



Industrial Relations Legislation Amendment Act 1994

No. 77 of 1994

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Industrial Relations Legislation Amendment Act 1994

No. 77 of 1994

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

[Assented to 21 June 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations Legislation Amendment Act 1994*.

Commencement

2.(1) This Part commences on the day on which this Act receives the Royal Assent.

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(2) Part 3 commences on the 28th day after the day on which this Act receives the Royal Assent.

(3) Subject to subsection (4), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(4) If a provision referred to in subsection (3) does not commence under that subsection within 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—AMENDMENT OF THE INDUSTRIAL RELATIONS ACT 1988

Principal Act

3. In this Part, “**Principal Act**” means the *Industrial Relations Act 1988*¹.

Repeal of Division 9 of Part VI

4. Division 9 of Part VI of the Principal Act is repealed.

PART 3—REPEAL OF THE STEVEDORING INDUSTRY ACTS (TERMINATION) ACT 1977

Principal Act

5. In this Part, “**Principal Act**” means the *Stevedoring Industry Acts (Termination) Act 1977*².

Repeal

6. The Principal Act is repealed.

PART 4—AMENDMENTS OF THE STEVEDORING INDUSTRY FINANCE COMMITTEE ACT 1977

Principal Act

7. In this Part, “**Principal Act**” means the *Stevedoring Industry Finance Committee Act 1977*³.

Interpretation

8. Section 3 of the Principal Act is amended:

- (a) by omitting “waterside workers” (wherever occurring) from the definition of “employer” and substituting “stevedoring employees”;
- (b) by omitting the definitions of “ACTU”, “approved bank”, “Authority”, “Fund”, “Reform Agreement”, “stevedoring operations” and “waterside worker”;
- (c) by inserting the following definition:

“‘**stevedoring employee**’ has the same meaning as in the *Stevedoring Industry Levy Collection Act 1977*.”.

Constitution of Committee

9.(1) Section 5 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

“(1) The Committee consists of:

- (a) a Chairperson; and
- (b) an officer of the Department; and
- (c) a person representing employers; and
- (d) a person representing stevedoring employees.”;

(b) by omitting subsection (4).

(2) The person who, immediately before the commencement of this section, held office as Chairperson of the Committee as it was constituted under section 5 of the Principal Act continues to hold office as if he or she had been duly appointed as Chairperson of the Committee under section 5 of the Principal Act as amended by this section.

(3) The officer of the Department who, immediately before the commencement of this section, held office as the member of the Committee referred to in paragraph 5(1)(aa) of the Principal Act continues to hold office as if he or she had been duly appointed as the member of the Committee referred to in paragraph 5(1)(b) of the Principal Act as amended by this section and had been so appointed for the duration of the period of his or her appointment under the Principal Act.

Functions of Committee

10. Section 6 of the Principal Act is amended by omitting paragraphs (c), (ca), (d) and (e) and substituting the following paragraph:

“(c) to make recommendations to the Minister as to when a levy should cease to apply.”.

Powers of Committee

11. Section 7 of the Principal Act is amended by adding at the end of subsection (2) the following word and paragraph:

“; and (c) engage people to advise or assist the Committee in the performance of its functions.”.

Repeal of Parts III and IV

12.(1) Parts III and IV of the Principal Act are repealed.

(2) If:

(a) the Committee is satisfied that an employer is required, or will at a future time be required, to make a payment to or in relation to a stevedoring employee:

- (i) under a relevant award obligation; or
- (ii) under an entitlement to long service leave that accrued up to and including 4 December 1977; and

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- (b) immediately before the commencement of this section, the Committee held any amount of money for the purpose of making a payment to that employer if and when the employer incurred expenditure in discharging that obligation;

the Committee must, as soon as practicable after the commencement of this section, pay the amount so held to the employer.

(3) If the Committee makes a payment to an employer under subsection (2) in respect of a relevant award obligation, or an entitlement to long service leave, to or in relation to a stevedoring employee, the Committee is discharged from any other liability to make a payment to the employer in respect of any expenditure that the employer has incurred or incurs in making a payment to or in relation to the stevedoring employee under that obligation or entitlement.

- (4) In this section:

“**relevant award obligation**”, in relation to an employer, has the same meaning as that expression had in relation to an employer under section 8 of the Principal Act.

Money payable to Committee

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

“(1) There are payable to the Committee out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the sum of the amounts raised under the *Stevedoring Industry Levy Act 1977*.”.

Repeal of section and substitution of new section

14. Section 17 of the Principal Act is repealed and the following section is substituted:

Application of Division 2 of Part XI of the Audit Act

“17. The Committee is a public authority to which Division 2 of the *Audit Act 1901* applies.”.

Application of money of Committee

15. Section 18 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Subject to subsection (2), the moneys” and substituting “The money”;
- (b) by adding at the end of paragraph (1)(a) “, including costs and expenses incurred by the Committee in, or in connection with, the making of payments under paragraphs (aa) and (b)”;
- (c) by omitting subsection (2).

Repeal of sections 21 and 22

16. Sections 21 and 22 of the Principal Act are repealed.

Repeal of section and substitution of new section

17. Section 23 of the Principal Act is repealed and the following section is substituted:

Deputies

“23.(1) The Minister may appoint a person to be a deputy of a member of the Committee.

“(2) If a member of the Committee is absent from a meeting of the Committee, the deputy of the member is entitled to attend the meeting and, while so attending, is taken to be a member of the Committee.”.

Tenure of office

18. Section 24 of the Principal Act is amended by omitting subsection (2).

Meetings of the Committee

19. Section 26 of the Principal Act is amended:

(a) by omitting subsection (4) and substituting the following subsection:

“(4) A meeting of the Committee is not validly held unless every member of the Committee or his or her deputy is present.”;

(b) by omitting from subsection (8) “Questions” and substituting “Subject to section 29, questions”.

Taxation

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

“(2) The Committee is not subject to income tax under any law of the Commonwealth, of a State or of a Territory.”.

Delegation

21. Section 29 of the Principal Act is amended by omitting subsections (1) to (4) and substituting the following subsections:

“(1) The Committee may, by resolution agreed to by at least 3 members, delegate to:

- (a) a member of the Committee; or
- (b) a deputy of a member of the Committee; or
- (c) a person engaged by the Committee to assist it; or
- (d) a person who is employed by, or holds office within, the Association;

all or any of its powers under this Act.

“(2) A delegation of a power under this section:

- (a) may be revoked by resolution of the Committee agreed to by at least 3 members (whether or not at the time of the resolution the Committee was constituted by the people who constituted the Committee when the power was delegated); and

- (b) continues in force even if the membership of the Committee changes.”.

Repeal of section 30

22. Section 30 of the Principal Act is repealed.

Addition of new section

23. After section 31 of the Principal Act the following section is added:

Expiry of Act

“32.(1) If the Committee is satisfied that all its obligations and liabilities have been discharged:

- (a) it must tell the Minister in writing that it is so satisfied; and
(b) if it holds any surplus funds, it must:
(i) prepare a scheme for distributing the funds in an equitable manner to such persons as it thinks appropriate; and
(ii) give details of the scheme to the Minister.

“(2) If the Minister approves a scheme prepared under paragraph (1)(b), the Committee must, as soon as practicable, distribute the surplus funds in accordance with the scheme.

“(3) If:

- (a) the Minister, by signed writing, certifies that:
(i) all the obligations and liabilities of the Committee have been discharged; and
(ii) the Committee does not hold any surplus funds or that all surplus funds held by the Committee have been distributed in a manner approved by the Minister; and
(b) a copy of the certificate is published in the *Gazette*;
this Act thereupon ceases to have effect.”.

**PART 5—AMENDMENTS OF THE STEVEDORING INDUSTRY
LEVY ACT 1977**

Principal Act

24. In this Part, “Principal Act” means the *Stevedoring Industry Levy Act 1977*⁴.

Imposition of levies

25. Section 4 of the Principal Act is amended:
(a) by omitting “waterside workers” (wherever occurring) and substituting “stevedoring employees”;
(b) by omitting paragraph (1)(a);
(c) by omitting from paragraphs (1)(b), (c) and (d) “special”.

Repeal of section 5

26. Section 5 of the Principal Act is repealed.

Person liable

27. Section 9 of the Principal Act is amended by omitting “waterside workers” (wherever occurring) and substituting “stevedoring employees”.

Phasing out of general levy

28. Section 9A of the Principal Act is repealed.

Expiry of levy

29. Section 10 of the Principal Act is amended by omitting “waterside workers” and substituting “stevedoring employees”.

Addition of new section

30. After section 12 of the Principal Act the following section is added:

Expiry of Act

“13. If the *Stevedoring Industry Finance Committee Act 1977* ceases to have effect under section 32 of that Act, this Act ceases to have effect at the same time.”.

**PART 6—AMENDMENTS OF THE STEVEDORING INDUSTRY
LEVY COLLECTION ACT 1977**

Principal Act

31. In this Part, “**Principal Act**” means the *Stevedoring Industry Levy Collection Act 1977*⁵.

Interpretation

32. Section 3 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definitions of “Division A waterside worker”, “Division B waterside worker”, “registered person” and “waterside worker”;
- (b) by omitting from paragraph (j) of the definition of “stevedoring operations” in subsection (1) “ships,” and substituting “ships;”;
- (c) by omitting from the definition of “stevedoring operations” in subsection (1) “Waterside Workers’ Federation of Australia” and substituting “Maritime Union of Australia”;
- (d) by inserting in subsection (1) the following definition:
“‘**stevedoring employee**’ has the meaning given by section 3A;”.

Insertion of new section

33. After section 3 of the Principal Act the following section is inserted:

Meaning of “stevedoring employee”

“3A.(1) Subject to this section, a reference in this Act to a stevedoring employee is a reference to someone who is a member, or has applied for membership, of the Maritime Union of Australia and is employed for work in the loading of cargo into or onto, or the unloading of cargo from, ships.

“(2) Without limiting the generality of subsection (1) but subject to subsection (3), a reference in this Act to a stevedoring employee includes a reference to anyone who is employed for work in:

- (a) the loading into or onto, or the unloading from, ships, of ships’ stores, coal or fuel oil (whether for bunkers or not), passengers’ luggage or mail; or
- (b) the handling or storage of cargo or other goods at or adjacent to a wharf; or
- (c) the driving or operation of mechanical appliances used in connection with the loading or unloading of ships or the handling or storage of cargo or other goods at or adjacent to a wharf; or
- (d) the haulage or trucking from ship to shed or shed to ship; or
- (e) the removal or replacing of beams or hatches; or
- (f) the handling of dunnage or ballast; or
- (g) the preparing or cleaning of holds; or
- (h) the preparation of gear for use in connection with the loading or unloading of ships.

“(3) Despite subsections (1) and (2), but subject to subsection (4), a reference in this Act to a stevedoring employee does not include a reference to anyone included in any of the following classes of people:

- (a) members of the crew of a ship on the ship’s articles;
- (b) members of the crew of a lighter;
- (c) members of the Sydney Coal Lumpers Union while loading or unloading coal in the port of Sydney;
- (d) people employed, directly or indirectly, at a port in or in connection with stevedoring operations that consist of the loading into, or the unloading from, ships, of loose bulk cargo by means of equipment based on the shore;
- (e) people who are in the regular employment of someone engaged in an industrial undertaking and whose duties include the performance of stevedoring operations in connection with the undertaking;

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- (f) people performing clerical functions involved in:
 - (i) tallying, receiving, delivering, sorting and stacking, storage, or other work, connected with the loading of cargo into or onto, or unloading of cargo from, ships (whether the cargo is in containers or not); or
 - (ii) receiving, delivering, packing, unpacking, loading, unloading or storage of containers in preparation for loading into or onto ships or after their discharge from ships;
- (g) people engaged in manifesting, freighting, preparation of ship's cargo disposition, timekeeping, labour allocation, roster preparation, preparation and distribution of payrolls, maintenance stores functions, computer operation, operation of other equipment used in connection with electronic data processing, or any other clerical work, in, or in connection with, stevedoring operations or a wharf office on a wharf or on a ship;
- (h) people performing maintenance, construction or repair work if the work is performed in relation to stevedoring operations by maintenance tradespersons, or maintenance tradespersons special class, in relation to any vehicles, mechanical or electrical equipment or both, buildings, materials or facilities;
- (i) people performing watching, guarding or protection duties in relation to stevedoring operations;
- (j) people supervising, directing, checking or instructing stevedoring employees;
- (k) people performing work consisting of planning, controlling, coordinating or integrating stevedoring operations in connection with vessels or cargoes, or both, or in compiling records, reports or information in connection with any such work;
- (l) people employed under the Australian Traineeship System or any other traineeship scheme in relation to the stevedoring industry that is approved by the Minister or a person authorised in writing by the Minister;
- (m) people included in a prescribed class of people.

“(4) Subsection (3) does not preclude a person from being a stevedoring employee under subsection (1) or (2) if the person's employer was liable to furnish returns in respect of the person's employment under the *Stevedoring Industry Levy Collection Act 1977* as amended and in force immediately before the commencement of this section.”

Employment in respect of which levy is payable

34. Section 4 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2);
- (b) by omitting from subsection (9) “(a), (b) or”.

Returns by employers

35. Section 6 of the Principal Act is amended by omitting paragraphs (1)(a) and (b).

Insertion of new sections

36. After section 8 of the Principal Act the following sections are inserted:

Information to be furnished by ship's agent

“8A.(1) If stevedoring employees:

- (a) load local or overseas cargo into a ship; or
- (b) unload overseas cargo from a ship;

the ship's agent responsible for the cargo must give the employer of the stevedoring employees a statement setting out particulars of the cargo in accordance with a form (“Form 1”) approved by the Secretary to the Department.

“(2) The statement must be given to the employer before the end of 21 days after the end of the month in which the loading or unloading of the cargo was completed.

“(3) In this section:

‘**ship's agent**’, in relation to the loading of cargo into, or the unloading of cargo from, a ship, means:

- (a) the person (if any) in Australia directly responsible:
 - (i) to the owners of the ship; or
 - (ii) if the ship has been chartered—to the charterers of the ship;for the loading or unloading of the cargo; or
- (b) if there is no such person responsible for the loading or unloading of the cargo other than the master of the ship—the master.

Offences by ship's agent

“8B. A person must not:

- (a) intentionally or recklessly fail to comply with the requirements of section 8A; or
- (b) give, in a statement referred to in subsection 8A(1), information that the person knows is false or misleading in a material particular.

Penalty: 20 penalty units.”.

Offences relating to returns etc.

37. Section 9 of the Principal Act is amended by omitting “\$1,500” and substituting “30 penalty units”.

Access to premises, books etc.

38. Section 10 of the Principal Act is amended by omitting from subsection (5) “\$1,000” and substituting “20 penalty units”.

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Regulations

39. Section 11 of the Principal Act is amended by omitting from paragraph (f) “\$1,000” and substituting “10 penalty units”.

Addition of new section

40. After section 11 of the Principal Act the following section is added:

Expiry of Act

“12. If the *Stevedoring Industry Finance Committee Act 1977* ceases to have effect under section 32 of that Act, this Act ceases to have effect at the same time.”.

NOTES

1. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988; No. 153, 1989 (as amended by No. 28, 1991); Nos. 37, 71 and 108, 1990; Nos. 19, 62 and 122, 1991; Nos. 52, 92, 94, 109 (as amended by No. 215, 1992), 132, 179, 196, 212 and 215, 1992; and Nos. 98, 104 and 109, 1993.
2. No. 119, 1977.
3. No. 123, 1977, as amended. For previous amendments, see No. 36, 1978; No. 140, 1984; Nos. 87 and 127, 1988; No. 129, 1989; No. 9, 1991 (as amended by No. 215, 1992); and No. 215, 1992.
4. No. 121, 1977, as amended. For previous amendments, see No. 197, 1985; and No. 10, 1991.
5. No. 122, 1977, as amended. For previous amendments, see No. 80, 1982; No. 9, 1991 (as amended by No. 215, 1992); and No. 215, 1992.

[*Minister's second reading speech made in—
House of Representatives on 5 May 1994
Senate on 11 May 1994*]