



Industrial Relations Legislation Amendment Act 1992

No. 109 of 1992

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

[Assented to 9 July 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Industrial Relations Legislation
Amendment Act 1992*.

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Commencement

2.(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation. 5

(3) If a provision referred to in subsection (2) 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 INDUSTRIAL RELATIONS ACT 1988 10

Principal Act

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

Interpretation 15

4. Section 4 of the Principal Act is amended:

(a) by adding at the end of the definition of “bans clause” in subsection (1) “, but does not include such a term if it constitutes or forms part of procedures specified in the award for preventing and settling disputes between parties to the award”; 20

(b) by omitting from subsection (1) the definition of “certified agreement” and substituting the following definition:
“**certified agreement** means an agreement certified under Division 3A of Part VI;”;

(c) by omitting from subsection (1) the definition of “designated Presidential Member” and substituting the following definition:
“**designated Presidential Member**, in relation to a power or function under this Act, means a member of the Vice President’s Panel referred to in section 38 who has responsibility for the exercise of the power or the performance of the function;” 25 30

(d) by omitting from paragraph (b) of that definition “paragraph (a)” and substituting “paragraph (a) or (aa)”;

(e) by omitting from subsection (1) the definition of “panel” and substituting the following definition:
“**panel**, except in section 38, means a panel to which an industry has been assigned under section 37;” 35

(f) by inserting after subsection (1) the following subsection:

“(1A) To avoid doubt, it is declared that a reference in this Act to an independent contractor is confined to a natural person.”. 40

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5. Section 38 of the Principal Act is repealed and the following section is substituted:

Vice President's Panel

“38.(1) There is to be a Vice President's Panel, consisting of:

- 5 (a) the Vice President; and
(b) at least one other Presidential Member (not the President) assigned to the Panel by the President.

“(2) The Vice President is to organise and allocate the work of the Panel, and the other member or members of the Panel must comply with directions given by the Vice President in relation to that work.”

“(3) A member of the Panel may be a member of one or more panels referred to in section 37.

“(4) The fact that a person is a member of the Panel does not affect any powers, functions or duties that have been, or may be, given to the person by or under any other provision of this Act.”.

Appeals to Full Bench

6. Section 45 of the Principal Act is amended:

(a) by inserting after paragraph (1)(e) the following paragraphs:

20 “(ea) an opinion formed by a member of the Commission under section 127A or a decision by a member of the Commission not to form such an opinion;

(eb) an order made by a member of the Commission under section 127B or a decision by a member of the Commission not to make such an order;

25 (ec) the certification of an agreement to which paragraph 134E(1)(e) applied;”;

(b) by inserting after paragraph (3)(b) the following paragraph:

30 “(ba) in the case of an appeal under paragraph (1)(ec)—by an organisation of employees described in subparagraph 134E(1)(e)(i) that was not a party to the agreement;”.

7. After section 127 of the Principal Act the following sections are inserted:

Unfair contracts with independent contractors

“127A.(1) In this section:

35 ‘contract’ means:

(a) a contract for services that:

(i) is binding on an independent contractor; and

(ii) relates to the performance of work by the independent

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- contractor, other than work for the private and domestic purposes of the other party to the contract; and
- (b) any condition or collateral arrangement relating to such a contract.

Note: the meaning of 'contract' is limited by section 127C for Constitutional reasons.

“(2) Application may be made to the Commission (constituted by a Presidential Member or a Full Bench) to review a contract on any or all of the following grounds: 5

- (a) the contract is unfair;
(b) the contract is harsh;
(c) the contract is against the public interest. 10

“(3) An application under subsection (2) may be made only by:

- (a) a party to the contract; or
(b) an organisation of employees of which the independent contractor is (or has applied to become) a member, if it is acting with the written consent of the independent contractor; or 15
(c) an organisation or association of employers of which the person contracting for the services is (or has applied to become) a member, if it is acting with the written consent of the person.

“(4) In reviewing the contract, the Commission may have regard to: 20

- (a) the relative strength of the bargaining positions of the parties to the contract and, if applicable, any persons acting on behalf of the parties; and
(b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract; and 25
(c) whether the contract may have an adverse effect on the development of the skills of employees performing work of the relevant kind in the industry, including any system designed to provide a trained labour force (for example, apprenticeship or any arrangement for improving the skills of employees); and 30
(d) whether the contract provides total remuneration that is, or is likely to be, less than that of an employee performing similar work; and
(e) any other matter that the Commission thinks relevant.

“(5) If the Commission forms the opinion that a ground referred to in subsection (2) is established in relation to the whole or part of the contract, it must record its opinion, stating whether the opinion relates to the whole or a specified part of the contract. 35

“(6) The Commission may form the opinion that a ground referred to in subsection (2) is established in relation to the whole or part of the contract even if the ground was not canvassed in the application. 40

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“(7) The Commission must exercise its powers under this section in a way that furthers the objects of this Act as far as practicable.

Commission may make orders about unfair contracts

5 “127B.(1) If the Commission records an opinion under section 127A in relation to a contract, it may make one or more of the following orders in relation to the opinion:

- (a) an order setting aside the whole or part of the contract, as the case may be;
- (b) an order varying the contract.

10 “(2) An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies.

15 “(3) While the application is pending, the Commission may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract.

“(4) An order takes effect from the date of the order or a later date specified in the order.

“(5) A party to the contract may apply to the Court to enforce an order by injunction or otherwise as the Court thinks fit.

20 “(6) This section does not limit any other rights of a party to the contract.

Application of sections 127A and 127B

“127C.(1) Sections 127A and 127B apply only as follows, namely:

- 25 (a) in relation to a contract to which a constitutional corporation is a party;
- (b) in relation to a contract relating to the business of a constitutional corporation;
- (c) in relation to a contract entered into by a constitutional corporation for the purposes of the business of the corporation;
- 30 (d) in relation to a contract relating to work in trade or commerce to which paragraph 51(i) of the Constitution applies;
- (e) in relation to a contract so far as it affects matters that take place in or are otherwise connected with a Territory;
- 35 (f) in relation to a contract to which the Commonwealth or a Commonwealth authority is a party.

“(2) In this section:

‘**constitutional corporation**’ means a corporation to which paragraph 51(xx) of the Constitution applies;

‘**contract**’ has the same meaning as in section 127A.”.

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8. After section 134 of the Principal Act the following Division is inserted in Part VI:

“Division 3A—Certified Agreements

Objects of Division

“134A.(1) The objects of this Division are: 5

- (a) to facilitate the making and certifying of agreements; and
- (b) to encourage their use in the prevention and settlement of industrial disputes.

“2) The Commission must, as far as practicable, perform its functions under this Division in a way that furthers the objects of this Act and, in particular, the objects of this Division. 10

“3) Sections 90 and 106 do not apply to the performance of functions of the Commission under this Division.

“4) In performing its functions under this Division, the Commission may not act under paragraph 111(1)(g) on the grounds specified in subparagraphs (i) and (iii) of that paragraph. 15

Definitions

“134B.(1) In this Division, unless the contrary intention appears:

‘party’ to an agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the business of a party, including a corporation that has acquired or taken over the whole or part of the business of the party; 20

‘single business’ means:

- (a) a business that is carried on by a single employer; or
- (b) a business that is carried on by 2 or more employers as a joint venture or common enterprise; or 25
- (c) a single project or undertaking; or
- (d) activities carried on by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or 30
 - (iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.

Certified agreements 35

“134C.(1) If the parties to an industrial dispute, or any of them, agree on terms for:

- (a) the settlement of all or any of the matters in dispute; or
- (b) the prevention of further industrial disputes between them;

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they may make a memorandum of the terms agreed on.

“(2) A single memorandum may deal with 2 or more disputes.

“(3) The parties to the agreement may apply to the Commission to certify the agreement.

5 Minister may intervene in certain cases

“134D.(1) If an agreement applies only to a single business, part of a single business or a single place of work, the Minister may intervene in the application on the ground that certification of the agreement may seriously jeopardise the public interest.

10 “(2) The intervention is to be made by giving written notice to the Industrial Registrar.

“(3) This section does not limit the operation of sections 43 and 44.

15 “(4) This section ceases to have effect at the end of 18 months after the commencement of this section.

Certification of agreements

“134E.(1) The Commission must certify an agreement if, and must not certify an agreement unless, it is satisfied that:

20 (a) the agreement does not, in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement; and

(b) the agreement includes procedures for preventing and settling further disputes between the employers and employees covered by the agreement about matters arising under the agreement; and
25

(c) subject to subsection (3), before the application for certification of the agreement was made, each organisation of employees that is a party to the agreement took reasonable steps:

30 (i) to consult with those of its members whose employment is covered by the agreement over the terms of the agreement; and

(ii) to inform those members of the organisation’s intention to apply for certification; and

35 (d) each organisation of employees that is a party to the agreement has:

(i) informed the Commission whether or not it consulted with its members as described in subparagraph (c)(i); and

(ii) informed the Commission of the outcome of any such consultations; and

40 (e) if the agreement applies only to a single business, part of a single business or a single place of work:

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- (i) subject to subsections (4) and (5), the parties to the agreement include:
 - (A) each organisation of employees that is a party to an award which binds an employer in respect of the work performed in that business, part of a business or place of work; or 5
 - (B) if there is no such award—an organisation of employees that is able to represent the industrial interests of the employees who are covered by the agreement; and 10
 - (ii) the agreement has been negotiated, on the one hand, by each employer concerned or a representative of the employer, and, on the other hand, by a single person or group of persons representing all the other parties to the agreement; and 15
 - (f) the agreement specifies the period of operation of the agreement.
- “(2) For the purposes of paragraph (1)(a), an agreement is only taken to disadvantage employees in relation to their terms and conditions of employment if:
- (a) certification of the agreement would result in the reduction of any entitlements or protections of those employees under: 20
 - (i) an award; or
 - (ii) any other law of the Commonwealth or of a State or Territory that the Commission thinks relevant; and
 - (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest. 25
- “(3) Paragraph (1)(c) does not apply to an organisation of employees if:
- (a) the agreement applies only to a new business, project or undertaking; and 30
 - (b) at the time when the application for certification is made, no members of the organisation have yet been employed in connection with the business, project or undertaking.
- “(4) Subparagraph (1)(e)(i) does not apply if the Commission is satisfied that: 35
- (a) each organisation of employees referred to in sub-subparagraph (1)(e)(i)(A) has been given the opportunity to be a party to the agreement; and
 - (b) at least one of those organisations is a party to the agreement; and 40
 - (c) the agreement is in the interests of the employees whose employment is covered by the agreement.

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“(5) Sub-subparagraph (1)(e)(i)(A) does not apply to an organisation of employees if none of its members are employed in the business, part of a business or place of work concerned.

When Commission may refuse to certify agreements

5 “134F.(1) In spite of section 134E, the Commission may refuse to certify an agreement if:

- (a) in the case of any agreement—the Commission thinks that any of the terms is one that the Commission would not have power to include in an award (disregarding section 95); or
- 10 (b) in the case of an agreement that does not apply only to a single business, part of a single business or a single place of work—the Commission thinks that certification of the agreement would be contrary to the public interest.

“(2) In spite of section 134E, if:

- 15 (a) the agreement applies only to a single business, part of a single business or a single place of work; and
- (b) the Minister has intervened in the application under section 134D;

20 the Commission may also refuse to certify the agreement if it thinks that certification of the agreement is likely to seriously jeopardise the public interest.

“(3) Subsection (2) ceases to have effect at the end of 18 months after the commencement of this section.

Other options open to Commission

25 “134G.(1) If, under section 134E or 134F, the Commission has grounds to refuse to certify the agreement:

- (a) the Commission may accept an undertaking from one or more of the parties in relation to the operation of the agreement and, if satisfied that the undertaking meets the Commission’s concerns, certify the agreement; and
- 30 (b) in any case, before refusing to certify the agreement, the Commission must give the parties an opportunity to amend it or to take any other action that may be necessary to make the agreement certifiable.

35 “(2) If an undertaking is not observed, the Commission may terminate the agreement after giving the parties an opportunity to be heard.

Procedures for preventing and settling disputes

40 “134H. Procedures in an agreement for preventing and settling further disputes between employers and employees covered by the agreement may, if the Commission so approves, empower the Commission to do either or both of the following:

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- (a) to settle disputes over the application of the agreement;
- (b) to appoint a board of reference as described in section 131 for the purpose of settling such disputes.

Operation of certified agreements

- “134J.(1) A certified agreement comes into force when it is certified and, during the period of the agreement, it remains in force unless: 5
- (a) the Commission terminates it under subsection 134G(2); or
 - (b) because of one or more orders or declarations under section 134M or 134N:
 - (i) the agreement is terminated; or 10
 - (ii) all the remaining parties to the agreement are organisations of employees; or
 - (iii) all the remaining parties to the agreement are employers or organisations of employers.
- “(2) During the period of the agreement, section 148 does not apply to the agreement. 15
- “(3) If the agreement remains in force until the end of the period of the agreement, then, at the end of that period:
- (a) section 148 applies to the agreement, and the agreement continues in force accordingly; and 20
 - (b) in the application of section 148 to the agreement, the references in that section to the period specified in the award as the period for which the award is to continue in force are to be read as references to the period of the agreement.
- “(4) In this section: 25
- ‘period of the agreement’** means the period of operation of the agreement specified in the agreement, or that period as extended or further extended under section 134K.

Extension of certified agreements

- “134K.(1) Subject to subsection (2), the parties to a certified agreement may extend the period of operation of the agreement. 30
- “(2) An extension has no effect unless:
- (a) the parties agree to the extension; and
 - (b) the parties notify the Commission in writing of the extension before the end of the period of operation of the agreement or that period as extended or further extended under this section. 35

Effect of certified agreements

- “134L.(1) During the period of operation of a certified agreement specified in the agreement, or that period as extended or further extended under section 134K: 40

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- (a) the terms of the agreement prevail over the terms of an award or an order of the Commission; and
- (b) a term of the agreement can be set aside or varied by the parties, but only as provided in section 134M; and
- 5 (c) the agreement or a term of the agreement is not to be set aside under subsection 113(1) or cancelled or suspended under section 187; and
- (d) the agreement may only be varied under subsection 113(2) for the purpose of:
 - 10 (i) removing ambiguity or uncertainty; or
 - (ii) including, omitting or varying a bans clause; or
 - (iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; and
- 15 (e) except as provided by this Division, the Commission is not to exercise arbitration powers to vary the agreement.

“(2) The agreement may, by express provision, exclude or limit the operation of subparagraphs (1)(d)(ii) and (iii).

Certified agreements may be varied or terminated by Full Bench

20 “134M.(1) At any time while a certified agreement is in force, a Full Bench may review the operation of the agreement after giving the parties to the agreement an opportunity to be heard.

“(2) The Full Bench may act under subsection (1) only:

- (a) on its own initiative; or
- 25 (b) on application by an organisation or person bound by the agreement.

“(3) If the Full Bench finds:

- (a) in the case of any agreement—that the continued operation of the agreement would be unfair to the employees covered by the agreement; or
- 30 (b) in the case of an agreement that does not apply only to a single business, part of a single business or a single place of work—that the continued operation of the agreement would be contrary to the public interest;

35 it may do any of the following things:

- (c) by order, terminate the agreement;
- (d) accept an undertaking from all or any of the parties in relation to the operation of the agreement;
- (e) permit the parties to vary the agreement.

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“(4) If an undertaking is not observed, the Full Bench may, by order, terminate the agreement after giving the parties an opportunity to be heard.

“(5) If a party to a certified agreement engages in industrial action in relation to a matter dealt with in the agreement, another party who is affected by the industrial action may apply to the Commission for a declaration that the party so applying is no longer bound by the agreement. 5

“(6) On such an application, the Commission may, by order, declare that the applicant is no longer bound by the agreement if the Commission is satisfied that it is in the public interest to make the declaration. 10

“(7) Despite subsections (2) and (3), for the period of 18 months after the commencement of this section, the following provisions have effect in relation to an agreement that applies only to a single business, part of a single business or a single place of work: 15

- (a) the Minister may apply to the Full Bench to review the agreement on the ground that its continued operation would seriously jeopardise the public interest; and
- (b) if, on such an application, the Full Bench finds that the ground is established, it may do any of the things specified in paragraphs (3)(c), (d) and (e). 20

Certified agreements may be terminated by parties

“134N.(1) A party to a certified agreement may, with the consent of all the relevant parties, give the Commission written notice stating that the party does not want to remain bound by the agreement. 25

“(2) All the parties to a certified agreement may jointly give the Commission written notice stating that they want the agreement to be terminated.

“(3) On receipt of such a notice, if the Commission is satisfied that it would be in the public interest for the party to be no longer bound or for the agreement to be terminated, as the case may be, the Commission may, by order, make a declaration to that effect. 30

“(4) In this section:

‘relevant party’, in relation to an agreement, means: 35

- (a) in relation to a party to the agreement that is an employer or an organisation of employers—a party that is an organisation of employees; or
- (b) in relation to a party to the agreement that is an organisation of employees—a party that is an employer or an organisation of employers.”. 40

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9. After section 143 of the Principal Act the following section is inserted:

Certain certified agreements not required to be published

5 “143A. Subsection 143(4) does not apply to an award constituted by a certified agreement that applies only to a single business, part of a single business or a single place of work.”.

10. After section 177 of the Principal Act the following section is inserted in Division 1 of Part VIII:

Definition of “court of competent jurisdiction”

10 “177A. In this Division:

‘court of competent jurisdiction’ means:

- (a) a District, County or Local Court; or
- (b) a magistrate’s court.”.

Imposition and recovery of penalties

15 11. Section 178 of the Principal Act is amended by omitting subsection (9) and substituting the following subsection:

“(9) In this section (in its application to an order made under section 127B):

‘employee’ includes an independent contractor;

20 ‘employer’ includes a person engaging an independent contractor.”.

Recovery of wages etc.

12. Section 179 of the Principal Act is amended by adding at the end the following subsection:

25 “(3) In this section (in its application to an order made under section 127B):

‘employee’ includes an independent contractor;

‘employer’ includes a person engaging an independent contractor.”.

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

30 **Plaintiffs may choose small claims procedure in magistrates’ courts**

“179C. If:

(a) a person starts an action under section 179 in a magistrate’s court; and

35 (b) the person indicates, in a manner prescribed by the regulations under this Act or by rules of court relating to that court, that he or she wants a small claims procedure to apply;

the action is to be dealt with under section 179D.

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Small claims procedure

“179D.(1) If an action is to be dealt with under this section, subsections (2), (3) and (4) apply in relation to the action.

“(2) The procedure is governed by the following conditions:

- (a) the court may not award an amount exceeding \$5,000 or such higher amount as is prescribed; 5
- (b) the court may act in an informal manner, is not bound by any rules of evidence, and may act without regard to legal forms and technicalities;
- (c) at any stage of the action, the court may amend the papers initiating the action if sufficient notice is given to any party adversely affected by the amendment; 10
- (d) a person is not entitled to be represented by counsel or solicitor unless the court permits;
- (e) if the court permits a party to be represented by counsel or solicitor, the court may, if it thinks fit, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged. 15

“(3) In a case heard in a court of a Territory:

- (a) despite paragraphs (2)(d) and (e), the regulations made under this Act may prohibit or restrict legal representation of the parties; and 20
- (b) the regulations made under this Act may provide for the representation of a party in specified circumstances by an officer or employee of an organisation of employees or of an organisation or association of employers. 25

“(4) In a case heard in a court of a State:

- (a) despite paragraphs (2)(d) and (e), if, in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State prohibits or restricts legal representation of the parties—the regulations made under this Act may prohibit or restrict legal representation of the parties to the same extent as that law; and 30
- (b) if, in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State allows representation of a party in that court in some circumstances by officials of bodies representing interests related to the matters in dispute—the regulations made under this Act may provide for representation of a party in specified circumstances by an officer or employee of an organisation of employees or of an organisation or association of employers.”. 35 40

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Associations capable of applying for registration

14. Section 188 of the Principal Act is amended:

(a) by adding at the end of paragraph (1)(b) the following word and subparagraph:

5 “; or (iii) independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the association.”;

10 (b) by inserting in subsection (2) “or (iii)” after “(b)(ii)”.

Rules of organisations

15. Section 195 of the Principal Act is amended by inserting after subsection (1) the following subsection:

15 “(1A) The rules of an organisation of employees may include provision for the eligibility for membership of the organisation of independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the organisation.”.

Entitlement to membership of organisations

20 16. Section 261 of the Principal Act is amended:

(a) by omitting from subsections (1) and (2) “an employee” (wherever occurring) and substituting “a person”;

(b) by omitting from subsections (1) and (2) “the employee” (wherever occurring) and substituting “the person”;

25 (c) by omitting from subsection (7) all the words after paragraph (b) and substituting:

“application may be made to the Court for a declaration as to the entitlement of the person under this section by any of the following:

30 (c) the person;

(d) where the person is an employee—a person who is or wants to become the employer of the person;

35 (e) where the person is an independent contractor—a person who is or wants to be a contractor for the services of the person;

(f) the organisation concerned.”.

Certain offences in relation to members of organisations etc.

17. Section 334 of the Principal Act is amended:

(a) by inserting after paragraph (1)(b) the following paragraph:

40 “(ba) is a person:

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- (i) who has made, or proposes, or has at any time proposed, to make, application to the Commission to review a contract under section 127A; or
 - (ii) on whose behalf an organisation has made, or proposes, or has at any time proposed, to make such an application; or
 - (iii) in relation to whom an order has been made under that section;”;
- (b) by inserting after paragraph (2)(b) the following paragraph: 10
 - “(ba) is a person:
 - (i) who has made, or proposes, or has at any time proposed, to make, application to the Commission to review a contract under section 127A; or 15
 - (ii) on whose behalf an organisation has made, or proposes, or has at any time proposed, to make such an application; or
 - (iii) in relation to whom an order has been made under that section;”;
- (c) by inserting after paragraph (3)(b) the following paragraph: 20
 - “(ba) because the employee is a person:
 - (i) who has made, or proposes, or has at any time proposed, to make, application to the Commission to review a contract under section 127A; or 25
 - (ii) on whose behalf an organisation has made, or proposes, or has at any time proposed, to make such an application; or
 - (iii) in relation to whom an order has been made under that section;”;
- (d) by inserting after subsection (7) the following subsections:
 - “(7A) Subsections (1) to (6) extend to independent contractors and, for those purposes:
 - ‘dismiss’ includes terminate a contract for services; 35
 - ‘employ’ includes engage an independent contractor;
 - ‘employee’ includes an independent contractor;
 - ‘employer’ includes a person engaging an independent contractor;
 - ‘employment’ includes the terms and conditions of a contract for services. 40
 - “(7B) If a person who engaged an independent contractor is convicted of an offence against subsection (1), (2) or (3) constituted by terminating the contract for services, the Court

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may make such orders as the Court thinks fit to compensate the independent contractor.

5 “(7C) The rights of and relating to reinstatement that are conferred on a person by this section do not limit any other rights of the person.”.

Offences in relation to independent contractors etc.

18. Section 336 of the Principal Act is amended by omitting paragraph (1)(c) and substituting the following paragraph:

10 “(c) take, or threaten to take, industrial action against an eligible person with intent to coerce the person to join an organisation.”.

Transitional: Certified agreements

19.(1) In this section:

“amended Act” means the Principal Act as amended by section 8;

15 “commencement day” means the day on which sections 115, 116 and 117 of the Principal Act are repealed by this Act.

(2) In spite of the repeal by this Act of sections 115, 116 and 117 of the Principal Act:

20 (a) an agreement made under section 115 of the Principal Act and in force (although not certified) immediately before the commencement day has effect as if it had been made under section 134C of the amended Act; and

25 (b) an agreement certified under section 115 of the Principal Act and in force immediately before the commencement day has effect as if the Principal Act had not been amended by this Act, but may be extended under section 134K of the amended Act; and

 (c) if an application that was made under section 115 of the Principal Act for certification of an agreement was pending immediately before the commencement day:

30 (i) if subparagraph (ii) does not apply, the Commission is to deal with the application as if it had been made under section 134C of the amended Act; or

35 (ii) if each of the applicants so requests, the Commission is to deal with the application as if section 115 of the Principal Act had not been repealed, and, if the agreement is certified, it has effect as if the Principal Act had not been amended by this Act, but may be extended under section 134K of the amended Act.

40 (3) The Commission may permit the parties to an agreement to which paragraph (2)(a) or subparagraph (2)(c)(i) applies to vary its terms so as to accord with Division 3A of Part VI of the amended Act.

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Transitional: Designated Presidential Members

20.(1) In this section:

“**amended Act**” means the Principal Act as amended by paragraph 4(c).

(2) Anything done before the commencement of paragraph 4(c) by or in relation to a designated Presidential Member (as defined by the Principal Act) has effect after that commencement as if it had been done by or in relation to the designated Presidential Member (as defined by the amended Act) who has the relevant powers and functions. 5

**PART 3—AMENDMENTS OF THE NATIONAL LABOUR
CONSULTATIVE COUNCIL ACT 1977** 10

Principal Act

21. In this Part, “**Principal Act**” means the *National Labour Consultative Council Act 1977*.

Definitions

22. Section 3 of the Principal Act is amended by omitting “or (e)” from the definition of “appointed member” and substituting “, (e) or (f)”. 15

Purpose of Council

23. Section 5 of the Principal Act is amended:

(a) by inserting in subsection (1) “, and, when the Minister considers it appropriate, representatives of other persons, bodies and organisations” after “employees”; 20

(b) by omitting paragraph (2)(c) and substituting the following paragraph:

“(c) subject to the rights of persons participating in meetings of the Council to report to the persons, bodies and organisations by which they are nominated and to the right of the Council to make announcements that those persons agree are in the public interest, the views expressed at those meetings will be kept confidential.”. 25 30

Membership of Council

24. Section 6 of the Principal Act is amended:

(a) by omitting from subsection (1) “16” and substituting “18”;

(b) by omitting from paragraph (1)(e) “7” and substituting “8”;

(c) by adding at the end of subsection (1) the following word and paragraph: 35

“; and (f) a member nominated by the Metal Trades Industry Association of Australia.”;

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(d) by omitting from subsection (2) “and (e)” and substituting “, (e) and (f)”.

Substitute members

5 25. Section 10 of the Principal Act is amended by omitting from paragraph (2)(b) “or (e)” and substituting “, (e) or (f)”.

26. After section 10 of the Principal Act the following section is inserted:

Invited representatives

10 “10A.(1) The Minister may, after consulting the Confederation of Australian Industry, the Australian Council of Trade Unions and the Metal Trades Industry Association of Australia, invite a person, body or organisation to nominate a representative for the purposes of this section.

15 “(2) A representative so invited may participate in a meeting or meetings of the Council and its committees, in accordance with the invitation, but does not become a member of the Council or of a committee.

20 “(3) If at any time the Minister terminates an invitation, the representative concerned ceases to be entitled to participate in meetings of the Council and its committees.

 “(4) While a representative is entitled to attend a meeting or meetings of the Council, the representative is entitled to payment of travelling allowance as if he or she were a member.”.

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SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

Industrial Relations Act 1988

The *Industrial Relations Act 1988* is further amended as set out below.

Paragraph 45(1)(b):

Omit “otherwise than under section 112”, substitute “, other than an award or order made by consent of the parties to an industrial dispute”.

Paragraph 45(1)(e):

Omit “section 115”, substitute “Division 3A of Part VI”.

Subsection 48(3):

Omit the subsection.

Section 95:

Omit “, or make an award under section 112 that includes terms”, substitute “(other than a certified agreement)”.

Paragraph 103(1)(a):

Omit “all action under section 112 or 115 arising out of the agreement has been taken”, substitute “the agreement has been certified under Division 3A of Part VI”.

Subsection 106(2):

Omit “, or to certify an agreement under section 115,”.

Subsection 108(8):

Omit “section 112 or 115”, substitute “Division 3A of Part VI”.

Paragraph 109(1)(b):

Omit the paragraph.

Section 109:

Add at the end the following subsection:

“(8) This section does not apply to:

- (a) an award constituted by a certified agreement; or
- (b) a decision to certify an agreement.”.

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SCHEDULE—continued

Paragraph 111(1)(b):

Omit the paragraph, substitute:

“(b) make an award or order, including one by consent of the parties, in relation to all or any of the matters in dispute, including:

- (i) a provisional award or order; or
- (ii) an interim award or order;”.

Paragraph 111(1)(c):

Omit the paragraph, substitute:

“(c) in accordance with Division 3A of Part VI, certify an agreement;”.

Section 112:

Repeal the section.

Section 115:

Repeal the section.

Section 116:

Repeal the section.

Section 117:

Repeal the section.

Paragraph 145(a):

Omit “section 115”, substitute “Division 3A of Part VI”.

Section 149:

Add the following subsections:

“(2) An award that is constituted by a certified agreement, or that otherwise is made by consent of the parties to an industrial dispute, is binding on:

- (a) each of the parties to the agreement; and
- (b) all members of an organisation that is a party; and
- (c) an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the business of a party, including a corporation that has acquired or taken over the whole or part of the business of the party.

“(3) In subsection (2):
‘party’ does not include a party that, because of an order under subsection 134M(6) or 134N(3), is no longer bound by the agreement.”.

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SCHEDULE—continued

Heading to Division 1 of Part VIII:

After “*Penalties*” insert “*and other remedies*”.

Subsection 179(1):

Omit “other”.

Subsection 193(8) (definition of “small organisation (stage 1)”):

Add at the end “or independent contractors”.

Subsection 193A(8) (definition of “small organisation (stage 2)”):

Add at the end “or independent contractors”.

Subparagraph 296(b)(iii):

After “188(1)(b)(ii)” insert “or (iii)”.

Paragraphs 335(1)(a) and (b):

After “(b)”, (wherever occurring) insert “(ba),”.

Subsection 336(5) (definition of “eligible person”):

Omit “is or, if the person were an employee, would be”, substitute “is, or if the person were an employee, would be.”.

Section 353A:

Add the following subsection:

“(2) The regulations may require employers of persons employed under an award to issue pay slips to those persons at such times, and containing such particulars, as are prescribed.”.

Schedule 4:

Add at the end the following Part:

“Part 4

“8. During the period of 12 months beginning on the day on which this Schedule begins to apply to an organisation, the organisation is not required to comply with clauses 2 and 4.”.

NOTES

1. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988; No. 153, 1989; Nos. 37, 71 and 108, 1990; and Nos. 19, 62 and 122, 1991.
2. No. 65, 1977, as amended. For previous amendments, see No. 125, 1979; No. 176, 1981; No. 80, 1982; and Nos. 63 and 72, 1984.

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No. 109, 1992*

*[Minister's second reading speech made in—
Senate on 7 May 1992 .
House of Representatives on 24 June 1992]*