



THE NEW IR ACT COMMENCES TODAY: THE TOP 5 THINGS YOU NEED TO KNOW

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The *Industrial Relations Act 2016* (Qld) (“the Act”) commences today, 1 March 2017. The Act applies to these entities as employers, and their employees:

- Queensland government and its agencies, and certain entities connected to government (including statutory bodies established under Queensland law for a public purpose); and
- local governments, and entities established under local government legislation.

Here are the top 5 things employers need to know about the new Act.

ADVERSE ACTION

Adverse action is the general name given to a new claim available to employees (and in some cases, prospective employees).

In short, it is a protection from “adverse action” being taken against a person *because* they have exercised a “workplace right.”

The “workplace rights” are varied and include making a complaint or enquiry about work – for example, a complaint against a coworker or supervisor, or a query about entitlements.

“Adverse action” is any conduct that is detrimental to an employee in their employment.

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Importantly, there is a reverse onus of proof. This means a claimant succeeds unless the employer can demonstrate the action was taken for a reason or reasons other than the workplace right.

There are accessorial liability provisions, which mean claimants can join other employees (such as managers) personally to proceedings on the basis the other employees are alleged to be “involved in” the conduct.

Remedies available to employees include uncapped compensation, damages for pain and suffering and injunctions.

The new provisions are largely the same as has been available to employees in the private sector for the past seven years. In some cases, dismissed employees have been successful in obtaining million dollar compensation awards under these provisions.

ANTI BULLYING ORDERS

The anti bullying provisions give the Queensland Industrial Relations Commission (“**QIRC**”) jurisdiction to hear an application to make a “stop bullying” order against others. A worker (which is a broad definition) can bring an application if they reasonably believe they have been bullied at work.

A worker is bullied at work if an individual or group of people *repeatedly* behaves unreasonably towards the worker (whilst the worker is *at work*), and that behaviour

creates a risk to the health and safety of the worker.

Workplace bullying **does not include** reasonable management action carried out in a reasonable manner.

The QIRC must start to deal with applications within 14 days, and there is no requirement that a worker follow an internal procedure before applying to the QIRC.

However, in deciding whether to make an order, the QIRC must consider:

- . if there are any final or interim outcomes arising from any investigation;
- . if there is any procedure available to the employee to resolve the dispute;
- . if there is any final or interim outcome arising out of any internal procedure carried out; and
- . any other matter the QIRC considers relevant.

The QIRC's powers are broad, and it can make any order it consider appropriate (other than pecuniary orders).

FLEXIBLE WORKING ARRANGEMENTS

An employee's right to request flexible working arrangements is now enshrined in the Act. A request need not be motivated by family responsibilities but can be for any reason, including lifestyle.

The employer must respond to the request within 21 days, and can only refuse a request on *reasonable grounds*.

Reasonable grounds is not a defined term, but it might include that the arrangement adversely affects service delivery, or other employees, or is impractical for reasons relating to customer contact.

The QIRC has jurisdiction to hear and decide a dispute over an employee's request for flexible work arrangements.

REVERSE ONUS OF PROOF

Several provisions adopt a reverse onus of proof – meaning employers are required to “prove their innocence”.

These include provisions relating to adverse action and other protections relating to discrimination, undue influence or pressure, coercion and misrepresentation.

The reverse onus of proof means that evidence from any decision makers about the reason they took the action will be critical.

MUTUAL TRUST AND CONFIDENCE

The Act states that its main purpose, to provide fairness and balance, is to be achieved by recognising *mutual obligations of trust and confidence* in the employment relationship. This is unique to the Act.

The QIRC must have regard to this purpose and object in its decision making (including in relation unfair dismissals, adverse action claims and bullying complaints, and a new jurisdiction regarding appeal rights under the *Public Service Act 2008* (Qld)).

Rights that might be recognised due to mutual obligations of trust and confidence in the employment relationship would likely include those relating to natural justice, procedural fairness and those requiring the employer to act in a way that is not capricious, unfair or unreasonable.

WHAT NEXT

Managers and decision makers should be made aware of the changes and reminded of the importance of record keeping.

Legal and human resource officers should be trained on how to identify problems before they develop into a claim.

Organisations should consider whether their policies and procedures should be updated to reflect the new provisions.

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