



Industrial Relations Legislation Amendment Act (No. 2) 1990

No. 108 of 1990

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Industrial Relations Legislation Amendment Act (No. 2) 1990

No. 108 of 1990

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

[Assented to 18 December 1990]

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

1. This Act may be cited as the *Industrial Relations Legislation Amendment Act (No. 2) 1990*.

Commencement

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

(2) Sections 22, 23 and 24 are taken to have commenced on 1 March 1989.

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(3) Section 26 is taken to have commenced on 1 January 1990.

(4) Sections 8, 13 and 21 are taken to have commenced on the same day as the *Industrial Relations Legislation Amendment Act 1990*.

(5) Subject to subsection (6), section 33 commences on a day to be fixed by Proclamation.

(6) If the provision referred to in subsection (5) 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.

PART 2—AMENDMENTS OF THE DEFENCE ACT 1903

Principal Act

3. In this Part, “Principal Act” means the *Defence Act 1903*¹.

Establishment of Defence Forces Remuneration Tribunal

4. Section 58G of the Principal Act is amended by omitting from subsection (5) “5 years” and substituting “year”.

Terms and tenure of office

5. Section 58L of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this Division, a member of the Tribunal holds office for such period, not exceeding 5 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.”.

PART 3—AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT 1988

Principal Act

6. In this part, “Principal Act” means the *Industrial Relations Act 1988*².

Interpretation

7. Section 4 of the Principal Act is amended by inserting in subsection (7) “to” after “reckless as”.

Limitations on appeals from Court to High Court

8. Section 57 of the Principal Act is amended by inserting in paragraph (3) (a) “Subdivision G of Division 7 or” after “other than”.

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Inspectors

9. Section 84 of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) The Minister may, by instrument:

(a) appoint a person appointed or employed under the *Public Service Act 1922* to be an inspector; or

(b) appoint a person, other than a person referred to in paragraph (a), to be an inspector for such period as is specified in the instrument of appointment, being a period not longer than a period prescribed for the purposes of this paragraph.”;

- (b) by omitting from subsection (4) “An inspector” and substituting “Subject to subsection (4A), an inspector”;

- (c) by inserting after subsection (4) the following subsection:

“(4A) A person appointed under paragraph (2) (b) to be an inspector has such powers and functions in relation to the observance of this Act and awards as are conferred on an inspector by this Act and specified in his or her instrument of appointment.”.

Imposition and recovery of penalties

10. Section 178 of the Principal Act is amended:

- (a) by omitting paragraph (5) (c) and substituting the following paragraphs:

“(c) an employer who is a member of an organisation and who is affected by the breach;

(ca) a person:

(i) whose employment is, or at the time of the breach was, subject to the award; and

(ii) who is affected by the breach;”;

- (b) by omitting from subsection (6) “to which the employee is entitled” and substituting “that the employer was required to pay”;

- (c) by inserting after subsection (6) the following subsections:

“(6A) Where, in a proceeding against an employer under this section, it appears to the court concerned that the employer has not paid an amount to a superannuation fund that the employer was required, under an award or order, to pay on behalf of a person, the court may order the employer to make a payment to or in respect of that person for the purpose of restoring the person, as far as practicable, to the position that the person

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would have been in had the employer not failed to pay the amount to the superannuation fund.

“(6B) Without limiting the generality of subsection (6A), the court concerned may order that the employer pay to the superannuation fund referred to in subsection (6A), or another superannuation fund, an amount equal to the amount (in this subsection called the ‘unpaid amount’) that the employer failed to pay together with such additional amount as, in the opinion of the court, represents the return that would have accrued in respect of the unpaid amount had it been duly paid by the employer.”;

(d) by inserting in subsection (7) “or (6A)” after “subsection (6)”.

11. Section 179 of the Principal Act is repealed and the following section is substituted:

Recovery of wages etc.

“179. (1) Where an employer is required by an award or order to pay an amount to an employee, the employee may, not later than 6 years after the employer was required to make the payment to the employee under the award or order, sue for the amount of the payment in the Court or in any other court of competent jurisdiction.

“(2) An employee is entitled to sue under subsection (1) whether the payment was required to be made before or after the commencement of section 11 of the *Industrial Relations Legislation Amendment Act (No. 2) 1990*.”.

12. After section 179 of the Principal Act the following sections are inserted:

Interest up to judgment

“179A. (1) In exercising its powers under subsection 178 (6) or in a proceeding under section 179, the Court or a court of competent jurisdiction must, upon application, unless good cause is shown to the contrary, either:

- (a) order that there be included in the sum for which an order is made or judgment given, interest at such rate as the Court or court of competent jurisdiction, as the case may be, thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date on which the order is made or judgment entered; or
- (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which an order is made or judgment given, a lump sum instead of any such interest.

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- “(2) Subsection (1) does not:
- (a) authorise the giving of interest upon interest or of a sum instead of such interest; or
 - (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of an agreement or otherwise; or
 - (c) authorise the giving of interest, or a sum instead of interest, otherwise than by consent, upon any sum for which judgment is given by consent.

Interest on judgment

“179B. A debt under a judgment or order of a court of competent jurisdiction made under subsection 178 (6) or section 179 carries interest from the date on which the judgment is entered or order made at such rate as would apply under the *Federal Court of Australia Act 1976* if the debt were a judgment debt to which section 52 of that Act applies.”.

Change of name or alteration of eligibility rules of organisation

13. Section 204 of the Principal Act is amended by omitting from paragraph (8) (a) “118 (7)” and substituting “118A (6)”.

Conduct by Australian Electoral Commission

14. Section 210 of the Principal Act is amended by adding at the end of subsection (2) “in relation to elections in the organisation or branch or an election for the particular office”.

Application for organisation or branch to conduct its elections

15. Section 211 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) A committee of management of an organisation or branch of an organisation may lodge in an Industrial Registry an application for the organisation or branch, as the case may be, to be exempted from subsection 210 (1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.”.

Registrar may permit organisation or branch to conduct its elections

16. Section 213 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Where an application in relation to an organisation or branch has been lodged under subsection 211 (1) and, after any objections duly made have been heard, a Registrar is satisfied:

- (a) that the rules of the organisation or branch comply with the requirements of this Act relating to the conduct of elections; and
- (b) that, if the organisation or branch is exempted from subsection 210 (1), the elections for the organisation or branch, or the

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election for the particular office, as the case may be, will be conducted:

- (i) under the rules of the organisation or branch, as the case may be, and this Act; and
- (ii) in a manner that will afford members entitled to vote at such elections or election an adequate opportunity of voting without intimidation;

the Registrar may exempt the organisation or branch from subsection 210 (1) in relation to elections for the organisation or branch, or the election for the particular office, as the case may be.”.

17. After section 353 of the Principal Act the following section is inserted:

Records relating to employees

“353A. The regulations may make provision in relation to:

- (a) the making and retention by employers of records relating to the employment of persons under an award; and
- (b) the inspection of such records.”.

Enforcement of penalties etc.

18. Section 357 is amended by inserting after paragraph (1) (b) the following paragraph:

- “(ba) under subsection 178 (6A) or (6B), ordered the payment of an amount;”.

Schedule 1

19. Schedule 1 of the Principal Act is amended by inserting in paragraph 3 (b) “or staff members” after “members”.

**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.

Certain proceedings to be dealt with under Industrial Relations Act

21. Section 8 of the Principal Act is amended by inserting in paragraph (2) (f) “Subdivision G of Division 7 or” after “other than”.

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

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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 1989; 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*.

“(2) If a person to whom this section applies elects, by written notice given to the Minister before 31 January 1991, 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
- (b) service of the person as a Presidential Member of the former Commission is taken to be service as a Judge for the purposes of the *Judges' Pensions Act 1968*.”.

Coal Industry Act

23. 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;”.

Schedule 2

24. The Principal Act is amended:

- (a) by omitting the amendment of subsection 5 (2) of the *Remuneration Tribunal Act 1973*;
- (b) by omitting the amendment of sub-subparagraph 53 (d) (i) (A) of the *States Grants (Tertiary Education Assistance) Act 1984* and substituting the following amendment:

“Sub-subparagraph 5 (3) (d) (i) (A):

Insert ‘, or the Remuneration Tribunal,’ after ‘Academic Salaries Tribunal.’”;

- (c) by omitting the amendment of sub-subparagraph 53 (d) (i) (B) of the *States Grants (Tertiary Education Assistance) Act 1984* and substituting the following amendment:

“Sub-subparagraph 5 (3) (d) (i) (B):

Insert ‘, or the Australian Industrial Relations Commission established under the *Industrial Relations Act 1988*,’ after ‘Conciliation and Arbitration Commission.’”;

- (d) by omitting from the amendment of paragraph 80AA (1) (b) of the *Trade Practices Act 1974* “Division 7” and substituting “Australian Industrial Relations Commission under Division 7”.

**PART 5—AMENDMENT OF THE LONG SERVICE LEAVE
(COMMONWEALTH EMPLOYEES) ACT 1976**

Principal Act

25. In this Part, “**Principal Act**” means the *Long Service Leave (Commonwealth Employees) Act 1976*⁴.

Meaning of employment in Government Service

26. Section 10 of the Principal Act is amended by inserting in subsection (2A) “or a staff member” after “of this Act, a member”.

**PART 6—AMENDMENTS OF THE NATIONAL
OCCUPATIONAL HEALTH AND SAFETY COMMISSION ACT
1985**

Principal Act

27. In this Part, “**Principal Act**” means the *National Occupational Health and Safety Commission Act 1985*⁵.

Interpretation

28. Section 3 of the Principal Act is amended by omitting the definitions of “**Minister**”, “**Parliament**”, “**Premier**”, “**State**” and “**Territory**” and substituting the following definitions:

“**‘Minister’** means:

- (a) in relation to the Australian Capital Territory—a person holding Office as Chief Minister or Minister under the *Australian Capital Territory (Self-Government) Act 1988*;
- (b) in relation to the Northern Territory—a person holding Ministerial Office under section 36 of the *Northern Territory (Self-Government) Act 1978*;

‘Parliament’ means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly of the Australian Capital Territory; or
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory;

‘Premier’ means:

- (a) in relation to the Australian Capital Territory—the Chief Minister of the Australian Capital Territory; or
- (b) in relation to the Northern Territory—the Chief Minister of the Northern Territory;

‘State’ includes the Australian Capital Territory and the Northern Territory;

‘Territory’ does not include the Australian Capital Territory or the Northern Territory;”.

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Functions of Commission

29. Section 8 of the Principal Act is amended by omitting subsection (10) and substituting the following subsection:

“(10) In paragraphs (2)(a) and (8)(g) ‘Territory’ includes the Australian Capital Territory and in paragraph (8)(c) ‘Territories’ includes the Australian Capital Territory and the Northern Territory.”.

Certain A.C.T. Self-Government (Consequential Provisions) Regulations cease to have effect

30. The modifications of section 3 and subsection 8(10) of the Principal Act made by the A.C.T. Self-Government. (Consequential Provisions) Regulations cease to have effect on the commencement of this Part.

Acting Chief Executive Officer

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

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

“(1B) Where the office of Chief Executive Officer becomes vacant when a person is acting in the office, 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.”.

PART 7—AMENDMENT OF THE REMUNERATION AND ALLOWANCES ACT 1990

Principal Act

32. In this Part, “Principal Act” means the *Remuneration and Allowances Act 1990*⁶.

Schedule 1

33. Schedule 1 of the Principal Act is amended by omitting Part 4 and substituting the following Part:

PART 4

Office	Rate per annum of Salary		
	from 1.7.90 \$	from 1.1.91 \$	from 1.7.91 \$
Master, Supreme Court of the Australian Capital Territory	97,590	104,421	111,710
Judicial Registrar of the Family Court of Australia	88,988	96,463	104,729

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**PART 8—AMENDMENTS OF THE STATES GRANTS (COAL
MINING INDUSTRY LONG SERVICE LEAVE) ACT 1949**

Principal Act

34. In this Part, “**Principal Act**” means the *States Grants (Coal Mining Industry Long Service Leave) Act 1949*.

Coal Mining Industry Long Service Leave Fund

35. Section 3 of the Principal Act is amended:

- (a) by omitting from subsection (2) “sixty-two A” and substituting “62A”;
- (b) by omitting from subsection (2) “—1948”;
- (c) by omitting from subsection (3) paragraphs (a), (aa) and (ab) and substituting the following paragraph:
 - “(a) amounts equal to four-fifths of the amounts from time to time raised on duties excise on coal; and”;
- (d) by omitting from subsection (4) “the last preceding subsection” and substituting “subsection (3)”;
- (e) by omitting paragraph (5) (b) and substituting the following paragraphs:
 - “(b) advance payable under section 6; and
 - (c) amounts payable into the Consolidated Revenue Fund under section 7.”.

Grants to States

36. Section 4 of the Principal Act is amended by omitting “Treasurer” and substituting “Minister”.

Further grants to States

37. Section 5 of the Principal Act is amended by omitting from subsection (1) “Treasurer” and substituting “Minister”.

38. Section 6 of the Principal Act is repealed and the following sections are substituted:

Advances to States

“6. The Minister may make advances to a State on account of amounts expected to be payable to a State under this Act.

Reimbursement of Commonwealth administrative expenses

“7. There are payable out of the Fund into the Consolidated Revenue Fund, at such times as are prescribed, amounts determined under the regulations as representing the expenses incurred by the Commonwealth in administering this Act.

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Regulations

“8. The Governor-General may make regulations, not inconsistent with this Act prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.”

NOTES

1. No. 20, 1903, as amended. For previous amendments, see No. 12, 1904; No. 15, 1909; Nos. 30 and 37, 1910; No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; Nos. 16 and 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; Nos. 13, 38, 70 and 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; No. 35, 1948; No. 71, 1949; No. 80, 1950; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 72, 1956; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 33, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975 (as amended by No. 164, 1984); Nos. 4 and 20, 1977; Nos. 19 and 155, 1979; No. 132, 1979 (as amended by No. 80, 1982); No. 70, 1980; Nos. 61 and 178, 1981; No. 80, 1982; No. 153, 1982 (as amended by No. 164, 1984); No. 39, 1983; Nos. 164 and 165, 1984; Nos. 65 and 193, 1985; No. 76, 1986; No. 65, 1987; Nos. 67, 75, 87, 99, 100 and 104, 1988; and No. 41, 1989.
2. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988.
3. No. 87, 1988.
4. No. 192, 1976, as amended. For previous amendments, see No. 9, 1978; Nos. 52 and 155, 1979; Nos. 6 and 61, 1981; No. 141, 1983; No. 63, 1984; No. 166, 1985; and Nos. 6 and 123, 1988.
5. No. 35, 1985, as amended. For previous amendments, see Nos. 4 and 129, 1989.
6. No. 71, 1990, as amended. For previous amendments, see No. 72, 1990.
7. No. 80, 1949, as amended. For previous amendments, see No. 1, 1950; No. 54, 1956; No. 20, 1961; No. 77, 1968; No. 137, 1977; and No. 25, 1982.

*[Minister's second reading speech made in—
House of Representatives on 11 October 1990
Senate on 18 October 1990]*