extensions and is required, in the exercise of that discretion, to give effect to the Convention.

“(7) In this section, a reference to a law of the Commonwealth, a State or a Territory includes a reference not only to written law but also to any associated practices.

“(8) Unless the Court otherwise orders, for the purpose of the application to the Court, the parties to the application are the parties to the conciliation.”.

SCHEDULE 2—continued

6. Subsection 170EDA(1):

- (a) Insert “lodged” after “application”.
- (b) Insert “then, in any consent arbitration arising from the application or in any proceedings arising on the referral of the application to the Court” after “subsection 170DE(1)” (first occurring).

7. Subsection 170EDA(2):

- (a) Insert “lodged” after “application”.
- (b) Insert “, in any consent arbitration arising from the application or in any proceedings arising on the referral of the application to the Court,” after “proves”.

8. Subsection 170EDA(3) (definition of *termination of employment*):

Omit “under section 170EA”.

9. Subsection 170EE(1):

After “the Court may” insert “, if the Court considers it appropriate in all the circumstances of the case,”.

10. Subsection 170EE(2):

After “the Court may” insert “, if the Court considers it appropriate in all the circumstances of the case,”.

11. Subsection 170EE(6):

- (a) Omit “in section 170EC or”.
- (b) Omit “under section 170EA”, substitute “referred to the Court under section 170ED”.

12. Subsection 376(1):

Add at the end the following word and paragraph:
 “; or (c) an application under subsection 170ECB(1)”.

13. Application

(1) The amendments of the *Industrial Relations Act 1988* made by an item of this Schedule other than item 2, 9 or 10 apply:

- (a) in relation to a termination of the employment of an employee that occurs on or after the day fixed by Proclamation for the commencement of that item; and
- (b) in relation to a termination of the employment of an employee that occurs before that day if neither the employee nor a trade union on behalf of the employee has made an application to the Industrial Relations Court of Australia for a remedy under section 170EA of the *Industrial Relations Act 1988* as in force before that day.

SCHEDULE 2—continued

- (2) The amendments of the *Industrial Relations Act 1988* made by items 9 and 10 of this Schedule apply:
- (a) in relation to a termination of the employment of an employee that occurs on or after the day fixed by Proclamation for the commencement of those items; and
 - (b) in relation to a termination of the employment of an employee that occurs before that day if:
 - (i) neither the employee nor a trade union on behalf of the employee has made an application to the Industrial Relations Court of Australia for a remedy under section 170EA of that Act as in force before that day; or
 - (ii) if such an application has been made to that Court before that day but the Court has not pronounced final judgment in respect of the application before that day.
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SCHEDULE 3

Section 5

**AMENDMENTS OF THE SAFETY, REHABILITATION AND
COMPENSATION ACT 1988**

1. After subsection 6(1):

Insert:

“(1A) For the purposes of this section:

- (a) a journey from a place of residence is taken to start at the boundary of the land where the place of residence is situated; or
- (b) a journey to such a place of residence is taken to end at that boundary.

“(1B) If an employee owns or occupies a parcel of land contiguous with the land on which the employee’s residence is situated, the boundary referred to in subsection (1A) is the external boundary of all of the contiguous parcels of land if treated as a single parcel.”.

2. Section 134:

Add at the end:

“(2) Neither section 8 nor section 13 applies to the amount of compensation payable to an employee from time to time in accordance with subsection (1).”.

SCHEDULE 4

Section 6

AMENDMENT OF THE SEX DISCRIMINATION ACT 1984

1. After section 50D:

Insert:

Referral of discriminatory determinations to the Defence Force Remuneration Tribunal

“50E.(1) A complaint in writing alleging that a person has done a discriminatory act under a determination may be lodged with the Commission by:

- (a) a person aggrieved by the act, on that person’s own behalf or on behalf of that person and one or more other persons aggrieved by the act; or
- (b) 2 or more persons aggrieved by that act, on their own behalf or on behalf of themselves and one or more other persons aggrieved by the act; or
- (c) a person or persons who are in a class of persons aggrieved by the act, on behalf of all the persons in the class.

“(2) If the Commission receives a complaint under this section, the Commission must notify the Commissioner accordingly.

“(3) If it appears to the Commissioner that the act is a discriminatory act, the Commissioner must refer the determination to the Defence Force Remuneration Tribunal. However, the Commissioner need not refer the determination if the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

“(4) If the Commissioner decides not to refer the determination, the Commissioner must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision and of the rights conferred by subsection (5).

“(5) A complainant who receives a notice under subsection (4) may, within 21 days after receipt, give a notice in writing to the Commissioner requiring the Commissioner to refer the decision to the President.

“(6) If the Commissioner receives a notice under subsection (5), the Commissioner must refer the decision to the President together with a report about the decision.

“(7) If the Commissioner refers the determination to the Defence Force Remuneration Tribunal, the Commissioner must give notice in writing of the outcome of the referral to the complainant or each of the complainants.

SCHEDULE 4—continued

“(8) The Commissioner may obtain documents or information under section 54 for the purposes of this section.

“(9) In this section:

determination means:

- (a) a determination made after the commencement of this section by the Defence Force Remuneration Tribunal under section 58H of the *Defence Act 1903*; or
- (b) a variation made after that commencement by that Tribunal to a determination made by it under that section before that commencement.

discriminatory act under a determination means an act that would be unlawful under Part II except for the fact that the act was done in direct compliance with a determination.

“(10) For the purposes of the definition of **discriminatory act under a determination** in subsection (9), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

President may review a decision of the Commissioner not to refer a determination to the Defence Force Remuneration Tribunal

“50F.(1) This section applies if the Commissioner refers to the President under subsection 50E(6) a decision of the Commissioner not to refer a determination to the Defence Force Remuneration Tribunal.

“(2) The President must review the Commissioner’s decision and must decide either:

- (a) to confirm the Commissioner’s decision; or
- (b) to set aside the Commissioner’s decision and to direct the Commissioner to refer the determination in accordance with section 50E.

“(3) Despite subsection (2), the President may refuse to review the Commissioner’s decision unless the complainant gives the President such relevant information as the President requires.

“(4) The President must give written notice of a decision of the President under subsection (2) to the complainant and to the Commissioner. The notice must set out the reasons for the decision.”.

SCHEDULE 5

Section 7

**AMENDMENTS OF THE STEVEDORING INDUSTRY LEVY
COLLECTION ACT 1977**

1. Subsection 3(1) (definition of *employer*):

Omit “waterside workers” (wherever occurring), substitute “stevedoring employees”.

2. Subsection 4(3):

(a) Omit “waterside workers”, substitute “stevedoring employees”.

(b) Omit “waterside worker” (wherever occurring), substitute “stevedoring employee”.

3. Subparagraph 4(4)(a)(ii):

Omit “waterside workers”, substitute “stevedoring employees”.

4. Subparagraph 4(4)(b)(ii):

Omit “waterside workers”, substitute “stevedoring employees”.

5. Subparagraph 4(4)(c)(ii):

Omit “waterside workers”, substitute “stevedoring employees”.

6. Paragraph 4(10)(a):

Omit “waterside workers” (wherever occurring), substitute “stevedoring employees”.

7. Section 5:

Omit “waterside workers”, substitute “stevedoring employees”.

8. Paragraph 6(1)(c):

Omit “waterside workers”, substitute “stevedoring employees”.

9. Subsection 6(2):

Omit “waterside workers” (wherever occurring), substitute “stevedoring employees”.

10. Subsection 10(2):

Omit “waterside workers”, substitute “stevedoring employees”.

11. Paragraph 10(3)(a):

Omit “waterside workers”, substitute “stevedoring employees”.

12. Subsection 10(7):

Omit “waterside workers”, substitute “stevedoring employees”.

SCHEDULE 5—continued

13. Paragraph 11(c):

Omit “waterside workers”, substitute “stevedoring employees”.

14. Paragraph 11(d):

Omit “waterside workers”, substitute “stevedoring employees”.

SCHEDULE 6

Section 8

**AMENDMENT OF THE INDUSTRIAL RELATIONS LEGISLATION
AMENDMENT ACT (NO. 2) 1994**

1. Item 7 of Schedule 1:

Omit the item.

