

## 7. Interpretation

- (1) In this Act, unless the contrary intention appears —
- “**alteration**”, in relation to rules of an organization, includes amendment, addition to, variation, rescission or substitution;
  - “**apprentice**” means an apprentice under the *Industrial Training Act 1975*;
  - “**association**” means an association that is registered under Division 4 of Part II;
  - “**Australian Commission**” means the Australian Industrial Relations Commission established by the Commonwealth Act;
  - “**award**” means an award made by the Commission under this Act;
  - “**calling**” means any trade, craft, occupation, or classification of an employee;
  - “**canvasser**” means any person wholly and solely employed in the writing of industrial insurance business or in the collection of premiums at not longer intervals than one month in respect of such insurance, or in both, but does not include a person who directly or indirectly carries on or is concerned in the carrying on or conduct of any other business or occupation in conjunction with that of industrial insurance;
  - “**Chamber**” means the body known as the Chamber of Commerce and Industry of Western Australia (Inc);
  - “**Chief Commissioner**” includes an Acting Chief Commissioner;
  - “**civil penalty provision**” means a provision of this Act that is specified to be a civil penalty provision for the purposes of section 83E;
  - “**Commission**” means the body continued and constituted under this Act under the name of The Western Australian Industrial Relations Commission;
  - “**Commission in Court Session**” means the Commission constituted as provided by section 15(2);
  - “**Commissioner**” means a Commissioner appointed under this Act and includes the Chief Commissioner, the Senior Commissioner and an Acting Commissioner;
  - “**Commonwealth Act**” means the *Workplace Relations Act 1996* of the Commonwealth;
  - “**constituent authority**” means the Public Service Arbitrator, a Public Service Appeal Board, or the Railways Classification Board, established or appointed under Part IIA;
  - “**Council**” means the body known as the Trades and Labor Council of Western Australia;
  - “**Court**” means the Western Australian Industrial Appeal Court continued and constituted under this Act;
  - “**decision**” includes award, order, declaration or finding;
  - “**declaration**” means a declaration made by the Commission under this Act;
  - “**Deputy Registrar**” means a Deputy Registrar appointed pursuant to this Act;
  - “**employee**” means, subject to section 7B —

- (a) any person employed by an employer to do work for hire or reward including an apprentice or trainee;
- (b) any person whose usual status is that of an employee;
- (c) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or
- (d) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if he is in all other respects an employee,

but does not include any person engaged in domestic service in a private home unless —

- (e) more than 6 boarders or lodgers are therein received for pay or reward; or
- (f) the person so engaged is employed by an employer, who is not the owner or occupier of the private home, but who provides that owner or occupier with the services of the person so engaged;

**“employer”** includes, subject to section 7B —

- (a) persons, firms, companies and corporations; and
- (b) the Crown and any Minister of the Crown, or any public authority, employing one or more employees and also includes a labour hire agency or group training organization that arranges for an employee (being a person who is a party to a contract of service with the agency or organization) to do work for another person, even though the employee is working for the other person under an arrangement between the agency or organization and the other person;

**“employment record”** means a record kept under section 49D;

**“enterprise order”** has the meaning given by section 42I(1);

**“final offer arbitration”** means arbitration in which an issue is decided by the Commission by awarding, without qualification or amendment, that one of the final proposals made by the parties concerned which, viewed in its entirety is, in the opinion of the Commission, the more or the most reasonable, as the case may be;

**“finding”** means a decision, determination or ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate;

**“Full Bench”** means the Commission constituted as provided by section 15(1);

**“group training organization”** means an organization that manages the employment and training of apprentices and trainees under contracted work based arrangements for the purpose of hosting those apprentices and trainees out to other employers;

**“industrial action”** means any act, omission, or circumstance done, effected, or brought about by an organization or employer or employee or by any other person for the purpose, or in the opinion of the Commission for the purpose, of compelling an employer or an employee or an organization to accept any terms or conditions of

employment or to enforce compliance with any demand relating to employment not including an application made under this Act;

**“industrial agreement”** means an agreement registered by the Commission under this Act as an industrial agreement;

**“industrial magistrate’s court”** means industrial magistrate’s court established under section 81(1);

**“Industrial Gazette”** means the *Western Australian Industrial Gazette* published pursuant to this Act;

**“Industrial Inspector”** means an Industrial Inspector appointed pursuant to this Act;

**“industrial matter”** means, subject to section 7C, any matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter affecting or relating or pertaining to —

- (a) the wages, salaries, allowances, or other remuneration of employees or the prices to be paid in respect of their employment;
- (b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;
- (c) the employment of children or young persons, or of any person or class of persons, in any industry, or the dismissal of or refusal to employ any person or class of persons therein;
- (ca) the relationship between employers and employees;
- (d) any established custom or usage of any industry, either generally or in the particular locality affected;
- (e) the privileges, rights, or duties of any organization or association or any officer or member thereof in or in respect of any industry;
- (f) in respect of apprentices or trainees —
  - (i) their wage rates; and
  - (ii) subject to the *Industrial Training Act 1975*—
    - (I) their other conditions of employment; and
    - (II) the rights, duties, and liabilities of the parties to any agreement of apprenticeship or training agreement;
- (g) any matter relating to the collection of subscriptions to an organization of employees with the agreement of the employee from whom the subscriptions are collected including —
  - (i) the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been stopped by an employer; or
  - (ii) the implementation of an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization;

[(h) *deleted*]

- (i) any matter, whether falling within the preceding part of this interpretation or not, where —
  - (i) an organization of employees and an employer agree that it is desirable for the matter to be dealt with as if it were an industrial matter; and
  - (ii) the Commission is of the opinion that the objects of this Act would be furthered if the matter were dealt with as an industrial matter;

and also includes any matter of an industrial nature the subject of an industrial dispute or the subject of a situation that may give rise to an industrial dispute but does not include —

- (j) compulsion to join an organization of employees to obtain or hold employment;
- (k) preference of employment at the time of, or during, employment by reason of being or not being a member of an organization of employees;
- (l) non-employment by reason of being or not being a member of an organization of employees; or
- (m) any matter relating to the matters described in paragraph (j), (k) or (l);

**“industry”** includes each of the following —

- (a) any business, trade, manufacture, undertaking, or calling of employers;
- (b) the exercise and performance of the functions, powers, and duties of the Crown and any Minister of the Crown, or any public authority;
- (c) any calling, service, employment, handicraft, or occupation or vocation of employees,

whether or not, apart from this Act, it is, or is considered to be, industry or of an industrial nature, and also includes —

- (d) a branch of an industry or a group of industries;

**“irregularity”**, in relation to an election for an office, includes a breach of the rules of an organization, and any act, omission, or other means by which the full and free recording of votes, by persons entitled to record votes, and by no other persons, or a correct ascertainment or declaration of the results of the voting is, or is attempted to be, prevented or hindered;

**“Judge”** means a Judge of the Supreme Court;

**“labour hire agency”** means a person or entity that conducts a business of the kind commonly known as a labour hire agency;

**“legal practitioner”** means a person who is, or is deemed to be, a certificated practitioner under and for the purposes of the *Legal Practitioners Act 1893*;

**“MCE Act”** means the *Minimum Conditions of Employment Act 1993*;

**“member of the Commission”** means the President or a Commissioner and includes the President or a Commissioner when he is performing the functions of a constituent authority, or of a member of a constituent

authority, but does not include any other member or acting member of a constituent authority;

**“Mines and Metals Association”** means the body known as the Australian Mines and Metals Association (Incorporated);

**“office”** in relation to an organization means —

- (a) the office of a member of the committee of management of the organization;
- (b) the office of president, vice president, secretary, assistant secretary, or other executive office by whatever name called of the organization;
- (c) the office of a person holding, whether as trustee or otherwise, property of the organization, or property in which the organization has any beneficial interest;
- (d) an office within the organization for the filling of which an election is conducted within the organization; and
- (e) any other office, all or any of the functions of which are declared by the Full Bench pursuant to section 68 to be those of an office in the organization,

but does not include the office of any person who is an employee of the organization and who does not have a vote on the committee of management of the organization;

**“officer”** means a person who carries out, or whose duty is or includes the carrying out of, the whole or part of the functions of an office in an organization;

**“organization”** means an organization that is registered under Division 4 of Part II;

**“post-secondary education institution”** means an institution or part of an institution established or continued by or under the *University of Western Australia Act 1911*, the *Curtin University of Technology Act 1966*, the *Murdoch University Act 1973*, the *Edith Cowan University Act 1984* or the *Vocational Education and Training Act 1996*<sup>1</sup>;

**“premises”** includes any land, building, structure, mine, mine working, aircraft, ship or other vessel, vehicle and place, and any part of it;

**“President”** means the President of the Commission and includes an Acting President;

**“Presiding Judge”** means the Presiding Judge of the Court;

**“principal executive officer”** in relation to an organization or association means the president or chairman of that organization or association;

**“public authority”** means the Governor in Executive Council, any Minister of the Crown in right of the State, the President of the Legislative Council or the Speaker of the Legislative Assembly or the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, as the case requires, under the *Parliamentary and Electorate Staff (Employment) Act 1992*, the Governor or his or her delegate under the *Governor’s Establishment Act 1992*, State Government department, State trading concern, State instrumentality, State agency, or any public statutory body, corporate or unincorporate,

established under a written law but does not include a local government or regional local government;

“**public hospital**” means a public hospital as defined in the *Hospitals and Health Services Act 1927*;

“**public service officer**” means a public service officer within the meaning of the *Public Sector Management Act 1994*;

“**published in the required manner**” means published in the next available issue of the *Industrial Gazette* and —

- (a) in a newspaper circulating throughout the State; or
- (b) on an internet website maintained by the Commission;

“**record**” means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the assistance of some electronic, electrical, mechanical, chemical or other machine or process is required to convey the information or meaning;

“**Registrar**” means the Registrar appointed pursuant to this Act;

“**registration**”, in relation to an organization, means registration under Division 4 of Part II by authority of the Full Bench;

“**repealed Act**” means the Act repealed by section 4;

“**secondary office**”, in relation to a person who holds an office of member of the Commission and is subsequently appointed to an office of the Australian Commission pursuant to section 14A, means the office of member of the Australian Commission;

“**Senior Commissioner**” includes an Acting Senior Commissioner;

“**stipendiary magistrate**” has the meaning given by the *Stipendiary Magistrates Act 1957*;

“**subscription**” means any subscription, fee or dues payable by a member for or in respect of membership of an organization;

“**trainee**” means a person who belongs to a class of persons prescribed by regulations made by the Governor as persons to be treated as trainees for the purposes of this Act;

“**vary**” in relation to an award or industrial agreement means to add a new provision or to add to, alter, amend or rescind an existing provision;

“**workplace agreement**” means a workplace agreement that is in force under the *Workplace Agreements Act 1993*.

(1a) A matter relating to —

- (a) the dismissal of an employee by an employer; or
- (b) the refusal or failure of an employer to allow an employee a benefit under his contract of service,

is and remains an industrial matter for the purposes of this Act even though their relationship as employee and employer has ended.

[(2) *repealed*]

- (3) A matter that has been referred to a safety and health magistrate under the *Occupational Safety and Health Act 1984* or the *Mines Safety and Inspection Act 1994* is not an industrial matter.
- (4) Subsections (3) and (4) of section 34 do not apply to a determination that is made contrary to subsection (3)(b) or to any proceeding based on that determination, and in the determination of any application for a prerogative writ or declaratory judgment no regard shall be had to the existence of any right of appeal under this Act.
- (5) In this Act —
  - (a) a reference to an industrial matter includes a reference to a matter relating to bargaining in good faith for an industrial agreement; and
  - (b) a reference to jurisdiction to inquire into and deal with an industrial matter includes a reference to jurisdiction to assist parties to bargain for an industrial agreement.
- (6) Subject to subsection (7), for the purposes of the definitions of “employee” and “employer” in subsection (1), if a person (“**the principal**”) engages a person, or a group of persons, under a contract to personally give a performance as, or as part of, musical, theatrical, dance or comic entertainment, the principal is to be regarded as employing the person, or each person in the group, to do work.
- (7) Subsection (6) has effect only to the extent necessary to enable a claim of the kind referred to in section 29(1)(b)(ii) to be referred to and dealt with by the Commission in respect of a person who would not be an employee but for the operation of subsection (6).

*[Section 7 inserted by No. 94 of 1984 s. 6; amended by No. 83 of 1987 s. 38; No. 119 of 1987 s. 5; No. 73 of 1990 s. 45; No. 99 of 1990 s. 4; No. 44 of 1991 s. 5; No. 40 of 1992 s. 8; No. 15 of 1993 s. 4; No. 32 of 1994 s. 14; No. 103 of 1994 s. 18; No. 1 of 1995 ss. 4, 26 and 49; No. 30 of 1995 s. 77; No. 79 of 1995 s. 30; No. 14 of 1996 s. 4; No. 42 of 1996 s. 71; No. 3 of 1997 ss. 29<sup>4</sup> and 35; No. 36 of 1999 s. 247; No. 20 of 2002 s. 128, 142, 149, 178, 185, 190(1), 191(1) and (2) and 194(2).]*