



Industrial Relations Legislation Amendment Act (No. 2) 1994

No. 158 of 1994

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Industrial Relations Legislation Amendment Act (No. 2) 1994

No. 158 of 1994

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

[Assented to 15 December 1994]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Industrial Relations Legislation Amendment Act (No. 2) 1994*.

Commencement

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

(2) The provisions of Schedule 1 commence as set out in item 1 of that Schedule.

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Schedules

3. The Acts specified in the Schedules are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

SCHEDULE 1

AMENDMENTS RELATING TO THE COAL INDUSTRY

PART 1—COMMENCEMENT PROVISIONS AND OBJECT OF SCHEDULE

1. Commencement

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

(2) The provisions of Part 2 of this Schedule commence on a day or days to be fixed by Proclamation.

(3) The Governor-General must not make a Proclamation fixing a day for the commencement of a provision of Part 2 of this Schedule unless the Governor of New South Wales has consented in writing to the provision coming into operation.

2. Object of Schedule

The object of this Schedule is to reform the arrangements for the prevention and settlement of disputes in the coal mining industry.

PART 2—ARRANGEMENTS FOR THE PREVENTION AND SETTLEMENT OF DISPUTES IN THE COAL MINING INDUSTRY

Division 1—Amendments of the Coal Industry Act 1946

3. Section 4 (definitions of “industrial dispute”, “industrial matters”, “organization”, “the Commission”, “the Commissioner” and “the Tribunal”):

Omit the definitions.

4. Part 5:

Repeal the Part.

5. Clause 3 of the Schedule:

Omit the clause.

Division 2—Amendments of the Industrial Relations Act 1988

6. Subsection 4(1):

Insert:

“ ‘coal mining industry’ includes the shale mining industry;”.

7. Subsection 5(3):

Add at the end:

SCHEDULE 1—continued

“(f) matters pertaining to the relationship between employers in the coal mining industry and their employees, so far as those matters relate to the terms and conditions of employment of employees engaged in, or in activities incidental to, the mining of coal for the purposes of trade or commerce:

- (i) between Australia and a place outside Australia; or
- (ii) between the States; or
- (iii) within a Territory, between a State and a Territory or between 2 Territories.”.

8. Section 5:

Add at the end:

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

- (a) 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; and
- (b) the Commission may perform those functions or exercise those powers; and
- (c) if a law of that State requires that, in the performance of those functions or the exercise of those powers by a full bench, the President is to ensure, if it is practicable to do so, that at least one member of the full bench is a member who also holds office as a member of the Industrial Relations Commission of that State, the President must comply with the requirement despite any other provision of this Act.”.

9. After section 92:

Insert:

Commission to have regard to relevant decisions of Coal Industry Tribunal

“92A. Subject to this Act, the Commission, in performing its functions in relation to the coal mining industry, is to have regard to any decisions of the Coal Industry Tribunal that are relevant to the matters before the Commission.”.

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SCHEDULE 1—continued

10. Division 2A of Part IV:

Repeal the Division.

11. Section 156 (subparagraph (b)(i) of the definition of “boycott dispute”):

Omit “or under an award or order of the Coal Industry Tribunal established under the *Coal Industry Act 1946*”.

12. Subsection 163B(2):

Omit the subsection.

Division 3—Amendments of the Industrial Relations (Consequential Provisions) Act 1988

13. Section 88:

Repeal the section.

Division 4—Saving and transitional

14. Interpretation

(1) In this Division:

“**Coal Industry Act**” means the *Coal Industry Act 1946*;

“**foreign corporation**” means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;

“**Industrial Relations Act**” means the *Industrial Relations Act 1988*;

“**matter**” includes an industrial dispute;

“**trading corporation**” means a trading corporation, within the meaning of paragraph 51(xx) of the Constitution, formed within the limits of the Commonwealth;

“**Tribunal**” means the Coal Industry Tribunal.

(2) Subject to subitem (1), unless the contrary intention appears, expressions used in this Division have the same meanings as in the Industrial Relations Act.

(3) For the purposes of this Division, a matter is taken to have been pending before an authority, body or person at a particular time if at that time the authority, body or person had been notified of the matter but had not begun to perform functions or exercise powers in relation to the matter or had begun to perform functions or exercise powers in relation to the matter but had not completed the performance of those functions or the exercise of those powers in relation to the matter.

SCHEDULE 1—continued

15. Existing awards, orders, decisions and agreements made under Coal Industry Act

(1) A reference in this item to an instrument is a reference to:

- (a) an award or order made by the Tribunal; or
- (b) a decision given by a Local Coal Authority; or
- (c) an agreement made at a hearing before the Tribunal or a Local Coal Authority; or
- (d) an agreement made under a provision of an award made by the Tribunal;

that had effect as mentioned in subsection 36(1) or (2) of the Coal Industry Act immediately before the commencement of this item.

(2) On and after the commencement of this item, an instrument, to the extent to which it was made under the powers and functions vested by subsection 32(2) of the Coal Industry Act, has effect as, and is taken to be, an award made by the Commission under the Industrial Relations Act.

(3) Subject to subitem (4), on and after the commencement of this item, an instrument, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry that are trading corporations, or foreign corporations, and their employees, has effect as, and is taken to be, an award made by the Commission under the Industrial Relations Act.

(4) Subitem (3) does not apply if there is a law of New South Wales that contains a provision to the effect that an instrument, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees, has effect as, and is taken to be, an award made by the Commission.

(5) Without limiting any effect that subitem (3) has apart from this subitem, that subitem also has the effect that it would have if the reference in that subitem to employees of trading corporations were confined, by express provision, to employees employed for the purposes of the trading activities of their employers.

(6) If an instrument to which subitem (2) or subitem (3) (including subitem (3) as it has effect by subitem (5)) applies contains a reference to the Tribunal or to a Local Coal Authority, that reference is taken (except in relation to matters that occurred before the commencement of this item) to be a reference to the Commission.

(7) If a determination was made or any other thing was done before the commencement of this item by the Tribunal or a Local Coal Authority under an instrument to which subitem (2) or subitem (3) (including subitem (3) as

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it has effect by subitem (5)) applies, the determination or other thing has effect on and after that commencement as if it had been made or done by the Commission.

(8) If:

- (a) a law of New South Wales formerly provided that the provisions of the Coal Industry Act applied (with or without any modifications) as a law of that State for the purpose of enabling the Tribunal or a Local Coal Authority to perform functions or exercise powers in relation to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees; and
- (b) a law of New South Wales provides that the provisions of the Industrial Relations Act apply (with or without any modifications) as a law of that State for the purpose of enabling the Commission to perform functions or exercise powers in relation to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees;

then, nothing in this Division affects the operation of any law of New South Wales that contains a provision of a kind mentioned in any of the following paragraphs:

- (c) a provision to the effect that an instrument, to the extent to which it was made under functions or powers referred to in paragraph (a), has effect as, and is taken to be, an award made by the Commission under the provisions of the Industrial Relations Act as applying as mentioned in paragraph (b);
- (d) a provision to the effect that a reference in an instrument referred to in paragraph (c) to the Tribunal or a Local Coal Authority is taken (except in relation to matters that occurred before the commencement of this item) to be a reference to the Commission;
- (e) a provision to the effect that a determination made or other thing done under such an instrument before the commencement of this item by the Tribunal or a Local Coal Authority has effect on and after that commencement as if it had been made or done by the Commission.

16. Existing determinations by boards of reference

(1) A reference in this item to a determination is a reference to a determination made, decision given or other instrument issued by a board of reference established under the Coal Industry Act that had effect immediately before the commencement of this item.

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(2) On and after the commencement of this item, a determination, to the extent to which it was made under the powers and functions vested by subsection 32(2) of the Coal Industry Act, has effect as, and is taken to be, a determination made by the board of reference under an appointment made, and in the performance of functions assigned to it, by the Commission under section 131 of the Industrial Relations Act.

(3) On and after the commencement of this item, a determination, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry that are trading corporations, or foreign corporations, and their employees, has effect as, and is taken to be, a determination made by the board of reference under an appointment made, and in the performance of functions assigned to it, by the Commission under section 131 of the Industrial Relations Act.

(4) Subitem (3) does not apply if there is a law of New South Wales that contains a provision to the effect that a determination, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees, has effect as, and is taken to be, a determination made by the Board of Reference under an appointment made, and in the performance of functions assigned to it, by the Commission under section 131 of the Industrial Relations Act.

(5) Without limiting any effect that subitem (3) has apart from this subitem, that subitem also has the effect that it would have if the reference in that subitem to employees of trading corporations were confined, by express provision, to employees employed for the purposes of the trading activities of their employers.

(6) If any thing was done before the commencement of this item by a board of reference under a determination to which subitem (2) or subitem (3) (including subitem (3) as it has effect by subitem (5)) applies, that thing has effect on and after that commencement as if it had been done by that board of reference under an appointment made, and in the performance of functions assigned to it, by the Commission under section 131 of the Industrial Relations Act.

(7) If:

- (a) a law of New South Wales formerly provided that the provisions of the Coal Industry Act applied (with or without any modifications) as a law of that State for the purpose of enabling the Tribunal or a Local Coal Authority to perform functions or exercise powers in relation to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees; and

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- (b) a law of New South Wales provides that the provisions of the Industrial Relations Act apply (with or without any modifications) as a law of that State for the purpose of enabling the Commission to perform functions or exercise powers in relation to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees;

then, nothing in this Division affects the operation of any law of New South Wales that contains a provision to the effect that a determination, to the extent to which it was made under functions or powers referred to in paragraph (a), has effect as, and is taken to be, a determination made by a board of reference under an appointment made, and in the performance of functions assigned to it, by the Commission under section 131 of the Industrial Relations Act as applying as mentioned in paragraph (b).

17. Matters pending before the Coal Industry Tribunal or a Local Coal Authority

(1) If, immediately before the commencement of this item, a matter was pending before the Tribunal or a Local Coal Authority, subitem (6) applies to the matter in accordance with this item.

(2) Subitem (6) applies to the extent to which:

(a) the matter was notified to the Tribunal or Authority for the purpose of the performance or exercise by the Tribunal or Authority of; or

(b) the Tribunal or Authority was performing or exercising;

functions or powers in relation to the matter under subsection 32(2) of the Coal Industry Act.

(3) Subitem (6) also applies to the extent to which the matter relates to the relationship between employers in the coal mining industry that are trading corporations, or foreign corporations, and their employees.

(4) Subitem (3) does not apply if there is a law of New South Wales that contains a provision to the effect that a matter that was pending before the Tribunal or a Local Coal Authority immediately before the commencement of this item, to the extent to which it relates to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees, is taken to be a matter before the Commission and that the Commission may deal with the matter as if it had been before the Commission since it arose.

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(5) Without limiting any effect that subitem (3) has apart from this subitem, that subitem also has the effect that it would have if the reference in that subitem to employees of trading corporations were confined, by express provision, to employees employed for the purposes of the trading activities of their employers.

(6) A matter to which this subitem applies is taken to be a matter before the Commission and the Commission may deal with the matter as if it had been before the Commission since it arose.

(7) For the purpose of dealing with a matter under subitem (6), the Commission may have regard to any evidence given, or arguments put, in the proceedings relating to the matter before the Tribunal or Local Coal Authority and to any decision, recommendation, determination or report made by the Tribunal or Authority in relation to the matter.

(8) If:

(a) a law of New South Wales provides that the provisions of the Industrial Relations Act apply (with or without any modifications) as a law of that State for the purpose of enabling the Commission to perform functions or exercise powers in relation to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees; and

(b) a law of New South Wales also contains a provision of a kind mentioned in either of the following subparagraphs:

(i) a provision to the effect that a matter referred to in paragraph (a) that was pending before the Tribunal or a Local Coal Authority immediately before the commencement of this item is taken to be a matter before the Commission under the provisions of the Industrial Relations Act as applying as mentioned in paragraph (a) and that the Commission may deal with the matter as if it had been before the Commission since it arose; and

(ii) a provision to the effect that, for the purpose of dealing with a matter under subparagraph (i), the Commission may have regard to any evidence given, or arguments put, in the proceedings relating to the matter before the Tribunal or Local Coal Authority and to any decision, recommendation, determination or report made by the Tribunal or Authority in relation to the matter;

nothing in this Part affects the operation of the provisions referred to in paragraph (b).

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SCHEDULE 1—continued

18. Matters pending before a board of reference

Despite the amendments made by this Part, if, immediately before the commencement of this item, a matter was pending before a board of reference established under the Coal Industry Act, the board of reference may deal, or continue to deal, with the matter as if the board of reference had been appointed, and assigned its functions, by the Commission under section 131 of the Industrial Relations Act.

19. Regulations

The Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Division.

SCHEDULE 2

AMENDMENTS OF THE REMUNERATION AND ALLOWANCES ACT 1990

1. After section 3:

Insert:

Operation of Remuneration Tribunal Determination

“3A. Determination No. 12 of 1994 of the Remuneration Tribunal, dated 30 June 1994, does not operate on or after the date of commencement of this section.”.

2. Schedule 3:

Omit subclauses (2) to (8), substitute:

“(2) The Members of Parliament annual salary is equal to the minimum SES Band 2 annual salary.

“(3) In this clause:

‘**minimum SES Band 2 annual salary**’ means the minimum annual rate of salary payable to the holders of offices in the Senior Executive Service of the Australian Public Service having a classification of Band 2.”.

3. Schedule 4, clause 4:

Omit the clause, substitute:

“4. Whenever the annual rate of salary payable to Senators and Members of the House of Representatives is, after the commencement of this section, increased under Schedule 3 because of an increase in the minimum SES Band 2 annual salary as defined in that Schedule, the rate per annum of additional salary payable to the holders of offices specified in clause 3 is increased by the same proportion.”.

SCHEDULE 3

AMENDMENTS OF THE NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION ACT 1985

1. Paragraphs 10(1)(a), (aa), (b), (c), (d) and (e):

Add at the end “and”.

2. Paragraphs 10(1)(f) and (g):

Omit, substitute:

“(f) one member nominated by the Minister for Human Services and Health.”.

3. After section 19:

Insert:

**Special rules for Commission decisions affecting bodies and people
who nominate Commission members**

“19A.(1) This section applies where:

- (a) a body that nominates a member of the Commission under paragraph 10(1)(b) or (c); or
- (b) a State; or
- (c) a Minister who nominates a member of the Commission under paragraph 10(1)(e) or (f);

has a direct or indirect pecuniary interest in a matter being considered by the Commission.

“(2) A Minister is not taken to have a direct or indirect pecuniary interest in a matter merely because the Commonwealth has or may have such an interest.

“(3) The member or members nominated by that body, by the Premier of that State or by that Minister must not:

- (a) be present during any deliberation of the Commission about the matter; or
- (b) take part in any decision of the Commission about the matter.

“(4) Where a member affected by subsection (3) was nominated under paragraph 10(1)(b) or (c), then, for the purposes of the Commission’s deliberation and decision:

- (a) paragraphs 19(4) and 19(5) do not apply; and
- (b) the quorum is constituted by three-quarters of the number of members who are not affected by subsection (3); and

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- (c) questions arising in relation to the matter are to be decided by an affirmative vote of at least three-quarters of the number of members who are not affected by subsection (3).”.

*{Minister's second reading speech made in—
House of Representatives on 10 November 1994
Senate on 8 December 1994}*