

Public Service (Industrial Functions) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 31 October 1990

(Brought in by Mr Pope and Mr Kennan)

A BILL

to amend the **Public Service Act 1974** and the **Industrial Relations Act 1979** and for other purposes.

Public Service (Industrial Functions) Act 1990

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- 5 (a) to provide for the application of the **Industrial Relations Act 1979** to certain people appointed or employed under the **Public Service Act 1974**, the **Intellectually Disabled Persons' Services Act 1986**, the **Mental Health Act 1986** or the **Legal Aid Commission Act 1978**; and
- 10 (b) to clarify the powers of members of the Industrial Relations Commission sitting alone.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

2. Commencement

This Act comes into operation on a day to be proclaimed.

PART 2—AMENDMENT OF THE PUBLIC SERVICE ACT 1974

3. New Division 1AA inserted in Part IV

No. 8656
R printed to
No. 50/1988
and
subsequently
amended by
Nos
75/1988,
12/1989,
15/1989,
19/1989,
40/1989,
56/1989,
57/1989,
62/1989
and 81/1989.

After the heading to Part IV of the Public Service Act 1974 insert— 5

“Division 1AA—General

41B. Industrial Relations Act 1979 applies

(1) Despite anything to the contrary in this Act or in the regulations or determinations made under this Act but subject to this section, the Industrial Relations Act 1979 applies to— 10

(a) officers and employees; and

(b) people to whom section 41A applies—

except the holders of prescribed offices within the meaning of section 23D or the holders of offices that are the subject of a declaration under section 28B or any person or class of persons to whom section 41A applies specified in an Order made by the Governor in Council. 20

(2) Despite anything to the contrary in the Industrial Relations Act 1979, the Industrial Relations Commission or a Conciliation and Arbitration Board constituted under that Act does not have power to hear and determine any question in an industrial dispute concerning the dismissal or dispensing with services or threatened dismissal or dispensing with services of an officer or employee or a person to whom section 41A applies. 25 30

- 5 (3) Despite anything to the contrary in this Act, the Public Service Board does not have power to determine or otherwise deal with any matter that after the commencement of the **Public Service (Industrial Functions) Act 1990** is within the powers or duties of the Industrial Relations Commission or a Conciliation and Arbitration Board constituted under the **Industrial Relations Act 1979**.”

10 4. *Amendment of section 42*

In section 42 (1) of the **Public Service Act 1974** for “It” substitute “Subject to section 41B, it”.

**PART 3—AMENDMENT OF THE INDUSTRIAL RELATIONS
ACT 1979**

15 5. *Act to apply to public servants*

- (1) In section 3 (1) of the **Industrial Relations Act 1979**, in the definition of “trade” after “occupation” insert “and includes appointment or employment under the **Public Service Act 1974**”.

- 20 (2) After section 3 (4) of the **Industrial Relations Act 1979** insert—

25 “(5) Despite anything to the contrary in the **Public Service Act 1974** or in regulations or determinations made under that Act, this Act applies to people appointed or employed under the **Public Service Act 1974** except—

(a) the holders of prescribed offices within the meaning of section 23D of that Act; or

- 30 (b) the holders of offices that are the subject of a declaration under section 28B of that Act; or

- (c) any person or class of persons to whom section 41A of that Act applies specified in an Order made by the Governor in Council under that Act.
- (6) Despite anything to the contrary in this Act, the Commission or a Board does not have power to hear and determine any question in an industrial dispute concerning the dismissal or dispensing with services or threatened dismissal or dispensing with services of a person appointed or employed under the **Public Service Act 1974**. 5 10
- (7) A person or body, corporate or unincorporate, nominated by the Governor in Council as the employer of a person appointed or employed under the **Public Service Act 1974** is to be taken as an employer for the purposes of this Act. 15
- (8) An officer or employee of an employer referred to in sub-section (7) and nominated by that employer to be the employer's representative is to be taken as a representative of the employer for the purposes of this Act." 20

6. Member of Commission sitting alone

- (1) In section 10 (1) of the **Industrial Relations Act 1979**, for paragraphs (c) and (d) **substitute—**
 “(c) a member of the Commission sitting alone.”. 25
- (2) In sections 11 (2), 13A, 14 (2) and 14A of the **Industrial Relations Act 1979**, for “a Deputy President or Commissioner sitting alone” (wherever occurring) **substitute** “a member of the Commission sitting alone”.

7. Powers of Commission

- (1) In section 11 (1) (e) of the **Industrial Relations Act 1979**, for sub-paragraphs (i), (ii) and (iii) **substitute—**
 “(i) the Minister; or
 (ii) the President on his or her own motion; or
 (iii) the President on application by— 35

- (A) a member of the Commission sitting alone; or
- (B) a Board; or
- (C) the chairperson of a Board; or
- (D) if the matter is an industrial dispute, a party to that dispute;”.

5

(2) After section 12A (3) of the **Industrial Relations Act 1979** insert—

“(4) A member of the Commission sitting alone has and may exercise, in addition to any other powers conferred on the member by or under this Act, all the powers of a Board under section 34.”.

10

8. *Insertion of new section 12AB*

After section 12A of the **Industrial Relations Act 1979** insert—

15

“12AB. *Sections 37, 38 and 39 to apply*

(1) Section 37 (except sub-section (3)) applies to an application for a determination or other proceeding before a member of the Commission sitting alone as if a reference to a Board or a chairperson of a Board were a reference to a member of the Commission sitting alone.

20

(2) Sections 38 and 39 apply to an award of a member of the Commission sitting alone as if a reference to a Board or the chairperson of a Board or the Commission were a reference to a member of the Commission sitting alone.”.

25

9. *Insertion of new section 15A*

After section 15 of the **Industrial Relations Act 1979** insert—

30

“15A. *Medical practitioners*

In considering the making of an award, order or determination in relation to medical

practitioners appointed or employed under section 66 of the **Intellectually Disabled Persons' Services Act 1986** or under section 95 of the **Mental Health Act 1986**, the Commission—

5

(a) is not bound by the **Public Service Act 1974**; and

(b) must take into consideration relevant determinations of the **Hospitals Remuneration Tribunal** made under section 6 of the **Hospitals Remuneration Tribunal Act 1978**.”.

10

10. *Amendment of section 24*

After section 24 (1) of the **Industrial Relations Act 1979** insert—

15

“(1A) The Commission must by order appoint one or more Conciliation and Arbitration Boards for the trade or any branch of the trade of appointment or employment under the **Public Service Act 1974** on the application of any one or more of the following bodies known as:

20

(a) The Victorian Public Service Association;

(b) The Hospital Employees' Federation of Australia, Victorian Number 2 Branch;

(c) The Printing and Kindred Industries Union, Victoria Branch.

25

(1B) The Commission must not appoint more than 3 Boards under sub-section (1A) within 5 years after the commencement of the **Public Service (Industrial Functions) Act 1990**.

30

(1C) The Commission must determine the jurisdiction of a Board appointed under sub-section (1A) having regard to the existing membership and industrial coverage of the bodies referred to in paragraphs (a), (b) and (c) of sub-section (1A).”.

35

11. *Amendment of section 26*

In section 26 of the **Industrial Relations Act 1979**—

- 5 (a) in sub-sections (3) and (4), for “Commissioner”
(wherever occurring) **substitute** “member of the
Commission”; and
- (b) in sub-section (5), after “chairperson” **insert** “or
acting chairperson”.

12. *Insertion of new section 26A*

10 After section 26 of the **Industrial Relations Act 1979**
insert—

“**26A. Acting Chairperson**

- (1) The President may appoint a member of the
Commission to act as chairperson of a Board.
- 15 (2) The acting chairperson shall act as chairperson
during the absence or inability of the
chairperson to act and while so acting, has all
the powers and duties of the chairperson.”.

13. *Amendment of section 27*

20 In section 27 (4) of the **Industrial Relations Act 1979**
after “case” (where first occurring) **insert** “(other than a
Board appointed under section 24 (1A))”.

14. *Amendment of section 29*

In section 29 (5) of the **Industrial Relations Act 1979**,
for “chairman” **substitute** “chairperson”.

25 15. *Amendment of section 34*

After section 34 (7) of the **Industrial Relations Act 1979**
insert—

- 30 “(8) In considering the making of an award, order or
determination in relation to medical practitioners
appointed or employed under section 66 of the
Intellectually Disabled Persons’ Services Act 1986

or under section 95 of the **Mental Health Act 1986**,
a Board—

(a) is not bound by the **Public Service Act 1974**;
and

(b) must take into consideration relevant 5
determinations of the Hospitals Remuneration
Tribunal made under section 6 of the **Hospitals
Remuneration Tribunal Act 1978**.”.

16. Amendment of section 37

After section 37 (9) of the **Industrial Relations Act 1979** 10
insert—

“(10) The President, after consultation with the
chairperson of a Board, may order on his or her
own motion that any matter before the Board be
referred to the Commission for hearing and 15
determination.”.

17. Amendment of section 44

In section 44 (6) of the **Industrial Relations Act 1979**,
after “Minister” **insert** “or President”.

18. Insertion of new section 53A 20

After section 53 of the **Industrial Relations Act 1979**
insert—

“53A. Associations taken to be recognized

The bodies known as the following are to be
taken as recognized associations under this Act 25
with respect to the trade or trades for which a
Board has been appointed under section 24
(1A):

(a) The Victorian Public Service Association;

(b) The Hospital Employees’ Federation of 30
Australia, Victorian Number 2 Branch;

(c) The Printing and Kindred Industries
Union, Victoria Branch.”.

19. Amendment of section 55

(1) After section 55 (2) of the **Industrial Relations Act 1979** insert—

5 “(2A) If an applicant applies for recognition as an association under this Act with respect to a Board appointed under section 24 (1A), the Commission may grant the application if—

10 (a) it appears that there is no recognized association to which the members of the applicant association might conveniently belong; and

(b) the Commission is satisfied that it is in the public interest to do so.”.

(2) In section 55 (3) of the **Industrial Relations Act 1979**—

15 (a) for “concerned” substitute “for which a Board has been constituted other than under section 24 (1A)”; and

(b) for “trader” substitute “trades”.

20. Amendment of section 64

20 In section 64 (1) of the **Industrial Relations Act 1979**, in the definition of “worker”, before “other” insert “any”.

PART 4—AMENDMENT OF OTHER ACTS

21. Amendment of *Intellectually Disabled Persons’ Services Act 1986*

25 (1) After section 66 (3) of the **Intellectually Disabled Persons’ Services Act 1986** insert—

30 “(3A) Subject to sub-section (3B), the **Industrial Relations Act 1979** applies to medical practitioners appointed or employed for the purposes of this Act, despite anything to the contrary in this Act or the **Public Service Act 1974** or in regulations or determinations made under that Act.

35 (3B) The Industrial Relations Commission or a Conciliation and Arbitration Board constituted under the **Industrial Relations Act 1979** does not

have power to hear and determine any question in an industrial dispute concerning the dismissal or dispensing with services or threatened dismissal or dispensing with services of a medical practitioner appointed or employed for the purposes of this Act.”. 5

- (2) In section 67 (2) of the **Intellectually Disabled Persons’ Services Act 1986**, after “**Public Service Act 1974**” (where secondly occurring) insert “or the **Industrial Relations Act 1979**”. 10
- (3) In Schedule 4 to the **Intellectually Disabled Persons’ Services Act 1986**, in clause 2 (11) for “40B (2)” substitute “40B”. 10

22. Amendment of Mental Health Act 1986

- (1) After section 95 (3) of the **Mental Health Act 1986** insert— 15
 - “(3A) Subject to sub-section (3B), the **Industrial Relations Act 1979** applies to medical practitioners appointed or employed for the purposes of this Act, despite anything to the contrary in this Act or the **Public Service Act 1974** or in regulations or determinations made under that Act. 20
 - (3B) The **Industrial Relations Commission** or a **Conciliation and Arbitration Board** constituted under the **Industrial Relations Act 1979** does not have power to hear and determine any question in an industrial dispute concerning the dismissal or dispensing with services or threatened dismissal or dispensing with services of a medical practitioner appointed or employed for the purpose of this Act.”. 25 30
- (2) In section 97 (2) of the **Mental Health Act 1986**, after “**Public Service Act 1974**” (where secondly occurring) insert “or the **Industrial Relations Act 1979**”. 30

23. Amendment of Legal Aid Commission Act 1978

After section 15 (2A) of the **Legal Aid Commission Act 1978** insert— 35

5 “(2B) Subject to sub-section (2C), the **Industrial Relations Act 1979** applies to officers and employees employed for the purposes of this Act, despite anything to the contrary in this Act or the **Public Service Act 1974** or in regulations or determinations made under that Act.

10 (2C) The Industrial Relations Commission or a Conciliation and Arbitration Board constituted under the **Industrial Relations Act 1979** does not have power to hear and determine any question in an industrial dispute concerning the dismissal or dispensing with services or threatened dismissal or dispensing with services of an officer or employee employed for the purposes of this Act.”

15 **PART 5—SAVINGS AND TRANSITIONALS**

24. Savings

20 (1) Relevant regulations and relevant determinations made under the **Public Service Act 1974** continue in operation and have the same force and effect after the commencement of this Act as if this Act had not been enacted until superseded by an award, order or determination of the Industrial Relations Commission or of a Conciliation and Arbitration Board constituted under the **Industrial Relations Act 1979**.

25 (2) In this section “**relevant regulations and relevant determinations**” means regulations and determinations in respect of any matter that after the commencement of this Act would have been within the powers or duties of the Industrial Relations Commission or a Conciliation and Arbitration Board constituted under the **Industrial Relations Act 1979**.

25. Transitionals

35 (1) An award, order or determination of the Industrial Relations Commission or of a Conciliation and Arbitration Board constituted under the **Industrial**

Relations Act 1979 that applies to a person appointed or employed under the **Public Service Act 1974**—

- (a) supersedes any inconsistent provision in regulations or determinations made under the **Public Service Act 1974** to the extent of the inconsistency; and 5
- (b) must not, unless amended or superseded, reduce the conditions or entitlements of the person.

(2) A reference in any Act or subordinate instrument to a matter that after the commencement of this Act is contained in an award, order or determination of the Industrial Relations Commission or of a Conciliation and Arbitration Board constituted under the **Industrial Relations Act 1979** is to be taken as a reference to that award, order or determination. 10

(3) If before the commencement of this Act the Public Service Board had begun to hear any relevant proceeding and at the date of that commencement evidence on any question of fact material to that proceeding had been given to the Public Service Board but the proceeding had not been finally determined, any party to the proceeding may apply in writing to the Industrial Relations Commission or a Conciliation and Arbitration Board for a determination under sub-section (4). 15 20

(4) On an application under sub-section (3), the Industrial Relations Commission or a Conciliation and Arbitration Board may determine— 25

- (a) to accept the proceeding as part-heard and to continue the hearing; or
- (b) to re-hear the proceeding—

in accordance with the **Industrial Relations Act 1979** as amended by this Act. 30

(5) If a relevant proceeding is re-heard by the Industrial Relations Commission or a Conciliation and Arbitration Board in accordance with a determination under sub-section (4), any thing done in relation to that proceeding before the commencement of this Act shall, so far as consistent with the provisions of the **Industrial Relations Act 1979** as amended by this Act, be taken to 35

5 have been done for the purposes of the hearing and
determination of the proceeding by the Commission or
a Board and the Commission or Board may, for the
purposes of the re-hearing, have regard to any record of
the earlier proceeding before the Public Service Board.

10 (6) If before the commencement of this Act a relevant
proceeding was pending before the Public Service Board
but the Public Service Board had not begun to hear that
proceeding or had begun to hear the proceeding but on
the commencement of this Act had not been given
evidence on any question of fact material to the
proceeding, the proceeding is to be heard and determined
15 by the Industrial Relations Commission or a Conciliation
and Arbitration Board in accordance with the provisions
of the **Industrial Relations Act 1979** as amended by this
Act and any thing done in relation to that proceeding
must, so far as consistent with that Act, be taken to have
been done for the purposes of the hearing and
determination of the proceeding by the Commission or
20 a Board under that Act.

(7) The Public Service Board may not commence or
continue or determine a relevant proceeding on or after
the commencement of this Act.

25 (8) In this section “**relevant proceeding**” means a
proceeding—

(a) begun or that could have been begun before the
Public Service Board on a day before the
commencement of this Act and that has not been
completed; and

30 (b) that could have been brought before the Industrial
Relations Commission or a Conciliation and
Arbitration Board if this Act had been in force on
that day.

