

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL
1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 30 November 1989

(Minister for Industrial Relations)

A BILL

FOR

**An Act to amend various Acts relating to matters dealt with
by the Department of Industrial Relations, and for related
purposes**

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Industrial Relations Legislation
Amendment Act 1989*.

Commencement

- 2. (1)** Subject to this section, this Act commences on the day on which
it receives the Royal Assent.

(2) Subsection 4 (1) and sections 8, 10, 11 and 13 are to be taken to have commenced on 1 December 1988.

(3) Section 21 is to be taken to have commenced on 1 March 1989.

PART 2—AMENDMENTS OF THE COMMONWEALTH EMPLOYEES’ REHABILITATION AND COMPENSATION ACT 1988 5

Principal Act

3. In this Part, “Principal Act” means the *Commonwealth Employees’ Rehabilitation and Compensation Act 1988*¹.

Interpretation

4. (1) Section 4 of the Principal Act is amended: 10

(a) by omitting paragraph (b) of the definition of “injury” in subsection (1) and substituting the following paragraphs:

“(b) an injury (other than a disease) suffered by an employee, being a physical or mental injury arising out of, or in the course of, the employee’s employment; or 15

(c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment), being an aggravation that arose out of, or in the course of, that employment;” 20

(b) by omitting “or injury” from the definition of “injury” in subsection (1) and substituting “, injury or aggravation”.

(2) Section 4 of the Principal Act is amended:

(a) by omitting “or” from paragraph (b) of the definition of “Commonwealth authority” in subsection (1); 25

(b) by adding at the end of the definition of “Commonwealth authority” in subsection (1) the following word and paragraph:

“; or (d) a body corporate:

(i) in which a body corporate declared under paragraph (c) has a controlling interest; and 30

(ii) that is declared by the Minister, by notice in writing, to be a body corporate to which this Act applies;”;

(c) by inserting “osteopath,” after “physiotherapist,” and “osteopaths,” after “physiotherapists,” in paragraph (d) of the definition of “medical treatment” in subsection (1). 35

Normal weekly earnings

5. Section 8 of the Principal Act is amended by omitting from subsection (3) “, temporary employment”.

6. After section 41 of the Principal Act the following section is inserted in Part III:

Delegation by rehabilitation authority

5 “41A. A rehabilitation authority who is the Secretary of a Department or the principal officer of a Commonwealth authority may, in writing, delegate to an officer of, or a person employed by, that Department or Commonwealth authority all or any of the powers and functions of the rehabilitation authority under this Part.”.

Compensation not payable where damages recovered

10 7. Section 48 of the Principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) Subsection (3) does not apply where the damages were recovered in proceedings instituted by the employee as a result of an election by the employee under section 45, or by way of a settlement of such proceedings.”.

15 **Costs of proceedings before Administrative Appeals Tribunal**

8. Section 67 of the Principal Act is amended:

(a) by inserting in subsection (8) “instituted by the claimant” after “proceedings”;

(b) by inserting after subsection (8) the following subsection:

20 “(8A) Subject to this section, the Administrative Appeals Tribunal must order that the costs incurred by the claimant of any proceedings instituted by the Commonwealth be paid by:

25 (a) if the Tribunal varies the relevant reviewable decision in a manner less favourable to the claimant, or sets aside the relevant reviewable decision and substitutes a decision that is less favourable to the claimant—the determining authority; or

(b) in any other case—the Commonwealth.”;

(c) by inserting in subsection (10) “, (8A)” after “(8)”.

30 **Disallowable instruments**

9. Section 121 of the Principal Act is amended by omitting “or (c)” and substituting “, (c) or (d)”.

10. After section 123 of the Principal Act the following section is inserted in Division 1 of Part X:

35 **Injuries suffered before the commencing day**

“123A. A reference in this Part to an injury suffered before the commencing day is a reference to an injury within the meaning of whichever of the 1912 Act, the 1930 Act or the 1971 Act was in force when the injury was suffered, as that Act was then in force.”.

Application of Act to pre-existing injuries

11. Section 124 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Subject to this Part, a person is entitled to compensation under this Act in respect of an injury, loss or damage suffered before the commencing day if compensation was, or would have been, payable to the person in respect of that injury, loss or damage under the 1912 Act, the 1930 Act or the 1971 Act.”. 5

Notices, claims etc. under previous Acts

12. Section 126 of the Principal Act is amended by omitting from subsection (4) “subsection” and substituting “section”. 10

Application for review and other proceedings under previous Acts

13. Section 129 of the Principal Act is amended:

(a) by inserting after paragraph (1) (a) the following paragraph:

“(aa) the determination were a determination by the Commission within the meaning of Part VI of this Act; and”; 15

(b) by adding at the end the following subsection:

“(3) Where proceedings under Part V of the 1971 Act in relation to a determination are continued under subsection (2), Part VI of this Act applies to the proceedings as if the determination were a reviewable decision by the Commission within the meaning of Part VI of this Act.”. 20

14. After section 129 of the Principal Act the following section is inserted:

Reconsideration and review of certain determinations under 1971 Act 25

“129A. (1) The Commission may, on its own motion, reconsider under section 62 of this Act a determination under the 1971 Act having effect immediately before the commencing day but not covered by subsection 129 (1) and, for that purpose, section 62 of this Act applies as if:

(a) the person in respect of whom the determination was made were a claimant under this Act; and 30

(b) the determination were a determination by the Commission within the meaning of Part VI of this Act.

“(2) Part VI of this Act applies to a decision of the Commission on a reconsideration of a determination mentioned in subsection (1) as if the decision were a reviewable decision by the Commission within the meaning of that Part.”. 35

**PART 3—AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT
1988**

Principal Act

5 15. In this Part, “Principal Act” means the *Industrial Relations Act 1988*².

Additional operation of Act

16. Section 5 of the Principal Act is amended by omitting from subparagraph (3) (c) (i) “the Australian National Airlines Commission” (wherever occurring) and substituting “Australian Airlines Limited”.

10 **Demarcation disputes**

17. Section 118 of the Principal Act is amended by inserting in subsection (1) “under subsection (3)” after “Commission”.

Registration

18. Section 191 of the Principal Act is amended:

- 15 (a) by omitting from subsection (1) “the name and eligibility rules of the association,” and substituting “such particulars in relation to the association as are prescribed”;
- (b) by omitting from subsection (2) “name and eligibility rules of the association” and substituting “particulars so prescribed”.

20 **Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.**

19. Section 242 of the Principal Act is amended by omitting from subparagraph (1) (b) (iii) “association” and substituting “organisation”.

25 **PART 4—AMENDMENTS OF THE INDUSTRIAL RELATIONS
(CONSEQUENTIAL PROVISIONS) ACT 1988**

Principal Act

20. In this Part, “Principal Act” means the *Industrial Relations (Consequential Provisions) Act 1988*³.

21. After section 81 of the Principal Act the following section is inserted:

30 **Application of Judges’ Pensions Act in certain circumstances**

“81A. (1) This section applies to a person who:

- (a) is a new Presidential Member on 1 March 1988; and
- (b) was, immediately before that day, a Presidential Member of the former Commission and an eligible employee for the purposes of the *Superannuation Act 1976*.
- 35

“(2) If a person to whom this section applies elects, by written notice given to the Minister before 1 July 1990, to cease to be an eligible employee for the purposes of the *Superannuation Act 1976*:

- (a) section 22 of the *Industrial Relations Act* applies in relation to that person as if the person had duly made an election under paragraph (2) (b) of that section; and 5
- (b) service of the person as a Presidential Member of the former Commission is to be taken to be service as a Judge for the purposes of the *Judges' Pensions Act 1968*.”.

Coal Industry Act 10

22. Section 88 of the Principal Act is amended by inserting after paragraph (1) (a) the following paragraph:

- “(aa) the references to the previous Act in subsections 34 (1A) and 36 (1) and paragraph 36 (2) (c) included a reference to the *Industrial Relations Act*.”. 15

PART 5—AMENDMENT OF THE NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION ACT 1985

Principal Act

23. In this Part, “Principal Act” means the *National Occupational Health and Safety Commission Act 1985*. 20

Acting Chief Executive Officer

24. Section 16A of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) A person appointed under subsection (1) to act during a vacancy must not continue so to act for more than 12 months. 25

“(1B) Where a person is acting in the office of Chief Executive Officer in accordance with paragraph (1) (b) and the office becomes vacant while the person is so acting, the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs ends, whichever first happens.”. 30

PART 6—AMENDMENTS OF THE REMUNERATION TRIBUNAL ACT 1973

Principal Act

25. In this Part, “Principal Act” means the *Remuneration Tribunal Act 1973*. 35

Interpretation

26. Section 3 of the Principal Act is amended:

- (a) by adding at the end of paragraph (4) (fa) “or”;
- (b) by omitting paragraph (4) (fb);
- (c) by omitting from paragraph (4) (q) “(other than an executive education office)”; 40

(d) by omitting paragraph (4) (r) and substituting the following paragraph:

“(r) an office or appointment in the Defence Force other than an appointment as:

- (i) Chief of the Defence Force; or
- (ii) Vice Chief of the Defence Force; or
- (iii) Chief of Naval Staff; or
- (iv) Chief of the General Staff; or
- (v) Chief of the Air Staff;”.

10 **Inquiries and reports by Tribunal**

27. Section 6 of the Principal Act is amended by omitting subsection (2A) and substituting the following subsection:

“(2A) The Tribunal, from time to time as provided by this Part, is to inquire into, and report to the Minister on, the rates of salaries in relation to:

(a) Vice-Chancellors, Principals and other chief executive officers, of higher education institutions (other than Commonwealth higher education institutions); and

(b) persons holding an office or appointment (however described) of deputy to the holder of such an office or appointment;

that should be used as a basis for making grants in relation to recurrent expenditure in connection with those institutions, and the dates as from which those rates of salary should be so used.”.

15 **Inquiries and determinations by Tribunal**

28. Section 7 of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsection:

“(2A) The Tribunal, from time to time as provided by this Part, is to inquire into, and determine, the rate of salary payable to a person holding an executive education office.”;

(b) by inserting after subsection (3B) the following subsection:

“(3C) The power of the Tribunal to determine the rate of salary to be paid to a person holding an executive education office includes the power to determine that the rate of salary to be paid to the holder of the office is to be the same as the rate of salary payable from time to time to the holder of another office, or to each of the holders of other offices included in a class of offices, specified or referred to in, or ascertained in accordance with, the determination and so includes that last-mentioned power even though the rate of salary payable to the holder of that other office or each of the holders of those other offices, as the case may be, is determined by some other Commonwealth tribunal or authority.”;

(c) by inserting in subsection (4) “, (2A)” after “(2)”;

(d) by omitting from subsection (9) “Remuneration or allowances to which” and substituting “Remuneration (including salary) or allowances to which”;

(e) by inserting after paragraph (9) (ac) the following paragraph:

“(aca) in the case of salary or allowances payable to a person who holds an executive education office in a Commonwealth higher education institution, where the institution has funds under its control that are lawfully available to pay the salary or allowances—be paid in accordance with the determination out of those funds;”;

(f) by omitting paragraph (9) (ad), being the paragraph so numbered that was inserted by the *Industrial Relations (Consequential Provisions) Act 1988*.

Time of making reports and determinations

29. Section 8 of the Principal Act is amended by inserting in paragraph (1) (b) “, (2A)” after “(2)”.

PART 7—AMENDMENT OF THE TRADE PRACTICES ACT 1974

Principal Act

30. In this Part, “Principal Act” means the *Trade Practices Act 1974*⁶.

Stay of injunctions

31. Section 80AA of the Principal Act is amended by inserting in paragraph (1) (b) “Australian Industrial Relations Commission under” after “pending before the”.

NOTES

1. No. 75, 1988, as amended. For previous amendments, see Nos. 109 and 135, 1988.
2. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988.
3. No. 87, 1988.
4. No. 35, 1985, as amended. For previous amendments, see No. 4, 1989.
5. No. 215, 1973, as amended. For previous amendments, see No. 80, 1974; No. 96, 1975; Nos. 60 and 178, 1978; Nos. 26, 108, 136 and 155, 1979; No. 160, 1980; Nos. 61, 74 and 176, 1981; Nos. 78 and 111, 1982; Nos. 39 and 128, 1983; Nos. 63, 73 and 164, 1984; Nos. 65 and 187, 1985; Nos. 87, 109 and 123, 1988; and No. 95, 1989.
6. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No.

NOTES—continued

73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; No. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; Nos. 8 and 20, 1988; and Nos. 28 and 39, 1989.



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