

## TASMANIA

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# INDUSTRIAL RELATIONS AMENDMENT (FAIR CONDITIONS) BILL 2005

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# **INDUSTRIAL RELATIONS AMENDMENT (FAIR CONDITIONS) BILL 2005**

*(Brought in by the Minister for Justice and Industrial  
Relations, the Honourable Judith Louise Jackson)*

## **A BILL FOR**

### **An Act to amend the *Industrial Relations Act 1984***

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:

#### **1. Short title**

This Act may be cited as the *Industrial Relations  
Amendment (Fair Conditions) Act 2005*.

#### **2. Commencement**

- (1) The provisions of this Act, other than section 12,  
commence on a day to be proclaimed.
- (2) Section 12 commences on 1 July 2006.

#### **3. Principal Act**

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

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\*No. 21 of 1984

**4. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of “award”:

**“casual employee”**, unless prescribed otherwise in an award or agreement, means a person who is engaged to work casual employment;

**“casual employment”**, unless prescribed otherwise in an award or agreement, means work performed by an employee on an irregular, variable or unpredictable basis or on an as and when required basis;

- (b) by inserting the following definitions after the definition of “Full Bench”:

**“full-time employee”**, unless prescribed otherwise in an Act, award or agreement, means a person engaged to work full-time employment;

**“full-time employment”**, unless prescribed otherwise in an Act, award or agreement, means the employment of an employee for 38 ordinary hours per week;

- (c) by inserting the following definition after the definition of “officer”:

**“ordinary hourly or weekly rate of pay”** means the wages paid to an employee in respect of his or her ordinary working hours;

- (d) by inserting the following definitions after the definition of “outworker”:

**“part-time employee”**, unless prescribed otherwise in an award or agreement, means a person who is engaged to work part-time employment;

**“part-time employment”**, unless prescribed otherwise in an award or agreement, means employment –

- (a) that is performed by an employee on a regular basis for less hours per day or week than the ordinary hours of an equivalent full-time employee; and
  - (b) the hours of which may vary from time to time but will generally remain constant from day to day and week to week;
- (e) by inserting the following definitions after the definition of “private employer”:

**“probationary or trial period”** means a period of employment,

for the purpose of determining an employee's suitability for continuing employment, which –

- (a) unless prescribed otherwise in an Act, award or agreement, does not exceed 6 months from the date of commencement of employment; and
- (b) is stipulated in writing at the time of engagement; and
- (c) is relevant to the work to be performed; and
- (d) is reasonable and appropriate in the context of acquiring the skills and experience necessary to satisfactorily perform the duties of the job;

**“probationary employment”**, unless prescribed otherwise in an Act, award or agreement, means employment of an employee for a probationary or trial period;

**5. Section 30 amended (Criteria applying to disputes relating to termination of employment)**

Section 30(1) of the Principal Act is amended by omitting the definition of “employee” and substituting the following definitions:

**“continuing employment”** means employment that is of a continuing or indefinite nature and for which there is no expressed or implied end date to the contract of employment;

**“employee”** means a person who is or was engaged to work casual employment, part-time employment, full-time employment or probationary employment and includes a former employee;

## **6. Section 30A substituted**

Section 30A of the Principal Act is repealed and the following section is substituted:

### **30A. Employees under federal award**

A person –

- (a) who is employed, or was employed, under a federal award but who is, or was, excluded from, or for any other reason does not have, or did not have at the relevant time, access to a remedy for termination of employment; or
- (b) to whom the termination provisions contained in Division 3 of Part IVA of the Commonwealth Act do not, or did not at the relevant time, apply –

may apply to the Commission for the hearing of a dispute specified in section 29(1A)(a) or (b).

**7. Section 35 amended (Certain matters to be dealt with by Full Bench of Commission)**

Section 35 of the Principal Act is amended by inserting after subsection (10) the following subsection:

- (10A) A Full Bench of the Commission must convene and conduct a hearing annually to determine the Tasmanian minimum wage specified in section 47AB.

**8. Part III, Division 2A inserted**

After section 47 of the Principal Act, the following Division is inserted in Part III:

***Division 2A – Minimum conditions of employment relating to all employees***

**47AA. Purpose and application of Division**

- (1) The purpose of this Division is to establish a safety net of fair minimum conditions of employment.
- (2) The Commission may make an award or approve an agreement or otherwise determine a condition in excess of the minimum conditions prescribed by this Division, but must not make an award or approve an agreement or otherwise

determine a condition that is less than those minimum conditions.

- (3) This Division does not apply in respect of a person granted an authority to work under section 79 or 81 or in respect of whom an order is made under section 80.

**47AB. Minimum weekly wage**

The minimum weekly wage for an adult full-time employee is the Tasmanian minimum wage as determined annually by the Commission under section 35(10A).

**47AC. Maximum ordinary working hours**

Unless prescribed otherwise in an Act, award or agreement, an employee's maximum number of ordinary working hours per week is not to exceed 38.

**47AD. Meal break**

Unless prescribed otherwise in an Act, award or agreement, an employee is entitled to an unpaid meal break of at least 30 minutes after each period of 5 hours' continuous work.

**47AE. Annual leave**

- (1) An employee, other than a casual employee or a part-time employee receiving a loading in lieu of annual leave, is entitled to a minimum of 4 weeks' paid annual leave, excluding statutory holidays within the meaning of the *Statutory Holidays Act 2000*, for each completed year of continuous employment.
- (2) Where an employee's length of employment is less than one year, the employee is entitled to *pro rata* paid annual leave upon termination of employment, provided that the employee has given the required period of notice.
- (3) After each completed year of continuous employment, a part-time employee is entitled to be paid annual leave calculated in the same proportion that his or her part-time hours bears to the ordinary hours of an equivalent full-time employee.
- (4) An employer must permit an employee to take annual leave due under subsection (1) or (3) within 6 months after the leave falls due.
- (5) Where an employee applies for leave, the employee must give the employer not less than 4 weeks' notice, or such other period of notice as may be agreed, of the employee's intention to take leave.

- (6) Where an employer requires an employee to take leave, the employer must give the employee not less than 4 weeks' notice, or such other period of notice as may be agreed, of the requirement to take leave.
- (7) Untaken annual leave accrues without limit.

**47AF. Personal leave**

- (1) An employee, other than a casual employee or a part-time employee receiving a loading in lieu of sick leave, is entitled to a minimum of 10 days of paid personal leave for each completed year of employment.
- (2) In the first year of employment, an employee's entitlement to paid personal leave accrues at the rate of five-sixths of a day for each completed month of employment.
- (3) In the second year of employment and each subsequent year, an employee's entitlement to paid personal leave falls due on the day on which the second or subsequent year of employment commences.
- (4) A part-time employee is entitled to be paid personal leave calculated in the same proportion that his or her part-time hours bears to the ordinary hours of an equivalent full-time employee.

- (5) Unless prescribed otherwise in an Act, award or agreement, or by mutual consent between an employer and an employee, paid personal sick leave is subject to the employee providing adequate proof of illness to the employer in respect of each period of absence.
- (6) Untaken paid personal leave accrues without limit.
- (7) In this section, “**paid personal leave**” means personal sick leave, carer’s leave and bereavement leave.

**47AG. Parental leave**

The minimum entitlements to unpaid parental leave are set out in Schedule 2.

**47AH. Jury service**

Where an employee is required to perform jury service, the employee’s employer is to make up the difference between the employee’s ordinary hourly or weekly rate of pay and any jury service allowance paid by the Crown to the employee.

**47AI. Redundancy**

- (1) Unless prescribed otherwise in an Act, award or agreement or determined otherwise by the Commission, an

employee with more than one year's employment with an employer must be given not less than 4 weeks' notice of the employer's intention to terminate the employee's employment on account of redundancy or 4 weeks' pay in lieu of such notice.

- (2) Unless prescribed otherwise in an Act, award or agreement or determined otherwise by the Commission, if an employee's employment is terminated on account of redundancy, the employee is entitled to a redundancy severance payment calculated on the basis of 2 weeks' wages for each completed year of employment with the employer, up to a maximum of 12 weeks.

#### **47AJ. Payments to be based on ordinary pay**

For the purposes of this Division, a payment to an employee is to be based on his or her ordinary hourly or weekly rate of pay.

#### **47AK. Offence provision**

A person who contravenes or fails to comply with a provision of this Division is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

**9. Section 55 amended (Making of industrial agreements)**

Section 55 of the Principal Act is amended by inserting after subsection (4) the following subsections:

- (4A) The Commission must ensure that an industrial agreement does not disadvantage the employees to be covered by the agreement.
- (4B) An industrial agreement is taken to disadvantage employees if its approval would result, on balance, in a reduction in the overall terms and conditions of employment of those employees compared with the award or agreement that would otherwise apply to those employees.
- (4C) Notwithstanding subsection (4A), the Commission may approve an industrial agreement if it is satisfied that it is appropriate to approve the agreement, having taken into account all of the circumstances including –
  - (a) whether or not the genuine consent of the parties to the agreement has been given; and
  - (b) the public interest; and
  - (c) any other matter the Commission considers relevant.

**10. Section 61A amended (Interpretation)**

Section 61A of the Principal Act is amended by omitting “*Tasmanian State Training Authority Act 1994*” from the definition of “trainee” and substituting “*Vocational Education and Training Act 1994*”.

**11. Section 61J amended (Approval of enterprise agreement)**

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

- (a) by omitting from subsection (1) “The” and substituting “Subject to subsections (1A) and (1C), the”;
- (b) by inserting the following subsections after subsection (1):
  - (1A) The Commissioner must ensure that an enterprise agreement does not disadvantage the employees to be covered by the agreement.
  - (1B) An enterprise agreement is taken to disadvantage employees if its approval would result, on balance, in a reduction in the overall terms and conditions of employment of those employees compared with the award or agreement that would otherwise apply to those employees.
  - (1C) Notwithstanding subsection (1A), the Commissioner may approve

an enterprise agreement if he or she is satisfied that it is appropriate to approve the agreement having taken into account all of the circumstances including –

- (a) whether or not the genuine consent of the parties to the agreement has been given; and
- (b) the public interest; and
- (c) any other matter the Commissioner considers relevant.

**12. Section 75 amended (Records of employment and advice of pay details)**

Section 75 of the Principal Act is amended by inserting after subsection (1A) the following subsections:

- (1B) An employer must provide each employee with written advice of pay details for each pay period.

Penalty: Fine not exceeding 20 penalty units.

- (1C) The pay advice provided to the employee by the employer must include, as a minimum, the following:

- (a) the name of the employer;

- (b) the name of the employee;
  - (c) the date and period for which payment is being made;
  - (d) the employee's classification;
  - (e) the employee's weekly wage or hourly rate;
  - (f) the number of ordinary hours the employee worked in the relevant pay period;
  - (g) the number of additional or overtime hours worked in the pay period and the rate at which those hours have been paid;
  - (h) the amount of any paid leave, including holidays;
  - (i) any amount paid as an allowance;
  - (j) any other amount included in the gross wage;
  - (k) all deductions from the gross wage, including tax;
  - (l) the net wage paid.
- (1D) Where employer-paid superannuation instalments are made on behalf of an employee, the amount paid and the fund into which it is paid is to be specified on the employee's pay advice.

**13. Section 99 inserted**

After section 98 of the Principal Act, the following section is inserted in Part VIII:

**99. Registered agreements and awards to remain in force**

- (1) A registered agreement in force on the day on which the *Industrial Relations Amendment (Fair Conditions) Act 2005* commences continues in force for the period specified in it unless it is sooner terminated notwithstanding that the conditions of employment set out in the agreement are less than the minimum conditions provided for in this Act.
- (2) An award in force on the day on which the *Industrial Relations Amendment (Fair Conditions) Act 2005* commences continues in force notwithstanding that the conditions of employment set out in the award are less than the minimum conditions provided for in this Act.

**14. Schedule 2 inserted**

After Schedule 1 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 2 – UNPAID PARENTAL LEAVE**

Section 47AG

**1. Interpretation**

In this Schedule –

**“adoption”** means the adoption of a child who –

- (a) is not the natural child of the employee or the employee’s partner; and
- (b) is less than 5 years of age; and
- (c) has not lived continuously with the employee for 6 months or longer;

**“continuous service”** means continuous service under a contract of employment and includes a period of paid leave or absence taken under an Act, award or agreement;

**“employee”** does not include a person engaged and paid as a casual employee;

**“expected date of birth”** means a date certified by a medical practitioner as the expected date of birth;

**“parental leave”** means unpaid leave under this Schedule;

**“partner”** means a partner within the meaning of the *Relationships Act 2003*.

**2. Entitlement to parental leave**

- (1) An employee is entitled to take parental leave for a period of up to 52 weeks for –
  - (a) the birth of a child to the employee or the employee's partner; or
  - (b) the placement of a child with the employee with a view to the adoption of the child by the employee.
- (2) An employee is not entitled to take parental leave unless the employee –
  - (a) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and
  - (b) has given the employer at least 10 weeks' written notice of the employee's intention to take the leave.
- (3) An employee is not entitled to take parental leave at the same time as the employee's partner apart from one week's parental leave taken by the employee and the employee's partner immediately after the birth of the child or the placement of the child for adoption with the employee and the employee's partner.
- (4) Apart from the period of one week referred to in subclause (3), an

employee's entitlement to parental leave is reduced by a period of parental leave taken by the employee's partner for the same child.

### **3. Maternity leave to start 6 weeks before birth**

A female employee who has given notice of her intention to take parental leave for the birth of a child must start the leave 6 weeks before the expected date of birth unless a medical practitioner has certified that the employee is fit to work closer to the expected date of birth.

### **4. Medical certificate**

An employee who has given notice of intention to take parental leave for the birth of a child must provide the employer with a certificate from a medical practitioner certifying that the employee or the employee's partner is pregnant and the expected date of birth.

### **5. Notice of partner's parental leave**

- (1) An employee who has given notice of intention to take parental leave, or who is actually taking parental leave, must give the employer notice of periods of parental leave taken or to be taken by the employee's partner for the same child.

- (2) A notice given under subclause (1) must, if the employer requires, be verified by statutory declaration.

## **6. Starting and finishing dates of parental leave**

- (1) Subject to subclause (2), the starting and finishing dates for a period of parental leave are to be agreed between the employer and the employee.
- (2) Parental leave may not extend more than one year after the date of the birth, or placement for adoption, of the child to whom the leave relates.

## **7. Return to work after parental leave**

- (1) Subject to subclauses (2) and (3), on finishing parental leave, an employee is entitled to the position that the employee held immediately before starting parental leave.
- (2) If the employee was temporarily acting in, or performing the duties of, a position immediately before starting parental leave, the entitlement under this section relates to the employee's substantive position.
- (3) If the former position referred to in subclause (1) is no longer available, the employee is entitled to an available position for which the employee is qualified and suited and which is nearest

in status and remuneration to the former position.

**8. Effect of parental leave on employment rights**

Absence on parental leave does not break an employee's continuity of service, but is not to be taken into account in calculating the employee's period of service.

**9. Part-time employment in lieu of parental leave**

An employee who is entitled to parental leave may, by agreement with the employer, reduce the employee's hours of employment to an agreed extent in lieu of taking parental leave.