



INDUSTRIAL RELATIONS AMENDMENT ACT 1994

No. 90 of 1994

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 6 amended (Provisions relating to appointment of Commissioners)
6. Section 15 amended (General functions and powers of the President)
7. Section 24 amended (Award hearings before Commissioner sitting alone)
8. Section 29 amended (Hearings for settling disputes)
9. Section 31 amended (Enforcement of decisions of hearings and conferences)
10. Section 52 amended (Remedy of employees)
11. Section 55 amended (Making of industrial agreements)
12. Section 61A amended (Interpretation)
13. Section 61D amended (Parties to an enterprise agreement)
14. Section 61E amended (Content of enterprise agreement)
15. Section 61F amended (Minimum conditions of employment)
16. Section 61H substituted
61H—Lodgement of enterprise agreement
17. Section 61I amended (Hearing)
18. Section 61J amended (Approval of enterprise agreement)
19. Section 61K amended (Withdrawal from enterprise agreement)
20. Section 61L substituted
61L—Registration of enterprise agreement

21. Section 61R amended (Termination of registered enterprise agreement)
22. Section 61U amended (Election of members of employee committee)
23. Section 61V amended (Periodic election)
24. Section 61ZD amended (Secret ballots under this Part)
25. Section 61ZE amended (Register)
26. Section 63 amended (Registration of associations)
27. Section 65A amended (Recall and re-issue of certificate of registration)
28. Section 68 amended (Cancellation of registration)
29. Section 69 amended (Interpretation of Part)
30. Section 70 amended (Rights of appeal)
31. Section 71 amended (Procedure on appeals)
32. Section 75 amended (Records of employment)
33. Section 87A amended (Responsibility of Secretary and Registrar for enforcement of certain provisions of Act)

**INDUSTRIAL RELATIONS AMENDMENT ACT 1994**

No. 90 of 1994

AN ACT to amend the *Industrial Relations Act 1984***[Royal Assent 16 December 1994]**

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

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

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Industrial Relations Act 1984** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended as follows:—

(a) by omitting paragraph (a) of the definition of “industrial dispute” and substituting the following paragraphs:—

(a) the termination of employment or reinstatement of an employee; or

(ab) a breach or an alleged breach of an award, registered industrial agreement or registered enterprise agreement; or

(b) by inserting “, other than a dispute referred to in paragraph (a) or (ab),” in the definition of “industrial dispute” after “include a dispute”;

(c) by inserting after the definition of “registered enterprise agreement” the following definition:—

“**registered industrial agreement**” means an industrial agreement registered under section 56;

Section 6 amended (Provisions relating to appointment of Commissioners)

5—Section 6 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:—

(5) A Commissioner is an employee for the purposes of—

(a) the *Retirement Benefits Act 1993*; and

(b) the *Long Service Leave (State Employees) Act 1994*; and

(c) the *Workers Compensation Act 1988*.

* No. 21 of 1984. Amended by Nos. 29 and 105 of 1984, No. 125 of 1985, No. 113 of 1986, No. 25 of 1987, No. 5 of 1990, Nos. 4 and 43 of 1991, No. 59 of 1992, Nos. 68 and 87 of 1994 and S.R. 1987, No. 244 and S.R. 1993, No. 260.

Section 15 amended (General functions and powers of the President)

6—Section 15 (2) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (e) “section 61; or” and substituting “section 61;”;
- (b) by inserting after paragraph (e) the following paragraph:—
 - (ea) by subsection (1) (j) from appointing himself or herself to hear an application for an order under section 75 (7A); or

Section 24 amended (Award hearings before Commissioner sitting alone)

7—Section 24 of the Principal Act is amended by omitting subsection (4) and substituting the following subsections:—

(4) A Commissioner who conducts the hearing of an application in relation to an award may refer the application to the President if the Commissioner considers that the application—

- (a) directly affects another award; or
- (b) is so important that it is in the public interest to have the matter dealt with by a Full Bench.

(4A) A party to the hearing of an application may request the Commissioner to refer the application to the President.

(4B) A party to the hearing of an application intending to request the Commissioner to refer the application to the President is to notify the Commissioner and the other parties to the hearing of that intention before the day on which the hearing is scheduled to commence.

(4C) Subject to subsection (4D), the Commissioner must refer an application to the President if requested to do so by a party to the hearing of the application.

(4D) The Commissioner may refer an application to the President after the commencement of the hearing of the application only if, in the Commissioner’s opinion, issues have emerged during the hearing which—

- (a) could not reasonably have been foreseen at the commencement of the hearing; and
- (b) satisfy the criteria set out in subsection (4).

Section 29 amended (Hearings for settling disputes)

8—Section 29 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “or employee” and substituting “, employee or the Minister”;

(b) by inserting after subsection (1) the following subsections:—

(1A) A former employee may apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to the termination of the employment of that employee.

(1B) An application for a hearing before a Commissioner in respect of an industrial dispute relating to termination of employment is to be made within 14 days of the date of termination.

(c) by omitting subsection (2) and substituting the following subsection:—

(2) The President must convene a hearing before a Commissioner if an application is made under subsection (1) or (1A).

(d) by omitting from subsection (3) “relevant”.

Section 31 amended (Enforcement of decisions of hearings and conferences)

9—Section 31 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

(1A) Before deciding whether or not to make an order in respect of an industrial dispute relating to termination of employment, a Commissioner is to take into account the standards of general application contained in Part II of the International Labour Organisation’s Convention concerning the Termination of Employment at the Initiative of the Employer as set out in Schedule 10 to the Commonwealth Act.

Section 52 amended (Remedy of employees)

10—Section 52 (1) of the Principal Act is amended by inserting “or section 31 (5)” after “Division”.

Section 55 amended (Making of industrial agreements)

11—Section 55 (7) of the Principal Act is amended by omitting “shall, subject to any award, continue” and substituting “continues”.

Section 61A amended (Interpretation)

12—Section 61A of the Principal Act is amended as follows:—

(a) by omitting “section 61ZE.” from the definition of “register” and substituting “section 61ZE;”;

(b) by inserting after the definition of “register” the following definition:—

“**trainee**” means an employee who is a party to a training agreement within the meaning of the *Tasmanian State Training Authority Act 1994*.

Section 61D amended (Parties to an enterprise agreement)

13—Section 61D (2) of the Principal Act is amended by omitting “Before” and substituting “Subject to section 61ZD (1A), before”.

Section 61E amended (Content of enterprise agreement)

14—Section 61E of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:—

(c) setting out the procedures to be followed by the parties to, and persons covered by, the agreement for resolving grievances and disputes; and

Section 61F amended (Minimum conditions of employment)

15—Section 61F (1) of the Principal Act is amended as follows:—

- (a) by inserting after “adult” in paragraph (a) “other than an apprentice or trainee”;
- (b) by inserting after “apprentice” in paragraph (e) “or trainee”.

Section 61H substituted

16—Section 61H of the Principal Act is repealed and the following section is substituted:—

Lodgement of enterprise agreement

61H—Parties to an enterprise agreement wishing to have the agreement approved and registered must lodge the agreement with the Enterprise Commissioner.

Section 61I amended (Hearing)

17—Section 61I of the Principal Act is amended as follows:—

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

(2) At the hearing, the Enterprise Commissioner must satisfy himself or herself that the parties to the agreement are aware of—

- (a) their entitlements and obligations under the agreement and this Part; and
- (b) any changes to existing conditions of employment which will result from the agreement taking effect.

(2A) At the hearing, the Enterprise Commissioner must be satisfied that any secret ballot required to be conducted in relation to the agreement has been conducted in accordance with section 61ZD (1).

- (b) by inserting after subsection (6) the following subsection:—

(7) At the hearing, the Enterprise Commissioner may—

- (a) with the consent of the parties, correct or amend any error, defect or irregularity relating to the agreement; and
- (b) with the consent of a person, add or delete the person as a party to the agreement; and
- (c) give any direction or do any thing necessary or convenient for the just and expeditious determination of the hearing; and
- (d) inform himself or herself on any matter in any way he or she thinks fit.

Section 61J amended (Approval of enterprise agreement)

18—Section 61J of the Principal Act is amended as follows:—

- (a) by omitting paragraph (b) of subsection (1);
- (b) by inserting after paragraph (c) of subsection (1) the following paragraph:—
 - (ca) the bargaining process adopted by the parties to the agreement was not appropriate and fair; or
- (c) by omitting from subsection (3) “not satisfied as required under this section” and substituting “satisfied as to any of the matters specified in subsection (1)”.

Section 61K amended (Withdrawal from enterprise agreement)

19—Section 61K (2) of the Principal Act is amended by omitting “Registrar” and substituting “Enterprise Commissioner”.

Section 61L substituted

20—Section 61L of the Principal Act is repealed and the following section is substituted:—

Registration of enterprise agreement

61L—(1) Subject to subsection (2), the Enterprise Commissioner is to register an enterprise agreement approved under section 61J (1).

(2) The Enterprise Commissioner is not to register an enterprise agreement if a withdrawal notice has been lodged under section 61K.

(3) An enterprise agreement has no effect unless it is registered.

Section 61R amended (Termination of registered enterprise agreement)

21—Section 61R of the Principal Act is amended as follows:—

- (a) by omitting paragraph (c) of subsection (4) and substituting the following paragraph:—
 - (c) the parties are aware of any changes to existing conditions of employment which will result from the termination of the agreement.
- (b) by omitting “Registrar” from subsection (5) and substituting “Enterprise Commissioner”.

Section 61U amended (Election of members of employee committee)

22—Section 61U of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

(3) The members of an employee committee hold office for the duration of the enterprise agreement or for any lesser period the relevant employees determine.

Section 61v amended (Periodic election)

23—Section 61v of the Principal Act is amended by omitting “At the end of the period of 12 months referred to in section 61U (3) and each successive 12 month period,” and substituting “If the members of an employee committee hold office for a period less than the duration of the enterprise agreement, at the end of that period”.

Section 61ZD amended (Secret ballots under this Part)

24—Section 61ZD of the Principal Act is amended as follows:—

(a) by inserting after subsection (1) the following subsection:—

(1A) The Enterprise Commissioner, at the request of all relevant persons, may waive the necessity to hold a secret ballot under section 61D (2) if—

(a) the number of employees involved is 5 or less; and

(b) all the employees attend the hearing to approve the agreement.

(b) by omitting from subsection (2) “Registrar” (wherever occurring) and substituting “Enterprise Commissioner”;

(c) by omitting subsection (3);

(d) by omitting from subsection (4) “Registrar” and substituting “Enterprise Commissioner”;

(e) by omitting from subsection (4) (b) “Registrar’s” and substituting “Enterprise Commissioner’s”.

Section 61ZE amended (Register)

25—Section 61ZE of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “Registrar” (twice occurring) and substituting “Enterprise Commissioner”;

(b) by omitting from subsection (2) “Registrar” and substituting “Enterprise Commissioner”;

(c) by omitting from subsection (3) “Registrar” and substituting “Enterprise Commissioner”.

Section 63 amended (Registration of associations)

26—Section 63 is amended by omitting subsection (2).

Section 65A amended (Recall and re-issue of certificate of registration)

27—Section 65A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) After the Registrar has issued a certificate of registration to an organization, the organization or another organization may apply to the President to have its interest in an award specified in the certificate—

- (a) deleted from the certificate; or
- (b) added to the certificate.

Section 68 amended (Cancellation of registration)

28—Section 68 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (a) (i) “matters;” and substituting “matters; or”;
- (b) by omitting subparagraph (ii) of subsection (1) (a);
- (c) by inserting after subsection (1) the following subsection:—

(1A) If an organization requests that its registration be cancelled, the Registrar may cancel its registration.

Section 69 amended (Interpretation of Part)

29—Section 69 (2) of the Principal Act is amended as follows:—

- (a) by omitting “section 71” and substituting “sections 70 and 71”;
- (b) by omitting “or a dismissal” and substituting “, a dismissal, an award or any other finding”.

Section 70 amended (Rights of appeal)

30—Section 70 of the Principal Act is amended as follows:—

- (a) by omitting subparagraph (ii) of subsection (1) (a) and substituting the following subparagraph:—
 - (ii) an organization granted, or deemed under Part V to have, an interest in the award and which is aggrieved by the making of that award; or
- (b) by inserting in subsection (1) (b) “a decision” after “paid or”;
- (c) by omitting from subsection (1) (d) “an order” and substituting “a decision”;

- (d) by omitting from subsection (1) (d) “directing”;
- (e) by inserting after paragraph (d) in subsection (1) the following paragraph:—

(da) the making of, or the refusal to make, an order by a Commissioner in relation to a breach or an alleged breach of an award, registered industrial agreement or registered enterprise agreement—by a person or organization notifying the dispute, a person against whom, or organization against which, an order is made or the Minister; and

- (f) by omitting subsections (2) and (3) and substituting the following subsection:—

(2) the Full Bench hearing an appeal under subsection (1) is not to include the Commissioner or Enterprise Commissioner who made the decision to which the appeal relates.

Section 71 amended (Procedure on appeals)

31—Section 71 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) An appeal under section 70 must be made by lodging a notice of appeal with the Registrar within 21 days after the date of service of the notice relating to the decision being appealed against.

Section 75 amended (Records of employment)

32—Section 75 of the Principal Act is amended by inserting after subsection (8) the following subsection:—

(9) Proceedings in relation to an offence against this section must be brought within 12 months of the date of the alleged offence.

Section 87A amended (Responsibility of Secretary and Registrar for enforcement of certain provisions of Act)

33—Section 87A of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “other” (twice occurring);
- (b) by omitting from subsection (1) “, subject to the direction of the Minister, is responsible” and substituting “must institute or cause to be instituted proceedings”;
- (c) by omitting from subsection (2) “other” (twice occurring);
- (d) by omitting from subsection (2) “, subject to the direction of the Minister, is responsible” and substituting “must institute or cause to be instituted proceedings”.

*[Second reading presentation speech made in:—
House of Assembly on 16 November 1994
Legislative Council on 24 November 1994]*