



Western Australia

Workplace Agreements Act 1993

Compare between:

[01 Nov 2002, 02-a0-02] and [14 Sep 2003, 02-b0-06]

Western Australia

Workplace Agreements Act 1993

An Act to make provision after the commencement of section 31 of the *Labour Relations Reform Act 2002* —

- **for employers and employees to be no longer empowered to make the employment agreements that were authorised by this Act as in force before that commencement;**
 - **for the times when existing agreements automatically terminate;**
 - **for the effect and enforcement of existing agreements until their termination; and**
 - **for the expiry of the Act at a time when all agreements have terminated,**
- and for related purposes.**

 [Long title inserted by No. 20 of 2002 s. 29.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Workplace Agreements Act 1993* ¹.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation ¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“award” means —

- (a) an award under the *Industrial Relations Act 1979*, and includes any industrial agreement or order under that Act; and
- (b) an award under the *Coal Industry Tribunal of Western Australia Act 1992*, and includes any order under that Act and any agreement that comes within section 12(4) or 17(1) of that Act;

“bargaining agent” means a person or persons representing another person or other persons under section 15;

“collective workplace agreement” means a workplace agreement of the kind described in section 9 and where the context so requires means an agreement of that kind that is in force;

“Commission” has the same meaning as it has in the *Industrial Relations Act 1979*;

“designated day” means the day on which section 31 of the *Labour Relations Reform Act 2002* comes into operation ²;

“employee” means —

- (a) a person who is an employee within the meaning of the *Industrial Relations Act 1979*; and
- (b) a person to whom section 43(1) applies;

“employer” has the same meaning as in the *Industrial Relations Act 1979* except that for the purposes of giving effect to Part 3 it has the meaning given by section 44;

“individual workplace agreement” means a workplace agreement of the kind described in section 10 and where the context so requires means an agreement of that kind that is in force;

“legal practitioner” means a **“certificated practitioner”** as defined in the *Legal Practitioners Act 1893*;

“organization” has the same meaning as in section 7 of the *Industrial Relations Act 1979*;

“Registrar” and **“Deputy Registrar”** have the same meanings as they have in the *Industrial Relations Act 1979*;

“repealed”, in relation to a section of a particular number, means the section in this Act of that number repealed by a provision of Part 3 Division 1 of the *Labour Relations Reform Act 2002*;

“workplace agreement” means an agreement of the kind described in section 5 and where the context so requires means an agreement of that kind that is in force.

[Section 3 amended by No. 79 of 1995 s. 18(1); No. 20 of 2002 s. 30.]

4. Act overrides *Industrial Relations Act 1979*

This Act has effect despite any provision of the *Industrial Relations Act 1979*.

Part 1A — Phasing out and expiry of Act

[Heading inserted by No. 20 of 2002 s. 31.]

4A. Expiry of Act

This Act expires at the end of one year commencing with the designated day.

[Section 4A inserted by No. 20 of 2002 s. 31.]

4B. Further workplace agreements cannot be made

On and after the designated day a workplace agreement cannot be made for the purposes of this Act.

[Section 4B inserted by No. 20 of 2002 s. 31.]

4C. Limit on duration of agreements registered on or after 22 March 2001

- (1) This section applies to a workplace agreement that —
 - (a) was registered on or after 22 March 2001; and
 - (b) has effect immediately before the designated day.
- (2) The agreement ceases to have effect —
 - (a) at the end of 6 months beginning with the designated day;
 - (b) on the day on which the parties have agreed that it is to cease to have effect, being a day provided for —
 - (i) by the agreement; or
 - (ii) by agreement between the parties under section 24(1);

or

 - (c) on a day on which section 14(1) or 43(4) becomes applicable to the agreement,

whichever happens first.

[Section 4C inserted by No. 20 of 2002 s. 31.]

4D. Limit on duration of arrangements under repealed section 19(4)(b)

- (1) This section applies to an arrangement under repealed section 19(4)(b) that has effect immediately before the designated day.
- (2) The arrangement has effect according to its terms despite the repeal of section 19.
- (3) The arrangement ceases to have effect —
 - (a) at the end of 6 months beginning with the designated day;
 - (b) on the day on which the parties agree in writing that the arrangement is to cease to have effect; or
 - (c) on the termination of the employee's contract of employment,

whichever happens first.

[Section 4D inserted by No. 20 of 2002 s. 31.]

4E. Termination of unregistered individual workplace agreements

- (1) This section applies to an individual workplace agreement that was signed by the parties to it but that immediately before the designated day —
 - (a) had not been lodged for registration under repealed section 29 or made ineffective by repealed section 27; or
 - (b) if lodged for registration, had not been registered under repealed section 31.

- (2) The agreement ceases to have effect on the designated day.

[Section 4E inserted by No. 20 of 2002 s. 31.]

s. 4F

4F. Limit on duration of agreements not covered by section 4C or 4E

- (1) This section applies to any workplace agreement that —
 - (a) has effect immediately before the designated day; and
 - (b) does not come within section 4C or 4E.
- (2) The agreement ceases to have effect —
 - (a) at the end of one year beginning with the designated day;
 - (b) on the day on which the parties have agreed that it is to cease to have effect, being a day provided for —
 - (i) by the agreement; or
 - (ii) by agreement between the parties under section 24(1);

or

 - (c) on a day on which section 14(1) or 43(4) becomes applicable to the agreement,

whichever happens first.

[Section 4F inserted by No. 20 of 2002 s. 31.]

4G. Termination of effect of agreement under repealed section 23(1)

- (1) This section applies to an agreement under repealed section 23(1) that was signed by the parties to it but that immediately before the designated day —
 - (a) had not been lodged for registration under repealed section 29 or made ineffective by repealed section 27; or
 - (b) if lodged for registration, had not been registered under repealed section 31.
- (2) On the designated day —
 - (a) the agreement ceases to have effect; and

- (b) the employee ceases to be a party to the collective workplace agreement concerned.
- (3) The reference in subsection (1) to an agreement under repealed section 23(1) includes an agreement under that section as applied by repealed section 40J.

[Section 4G inserted by No. 20 of 2002 s. 31.]

4H. Employment conditions if workplace agreement or arrangement terminated or employee ceases to be a party

- (1) This section applies where —
 - (a) a workplace agreement or an arrangement under repealed section 19(4)(b) ceases to have effect as provided by section 4C, 4D, 4E or 4F; or
 - (b) an employee ceases to be a party to a collective workplace agreement as provided by section 4G.
- (2) The employment of an employee becomes subject to a contract of employment under this section.
- (3) If —
 - (a) the workplace agreement that ceased to have effect was an individual workplace agreement; or
 - (b) the arrangement under repealed section 19(4)(b) that ceased to have effect followed on the expiry of an individual workplace agreement,the contract of employment is one containing —
 - (c) the same provisions as those of the workplace agreement or arrangement that has ceased to have effect, other than the provisions implied by section 18; and
 - (d) if the employee had an existing contract of employment relating to the workplace agreement or arrangement, the provisions of that contract.

s. 4H

- (4) If —
- (a) the workplace agreement that ceased to have effect was a collective workplace agreement; or
 - (b) the arrangement under repealed section 19(4)(b) that ceased to have effect followed on the expiry of a collective workplace agreement,
- the contract of employment is an individual contract —
- (c) applying to the employee such of the provisions of the collective workplace agreement or arrangement that has ceased to have effect, other than the provisions implied by section 18, as were applicable to the employee; and
 - (d) containing, in addition, the provisions of the existing contract of employment that the employee had relating to the workplace agreement or arrangement.
- (5) A contract of employment referred to in subsection (3) or (4) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee.
- (6) Despite subsection (2) the employer and the employee are bound by —
- (a) any award that extends to them; or
 - (b) any employer-employee agreement under Part VID of the *Industrial Relations Act 1979* to which they are parties.
- (7) Where subsection (6)(a) applies, the award ordinary rate of pay (howsoever described in the award) shall, for the purposes of the award only, be the rate of pay as prescribed in the award and not that prescribed in the contract of employment.
- (8) Where subsection (6)(a) applies, nothing in this section or in any other enactment or law requires an employer to pay an employee more than the greater of —
- (a) the employee's entitlement arising under the contract of employment; or

- (b) the employee's entitlement arising under the relevant award,

whichever is the greater when assessed on a yearly basis.

- (9) This section does not apply to —
 - (a) a workplace agreement that was registered under repealed section 40I; or
 - (b) an arrangement under repealed section 19(4)(b) that followed on the expiry of such a workplace agreement.

 Note: [for this section](#):

 For the position when an agreement or arrangement referred to in subsection (9) ceases to have effect, see section 152 of the *Workplace Relations Act 1996* of the Commonwealth.

[Section 4H inserted by No. 20 of 2002 s. 31.]

4I. Rights, obligations and proceedings not affected by termination of agreement or arrangement

The termination of a workplace agreement or an arrangement under repealed section 19(4)(b) by operation of this Division does not affect —

- (a) any —
 - (i) right or entitlement that accrued; or
 - (ii) obligation or liability that was incurred, under the agreement or arrangement before the termination; or
- (b) any proceedings or remedy in respect of anything referred to in paragraph (a).

[Section 4I inserted by No. 20 of 2002 s. 31.]

4J. This Part to prevail

This Part has effect despite any provision of this Act or a workplace agreement or any other agreement or arrangement.

[Section 4J inserted by No. 20 of 2002 s. 31.]

Part 2 — Workplace agreements

Division 1 — Purpose and effect of workplace agreements

5. Workplace agreements

- (1) Workplace agreements are agreements —
 - (a) made between employers and employees; and
 - (b) providing for some or all of the rights and obligations that employers and employees have in relation to one another, including rights and obligations that are to take effect after termination of employment.
- (2) A workplace agreement may —
 - (a) cover a single workplace or a number of workplaces;
 - (b) apply to the employment relationship between the parties in any place or circumstances.
- (3) Nothing in this Act is to be taken to prevent —
 - (a) any contract of employment and a workplace agreement between an employer and employee being entered into at the same time; or
 - (b) any contract of employment between an employer and any employee being in the form of a workplace agreement.

6. Effect of workplace agreement

- (1) Where a workplace agreement —
 - (a) has been made between —
 - (i) an employer and an employee under a contract of employment; or
 - (ii) an employer and employees under contracts of employment;and
 - (b) has come into force,

no award, whether existing or future, applies to —

- (c) that contract or those contracts of employment; or
- (d) the employer or any such employee as a party to any such contract,

so long as the workplace agreement remains in force.

- (2) Where a workplace agreement has been made as mentioned in subsection (1)(a), in relation to any contract of employment, and has come into force, any award provision that applied to that contract immediately before that coming into force is not to be implied into, or in any way read as being part of, the workplace agreement unless the agreement expressly so requires.
- (3) A workplace agreement also has the effects described in sections 7B, 7C, 7D and 7E of the *Industrial Relations Act 1979*.
- (4) A workplace agreement does not displace the contract of employment between an employer and an employee but while it is in force it has effect —
 - (a) as if it formed part of that contract; and
 - (b) regardless of any provision of that contract.
- (5) Subsection (1)(c) may be extended by an agreement of the kind described in section 14(2).

7. Effect of workplace agreement on accrued entitlements

Any entitlement accrued to an employee under the relevant award before the workplace agreement entered into by the employee comes into effect shall be preserved and paid to the employee by the employer at either —

- (a) the award rate; or
- (b) the rate the employee was paid,

whichever was the higher at the time immediately prior to the workplace agreement coming into effect.

8. Effect of addition of employee as party

- (1) Where an employee under a contract of employment was added as a party to a collective workplace agreement under the repealed provision no award, whether existing or future, applies to —
- (a) that contract of employment; or
 - (b) the employer or the employee as a party to that contract,
- so long as the workplace agreement remains in force.

- (2) In subsection (1) —

“the repealed provision” means subsection (1) of repealed section 23, including that subsection as applied by section 40J.

[Section 8 inserted by No. 20 of 2002 s. 32.]

Division 2 — Making of workplace agreements

9. Making of collective workplace agreement

Before the designated day a workplace agreement could be entered into between an employer and all or some of the employer’s employees.

[Section 9 inserted by No. 20 of 2002 s. 33.]

10. Making of individual workplace agreements

- (1) Before the designated day a workplace agreement could be entered into between an employer and one of the employer’s employees.
- (2) An individual workplace agreement may —
- (a) override a collective workplace agreement that could otherwise apply to the employee;
 - (b) be in addition to an applicable collective workplace agreement; or
 - (c) be in substitution for any provision of an applicable collective workplace agreement.

- (3) A provision of an individual workplace agreement has effect despite any inconsistency with an applicable collective workplace agreement.

[Section 10 amended by No. 20 of 2002 s. 34.]

~~11.~~ *Repealed by No. 20 of 2002 s. 35.]*

12. Persons bound by workplace agreement

- (1) A workplace agreement is binding on —
- (a) the parties to the agreement, but subject to section 14(1); and
 - (b) an employer that is a successor, assignee or transmittee, whether immediate or not, to or of the whole or part of the business of an employer that is a party to the agreement.
- (2) Where an employer becomes bound by a workplace agreement as mentioned in subsection (1)(b) any right or entitlement accrued to an employee under the agreement before the succession, assignment or transmission is binding on, and enforceable against, the employer to the extent that it is not enforced against the previous employer.

- (3) A workplace agreement entered into by a person who is under 18 years of age binds the person as if he or she were of full age.

[Section 12 amended by No. 20 of 2002 s. 36.]

13. Disposition etc. of business

- (1) An employer who becomes bound by a workplace agreement by operation of section 12(1)(b) is to be taken to be a party to every contract of employment that it governs.
- (2) A disposition or transmission of the whole or part of a business of an employer does not affect the continuation in force of a relevant workplace agreement to which that employer is a party

if another employer becomes bound by that workplace agreement under section 12(1)(b).

14. Termination of contract of employment

- (1) Where a contract of employment of an employee comes to an end, a workplace agreement that governs that contract no longer applies to that person except where an agreement under subsection (2) provides otherwise.
- (2) An employer and a person who is employed by the employer may agree in writing that a specified workplace agreement is to apply to that person as an employee of that employer during a specified period, not exceeding 12 months, regardless of the number of separate contracts of employment between them that come into existence during that period.
- (3) Subsection (1) does not affect rights or obligations under a workplace agreement that are to take effect after termination of employment.

15. Bargaining agents

- (1) The employer, the employees or any employee are entitled to be represented by a bargaining agent in connection with the operation of a workplace agreement.
- (2) A bargaining agent may be any person or group of persons.
- (3) The authority of a bargaining agent to represent an employer or an employee under this section —
 - (a) must be given in writing by that employer or employee; and
 - (b) may be terminated by that employer or employee at any time by notice in writing to the bargaining agent.
- (4) A copy of an authority given to a bargaining agent under subsection (3)(a) must be given to each other party who is not represented by that agent.

- (3) A workplace agreement must not exclude the operation of subsection (1) and to the extent that it purports to do so it is of no effect.

[Section 18 amended by No. 20 of 2002 s. 39.]

[19, 20. Repealed by No. 20 of 2002 s. 40.]

21. Agreement must provide for resolution of certain disputes

- (1) A workplace agreement must set out provisions for dealing with any question or dispute that arises between the parties about the meaning or effect of the agreement, including any provisions implied in the agreement by the *Minimum Conditions of Employment Act 1993*.
- (2) The provisions referred to in subsection (1) must —
- (a) confer a right on any party to refer to arbitration a dispute of the kind described in that subsection;
 - (b) specify the means for appointing a person or persons to conduct an arbitration referred to in paragraph (a), and for making any new appointment that may be required; and
 - (c) contain an undertaking by the parties to accept the arbitrated decision as final and binding for the purposes of the agreement, but subject to section 64(3).

[(3) repealed]

- (4) Schedule 1 has effect to provide for the powers of arbitrators and the related matters set out in that Schedule.

[Section 21 amended by No. 3 of 1997 s. 41; No. 20 of 2002 s. 41.]

22. Certain requirements relating to membership of organizations to have no effect

- (1) A workplace agreement must not —
- (a) require a person —

- (i) to become or remain a member of an organization;
- (ii) to cease to be a member of an organization;
- (iii) not to become a member of an organization; or
- (iv) to treat another person less favourably or more favourably according to whether or not that other person is, or will become or cease to be, a member of an organization;

or

- (b) confer on any person by reason of that person's membership or non-membership of an organization any right to preferential employment or to be given preference in any aspect of employment.

- (2) In subsection (1) **“organization”** has the same meaning as it has in section 96A of the *Industrial Relations Act 1979*.

~~[23.]~~ *Repealed by No. 20 of 2002 s. 42.]*

24. Cancellation and variation

- (1) The parties to a workplace agreement may enter into an agreement in writing cancelling the workplace agreement.
- (2) A workplace agreement cannot be amended.

[Section 24 amended by No. 20 of 2002 s. 43.]

~~[25.]~~ *Repealed by No. 20 of 2002 s. 44.]*

Division 4 — Register of workplace agreements etc.

[Heading amended by No. 20 of 2002 s. 45.]

~~[26, 27.]~~ *Repealed by No. 20 of 2002 s. 46.]*

28. Register

- (1) The Registrar is to keep a register of workplace agreements and the other agreements that were registered under this Division as

in force immediately before the commencement of section 47 of the *Labour Relations Reform Act 2002*.

- (2) The register is to be kept in a form and manner determined by the Registrar which may be in the form of a computer record.

[Section 28 amended by No. 20 of 2002 s. 47.]

[29-38. Repealed by No. 20 of 2002 s. 48.]

39. Confidentiality

- (1) An agreement to which this subsection applies is not open for inspection by any person except a party to it or a person authorised in writing by such a party.
- (1a) Subsection (1) applies to an agreement that immediately before the designated day had been lodged or registered under Part 2 Division 4 or under section 40F or 40I.
- (2) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of information obtained in the course of performing functions under this Act except —
- (a) in the course of performing functions under this Act;
 - (b) as required or allowed by this Act or any other written law;
 - (c) for the purpose of proceedings in a court;
 - (d) with the written authority of the party to whom the information relates; or
 - (e) in other prescribed circumstances.

Penalty: \$2 000.

- (3) Subsection (2) does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (4) Subsection (2) applies to a person who —

- (a) has held office as the Commissioner under repealed section 82 or has been a member of the Commissioner's staff or a consultant under repealed section 90; or
 - (b) holds or has held office as the Registrar or a Deputy Registrar, or otherwise is or has been an officer of the Commission.
- (5) This section has effect despite any provision of the *Freedom of Information Act 1992*.

[Section 39 amended by No. 20 of 2002 s. 49.]

40. Section 39 not applicable to public sector agreements

Despite section 39, the contents of a workplace agreement referred to in section 43(1) that immediately before the designated day had been lodged or registered under Part 2 Division 4 or under section 40F or 40I —

- (a) are to be open for inspection by any person; and
- (b) may be disclosed to any person who, in the opinion of the Registrar, makes a request for information that can reasonably be complied with by the Registrar.

[Section 40 amended by No. 20 of 2002 s. 50.]

~~—————~~ *[Part 2A (s. 40A-40K) repealed by No. 20 of 2002 s. 51.]*

Part 3 — Application to public sector

41. Definition for this Part

In this Part “**public authority**” means —

- (a) the Governor in Executive Council;
- (b) a Minister of the Crown in right of the State;
- (c) the President of the Legislative Council or the Speaker of the Legislative Assembly or both of them acting jointly, as the case may be, under the *Parliamentary and Electorate Staff (Employment) Act 1992*;
- (d) the Governor or his or her delegate under the *Governor’s Establishment Act 1992*;
- (e) any State Government department, State trading concern, State instrumentality or State agency; or
- (f) any public statutory body, corporate or unincorporate, established under a written law but not including a local government or regional local government.

[Section 41 amended by No. 14 of 1996 s. 4.]

42. Act binds Crown

This Act binds the Crown.

43. Employees in the public sector

- (1) Subject to this Act any person who is —
 - (a) appointed under a written law to a position as an officer or employee;
 - (b) employed by the Crown; or
 - (c) the holder of an office or position in or under a public authority,

may be a party to a workplace agreement as an employee.

- (2) Subsection (1) applies whether or not in law a person has a contract of employment.

- (3) Subsection (1) does not apply to —
- (a) the holder of an office mentioned in Division 1 of Part 1 of Schedule V to the *Constitution Acts Amendment Act 1899*;
 - (b) the holder of an office or position for which the remuneration is determined under the *Salaries and Allowances Act 1975*, unless that person is an officer referred to in section 6(1)(d) or (e) of that Act; or
 - (c) the holder of any office or position, or class of office or position, that is prescribed by the regulations to be excluded from the operation of this Act.
- (4) Without limiting section 14, a workplace agreement referred to in subsection (1) no longer applies to a person as an employee if his or her appointment or employment ceases or is terminated.
- (5) Subsection (4) does not affect rights or obligations that under a workplace agreement are to take effect after termination of appointment or employment.

[Section 43 amended by No. 1 of 1995 s. 38.]

44. Employers in the public sector

- (1) In respect of any employee, or class of employee, to whom section 43(1) applies, the employer for the purpose of this Act is to be a person prescribed by the regulations in respect of that employee or class of employee.
- (2) A person referred to in subsection (1) is to be taken to be the employer of an employee for the purposes of this Act and, despite any provision of a written law, has authority to enter into an agreement under section 24(1) with that employee.

[Section 44 amended by No. 20 of 2002 s. 52.]

45. Matters that cannot be the subject of a workplace agreement

- (1) Any matter that is excluded from the operation of this Part by section 99 of the *Public Sector Management Act 1994* cannot be varied or affected by agreement between the parties to a workplace agreement referred to in section 43(1).
- (2) To the extent that a provision of a workplace agreement is inconsistent with subsection (1) it is of no effect.

[Section 45 amended by No. 20 of 2002 s. 53.]

46. Agreement to prevail over certain written laws

- (1) Subject to section 45, this Part and any workplace agreement have effect despite any relevant enactment that would otherwise apply.
- (2) In subsection (1) “**relevant enactment**” means an enactment that —
 - (a) makes provision for or in relation to the way in which human resources are to be managed or administered in any part of the public sector;
 - (b) confers a right of appeal against a decision or recommendation of an official performing any function of public sector management;
 - (c) empowers a person or body to determine the remuneration or other terms and conditions of employment of officers or employees;
 - (d) requires any determination of the kind referred to in paragraph (c) to be made subject to any order, award or industrial agreement under the *Industrial Relations Act 1979*,

but does not include any provision of the *Equal Opportunity Act 1984*.

Part 4 — Keeping of records

47. Keeping of employment records

- (1) Subsection (2) applies to an employee during any period when the employee's contract of employment is governed by a workplace agreement.
- (2) An employer must ensure that details are recorded of —
 - (a) the employee's name and, if the employee is under 21 years of age, his or her date of birth;
 - (b) the workplace agreement that applies;
 - (c) the gross and net amounts paid to the employee under the agreement, and all deductions and the reasons for them;
 - (d) all leave taken by the employee, whether paid, partly paid or unpaid; and
 - (e) other matters prescribed by the regulations.
- (3) The employer must ensure that —
 - (a) the records are kept in accordance with the regulations; and
 - (b) each entry in relation to long service leave is retained during the employment of the employee and for not less than 7 years thereafter, and any other entry is retained for not less than 7 years after it is made.

Penalty: \$5 000.

[Section 47 amended by No. 79 of 1995 s. 43.]

48. Access to records kept by employer

- (1) An employer, on request in writing by a relevant person, must —
 - (a) produce to the person the records under section 47 relating to an employee to whom that section applies; and
 - (b) let the person inspect the records.

Penalty: \$5 000.

- (2) Relevant persons are —
- (a) the employee;
 - (b) a person authorised in writing by the employee; and
 - (c) an officer of the Commission authorised in writing by the Registrar.
- (3) The duty placed on an employer by subsection (1) —
- (a) continues so long as the record is required to be kept under section 47(3)(b);
 - (b) is not affected by the fact that the employee is no longer employed by the employer or that the workplace agreement no longer applies to him or her;
 - (c) includes the further duties —
 - (i) to let the relevant person enter premises of the employer for the purposes of inspection of the records; and
 - (ii) to let the relevant person take copies of or extracts from the records;
- and
- (d) must be complied with not later than —
 - (i) the end of the next pay period; or
 - (ii) the expiration of 14 days,whichever is the earlier, after the request for inspection is received.

[Section 48 amended by No. 20 of 2002 s. 54.]

Part 5 — Disputes, remedies and offences

Division 1 — Enforcement

[Heading amended by No. 20 of 2002 s. 55.]

49. Definitions

In this Division —

“industrial magistrate’s court” means an industrial magistrate’s court established under Part III of the *Industrial Relations Act 1979*;

“the court” means the industrial magistrate’s court in which an action under this Division has been brought;

“unfair”, in relation to dismissal, includes harsh or oppressive;

“workplace agreement” is to be taken to include —

- (a) a contract of employment that is governed by a workplace agreement; and
- (b) a contract of employment referred to in section 4H(3) or (4).

[Section 49 amended by No. 3 of 1997 s. 41; No. 20 of 2002 s. 56.]

50. Actions for breach of agreement etc.

- (1) Where an employer or employee who is a party to a workplace agreement claims that there has been a breach of the workplace agreement by a party to the agreement, the employer or employee may bring an action in an industrial magistrate’s court against that party.

[(2) repealed]

- (3) Where a right to bring an action under this section has accrued to a person as an employer or employee under a contract of employment it does not matter that at the time when the action is brought or subsequently the contract has ceased to be in force.

[Section 50 amended by No. 20 of 2002 s. 57.]

51. Unfair dismissal

- (1) This section applies if a person who was a party to a workplace agreement as an employee claims that he or she has been unfairly dismissed from employment in breach of the provision implied in the agreement by section 18.
- (2) The person may refer the claim to the Commission in accordance with section 29(1)(b)(i) of the *Industrial Relations Act 1979*, and that Act is to apply in all respects to the claim and all matters, including appeal rights, relating to or arising from the claim.
- (3) For the avoidance of doubt it is declared that the meaning of the expression “**unfairly dismissed**” in —
 - (a) subsection (1) of this section; and
 - (b) repealed section 51(1),

when read with the definition of “unfair” in section 49, is the same as the meaning of the expression “harshly, oppressively or unfairly dismissed” in section 29(1)(b)(i) of the *Industrial Relations Act 1979*.

[Section 51 inserted by No. 20 of 2002 s. 58.]

[52. — Repealed by No. 20 of 2002 s. 59.]

53. Representation

In any proceedings under this Division an employer or employee may —

- (a) appear in person;
- (b) be represented by an agent; or
- (c) be represented by a legal practitioner.

[Section 53 inserted by No. 79 of 1995 s. 18(3).]

54. Disputes procedures to be followed

- (1) A person who brings an action under section 50 in respect of a workplace agreement must include in the claim a certificate under subsection (2).
- (2)- The certificate must state either —
 - (a) that there are no relevant provisions in the workplace agreement that relate to the resolution of the matter in dispute; or
 - (b) that there are such provisions and the claimant has, so far as is possible, complied with them,and must be given in accordance with any requirements of the regulations.
- (3)- The court is not to make an order under section 57 unless a certificate under this section has been given and the court is satisfied that the certificate has been correctly given.

55. Court bound by arbitrated decision

In any proceedings under this Division, the court is not bound by any decision about the meaning and effect of a workplace agreement made —

- (a) by arbitration under a provision described in section 21; or
- (b) by the Industrial Relations Commission under section 7F of the *Industrial Relations Act 1979* or in the circumstances provided for by section 94 of the *Labour Relations Reform Act 2002*.

[Section 55 amended by No. 20 of 2002 s. 60.]

56. Time limits

- (1) An action under section 50 cannot be brought more than 6 years after the time when the cause of action arose.

[(2) repealed]

[Section 56 amended by No. 1 of 1995 s. 46; No. 3 of 1997 s. 27; No. 20 of 2002 s. 61.]

57. Orders that can be made

- (1) In any proceedings under this Division the court may —
 - (a) order the payment of any amount payable under the workplace agreement;
 - [(b) deleted]*
 - (c) subject to section 58, order the payment of an amount for compensation for loss or injury caused by —
 - (i) breach of the workplace agreement; or
 - [(ii) deleted]*
 - (d) where an employee has been dismissed in breach of the workplace agreement, order the employer —
 - (i) to reinstate or re-employ the employee; or
 - (ii) subject to subsection (2) and section 58, to pay compensation to the employee for loss or injury caused by the breach;
 - (e) make any ancillary or incidental order that the court thinks necessary for giving effect to any order made under this subsection.
- (2) The court is not to make an order under subsection (1)(d)(ii) unless —
 - (a) it is satisfied that reinstatement or re-employment of the claimant is impracticable; or
 - [(b) deleted]*
- (2a) For avoidance of doubt, an order under subsection (1)(d)(ii) may permit the employer concerned to pay the compensation required in instalments specified in the order.
- (3) An order under subsection (1) may require that it be complied with within a specified time.

- (4) If an employer fails to comply with an order under subsection (1)(d)(i) the court may, upon further application, revoke that order and, subject to section 58, make an order for the payment of compensation for loss or injury caused by the breach of the workplace agreement.

[Section 57 amended by No. 1 of 1995 s. 47; No. 3 of 1997 s. 28; No. 20 of 2002 s. 62.]

58. Monetary limit on jurisdiction

- (1) The court does not have jurisdiction under section 57(1)(c) or (d) or (4) to order the payment of an amount exceeding the prescribed amount.
- (2) For the purposes of subsection (1) the prescribed amount is \$5 000 or some other amount fixed by the regulations.

[Section 58 inserted by No. 20 of 2002 s. 63.]

59. Jurisdiction of other courts

Nothing in this Part prevents the bringing of an action in any other court in respect of a matter that is, under this Part, within the jurisdiction of an industrial magistrate's court if the matter is within the jurisdiction of that other court.

60. Proof of agreement

In any proceedings under this Division, a document which purports to be certified by the Registrar as being a copy of —

- (a) a workplace agreement; or
(b) an agreement under repealed section 23(1),

that is or was registered under repealed section 31, 32, 40I or 40J is to be taken to be such an agreement in the absence of evidence to the contrary.

[Section 60 amended by No. 3 of 1997 s. 41; No. 20 of 2002 s. 64.]

61. Appeals

- (1) A party to proceedings under section 50 before the court may appeal to the District Court against a decision of the court in those proceedings in the manner and in the time prescribed by rules made by the District Court.
- (2) A party to an appeal to the District Court under subsection (1) may appeal to the Supreme Court against a decision of the District Court, in the manner and in the time prescribed by rules made by the Supreme Court.
- (3) Without limiting the rules of court, where an appeal under this section has been commenced, the Court to which the appeal is made —
 - (a) may suspend the operation or effect of the decision appealed against until the appeal is determined or is withdrawn; and
 - (b) may revoke any such suspension.

[Section 61 amended by No. 20 of 2002 s. 65.]

~~[62.]~~ *Repealed by No. 79 of 1995 s. 29.]*

63. Enforcement of money orders

- (1) Where —
 - (a) an order of the court requires the payment of a sum of money; and
 - (b) a party to the proceedings in which the order was made, or a person claiming through or under such a party, applies for a certified copy of the order,the clerk of the court is to issue such a copy.
- (2) Where a certified copy of an order is lodged with the clerk of a Local Court in accordance with the rules of court (which may include provision for the payment of a lodging fee), the clerk of that Court is to register the order; and payment of the sum of

money to which the order relates may be enforced as if it were required by an order of that Court.

Division 2 — Other remedies

64. Arbitrated decisions

- (1) In this section “**arbitrated decision**” means a decision about the meaning or effect of a workplace agreement made by arbitration under a provision described in section 21.
- (2) An arbitrator must give reasons in writing for an arbitrated decision.
- (3) The Supreme Court has the same powers in respect of arbitrations and arbitrators under a workplace agreement as it has in respect of those matters under Part V of the *Commercial Arbitration Act 1985*; and the provisions of that Part have effect, with the necessary changes, for the purposes of this subsection.
- (4) An arbitrated decision cannot be the subject of appeal or judicial review or otherwise be called in question in any proceedings except under subsection (3).
- (5) Subsection (4) does not affect the operation of section 55.

65. Injunctions

- (1) The Supreme Court may, on the application of any person, grant an injunction in such terms as the Court thinks fit where the Court is satisfied that a person —
 - (a) has engaged, or is proposing to engage, in conduct that amounts to, or would amount to, a breach of section 67, 68, 69, 70 or 71; or
 - (b) is involved in a breach of any of those provisions.
- (2) An interim or interlocutory injunction may be granted before final determination of an application.

Division 3 — Offences

66. Definition

In this Division “**an agreement under this Act**” means an agreement under section 24(1).

[Section 66 amended by No. 20 of 2002 s. 66.]

67. Offences relating to representation

(1) A person must not make any statement to —

- (a) an employer or an employer’s bargaining agent; or
- (b) an employee or an employee’s bargaining agent,

that falsely asserts or implies that the person is authorised under section 15 to represent employees or an employer.

(2) A person, not being duly authorised under section 15 to represent an employer or employees in any dealings about the operation of a collective workplace agreement must not interfere in or obstruct the dealings.

[Section 67 amended by No. 20 of 2002 s. 67.]

68. Threats and intimidation

(1) A person must not by threats or intimidation persuade or attempt to persuade another person to enter into, or not enter into —

- (a) an agreement under this Act; or
- (b) an agreement under this Act that contains or does not contain particular provisions.

(2) A person must not intimidate an employee of an employer, or threaten injury or harm to the person or property of an employee of an employer, because the employee is or is not a party to —

- (a) an agreement under this Act with his or her employer; or
- (b) an agreement under this Act with his or her employer that contains or does not contain particular provisions.

- (3) A person must not by threats or intimidation persuade or attempt to persuade an employer to apply to any employee of the employer any provision of a workplace agreement that is not binding on the employer.

69. Misinformation

A person must not make or give to another person any statement or information that he or she knows to be false with intent to persuade that other person to enter into, or not to enter into —

- (a) an agreement under this Act; or
- (b) an agreement under this Act that contains or does not contain particular provisions.

70. Dismissal etc. because of refusal to enter into agreement

- (1) An employer must not —
- (a) dismiss an employee from his or her employment; or
 - (b) alter the employee's position in his or her employment to his or her disadvantage; or
 - (c) refuse to promote the employee in his or her employment; or
 - (d) otherwise injure the employee in his or her employment,
- when the reason for doing so is that the employee refused to enter into —
- (e) an agreement under this Act; or
 - (f) an agreement under this Act that contains or does not contain particular provisions.
- (2) If an employer is convicted of an offence against subsection (1) in relation to a person who is or was an employee, the industrial magistrate's court by which the employer was convicted may order the employer —
- (a) to re-instate the person if he or she was dismissed from employment; or

- (b) subject to subsection (3), to pay to the person compensation for any loss or injury suffered as a result of the commission of the offence; or
- (c) to do both of those things,

but the person is not entitled to compensation both under this section and otherwise for the same dismissal, loss or injury.

- (3) An industrial magistrate's court does not have jurisdiction under subsection (2) to order that there be paid —
 - (a) to an employee who has been dismissed, any amount exceeding 6 months' loss of earnings of the employee; and
 - (b) in any other case, any amount exceeding \$5 000 or such other amount as is prescribed by the regulations.
- (4) For the purposes of subsection (3)(a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.
- (5) Where in any proceedings for an offence against subsection (1) it is proved that an employer took any course of action mentioned in that subsection against or in relation to an employee after the employee refused to enter into —
 - (a) an agreement under this Act; or
 - (b) an agreement under this Act that contains or does not contain particular provisions,

it is for the employer to prove that he or she took that course of action for some reason other than because the employee refused to enter into any such agreement.

71. Coercion of employers by commercial pressure

- (1) A person must not —
 - (a) in the course of carrying on any trade or business refuse to deal with or threaten to refuse to deal with an employer on the ground that —

- (i) the employer is, or is not, a party to a workplace agreement with the employer's employees; or
 - (ii) a workplace agreement between the employer and the employer's employees contains, or does not contain, any particular provision;
- or
- (b) cause, encourage, or procure another person to do anything that contravenes paragraph (a).
- (2) For the purposes of subsection (1) references to refusing to deal with an employer mean —
- (a) refusing to make use of, or refusing to agree to make use of, any service offered by the employer;
 - (b) refusing to receive, or refusing to agree to receive, any goods offered by the employer; or
 - (c) refusing to supply, or refusing to agree to supply, goods or services to the employer.

72. Penalties

- (1) A person who contravenes section 67, 68, 69, 70 or 71 commits an offence and is liable to —
- (a) in the case of an individual, a fine of not less than \$400 and not more than \$5 000; and
 - (b) in any other case, a fine of not less than \$1 000 and not more than \$10 000; and a daily penalty of \$500.
- (2) The minimum penalties provided for by subsection (1) are not to be reduced in mitigation despite anything in the *Sentencing Act 1995* or any other Act.

[Section 72 amended by No. 78 of 1995 s. 139.]

~~[73.]~~ *Repealed by No. 20 of 2002 s. 68.]*

74. Who may prosecute

- (1) A prosecution for an offence in this Division may only be brought —
 - (a) by a person authorised by the Minister to prosecute such offences; or
 - (b) by a person who comes within subsection (2).
- (2) Any person may make a complaint of an offence in this Division, but except where subsection (1)(a) applies a complaint cannot be prosecuted unless the court is satisfied that the complainant has been affected by the conduct complained of.
- (3) If a complaint shows that the person making the complaint is authorised under subsection (1)(a), that fact is to be taken to be proved on the absence of evidence to the contrary.

~~—————~~ *[Parts 6 (s. 75-81) and 7 (s. 82-99) repealed by No. 20 of 2002 s. 69.]*

Part 8 — General

100. Exclusive jurisdiction for offences

- (1) An industrial magistrate's court established under Part III of the *Industrial Relations Act 1979* has jurisdiction to hear and determine, under the *Justices Act 1902*, complaints for offences against this Act; and that jurisdiction is exclusive of any other court except where an appeal lies to that other court.
- (2) In subsection (1) the reference to the *Justices Act 1902* includes Part VIII of that Act.

~~[101. — Repealed by No. 20 of 2002 s. 70.]~~

101A. Registration of industrial agents

- (1) In this section a reference to carrying on business as an industrial agent is a reference to carrying on business as a person who does all or any of the following —
 - (a) acts as a bargaining agent;
 - (b) acts as an agent under section 53;
 - (c) provides advice or other services in relation to workplace agreements,

but does not include carrying on business by an organization, the Council, the Chamber or the Mines and Metals Association.

- (2) Except as provided under this section a person who, not being an industrial agent registered under this section or a legal practitioner, in any way carries on business as an industrial agent, or holds himself out as carrying on business as an industrial agent, commits an offence.

Penalty: \$2 000.

- (3) For the purposes of section 77A of the *Legal Practitioners Act 1893* a person who is —
 - (a) registered under this section;

s. 101A

- (b) acting under a contract of employment for a person who is registered under this section; or
 - (c) an employee or officer of any organization, the Council, the Chamber, the Mines and Metals Association, or a prescribed body or class of body, acting on behalf of that body,
- is authorised to —
- (d) act as a bargaining agent;
 - (e) act as an agent under section 53; and
 - (f) provide advice and other services in relation to workplace agreements.
- (4) A person shall not be registered under this section unless that person can demonstrate that that person has professional indemnity insurance, or has sufficient material resources, of a prescribed kind to provide professional indemnity.
- (5) Regulations made by the Governor are to —
- (a) provide for a scheme of registration of persons for the purposes of this section and the procedure for obtaining registration;
 - (b) prescribe a code of conduct for persons registered under this section;
 - (c) prescribe the circumstances in which, and the procedures by which, a person may be disqualified from obtaining registration, or registration may be cancelled;
 - (d) provide for appeals to the Full Bench within the meaning of the *Industrial Relations Act 1979* from disqualification or cancellation of registration; and
 - (e) prescribe any matter or thing which is authorised or required to be prescribed for the purposes of this section.

[Section 101A inserted by No. 79 of 1995 s. 18(4); amended by No. 20 of 2002 s. 71.]

102. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[103. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1

[s. 21(4)]

Powers of arbitrator and related matters

1. Powers to obtain information

For the purposes of an arbitration under a provision of a workplace agreement referred to in section 21, an arbitrator may —

- (a) by notice in writing require the attendance of any person at a place and time specified in the notice;
- (b) by notice in writing require any person to produce at a place and time specified in the notice any book, document, or record that is in the possession or under the control of that person;
- (c) inspect any book, document, or record produced and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents;
- (d) require any person to take an oath or make an affirmation and may administer an oath or affirmation to any person;
- (e) require any person to answer any question put to that person;
- (f) take statements and receive affidavits;
- (g) enter any workplace that is the subject of the workplace agreement to which the arbitration relates.

2. Obstruction

A person must not hinder or obstruct an arbitrator exercising any power conferred by this Schedule.

Penalty: \$2 000.

3. False statements

A person must not make a statement or give an answer to an arbitrator, that the person knows to be false or misleading in a material particular.

Penalty: \$2 000.

4. Failure to attend, take oath, etc.

- (1) A person must not, without lawful excuse, refuse or fail —
- (a) to attend; or
 - (b) to produce a book, document, or record,

as required by a notice under clause 1.

Penalty: \$2 000.

- (2) A person must not, without lawful excuse, refuse or fail —
- (a) to be sworn or make an affirmation;
 - (b) to answer a question,

when required to do so under clause 1.

Penalty: \$2 000.

5. Legal professional privilege

Nothing in this Schedule prevents a person from refusing to answer a question or produce a book, document or record because the answer would relate to, or the book, document or record contains, information in respect of which the person claims legal professional privilege.

6. Incriminating answers etc.

- (1) It is not a lawful excuse for the purposes of clause 4 for a person to refuse to answer a question or produce a book, document or record on the grounds that the answer or the book, document or record might tend to incriminate the person, or make the person liable to a penalty.
- (2) Despite subclause (1), an answer given or any statement made for the purposes of clause 4 is not, except in proceedings under clause 2, 3 or 4, admissible in evidence in any civil or criminal proceedings against the person giving the answer or making the statement.

—————*[Schedule 2 repealed by No. 20 of 2002 s. 72.]*

—————*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*

Notes

¹ This is a compilation of the *Workplace Agreements Act 1993* and includes the amendments made by the other written laws referred to in the following table ³. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Workplace Agreements Act 1993</i>	13 of 1993	23 Nov 1993	1 Dec 1993 (see s. 2 and <i>Gazette</i> 30 Nov 1993 p. 6439)
<i>Industrial Legislation Amendment Act 1995</i> s. 38 and Pt. 6 Div. 2	1 of 1995	9 May 1995	9 May 1995 (see s. 2(1))
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 139	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> s. 18, 29 and 43	79 of 1995	16 Jan 1996	s. 29 and 43: 16 Jan 1996 (see s. 3(1)); s. 18: 5 Dec 1997 (see s. 3(2) and <i>Gazette</i> 4 Dec 1997 p. 7071)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Labour Relations Legislation Amendment Act 1997</i> Pt. 6 Div. 2 and Pt. 10 ⁴	3 of 1997	23 May 1997	Pt. 6 Div. 2: 23 May 1997 (see s. 2(1)); Pt. 10: 12 Jul 1997 (see s. 2(3) and <i>Gazette</i> 11 Jul 1997 p. 3621)
Reprint of the <i>Workplace Agreements Act 1993</i> as at 4 Aug 1997 (includes amendments listed above except the <i>Industrial Relations Legislation Amendment and Repeal Act 1985</i> s. 18)			
<i>Labour Relations Reform Act 2002</i> Pt. 3 Div. 1-3 ⁵	20 of 2002	8 Jul 2002	Pt. 3 Div. 1-2: 15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487); Pt. 3 Div. 3: 15 Sep 2003 (see s. 2(4))
Reprint of the <i>Workplace Agreements Act 1993</i> as at 1 Nov 2002 (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
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[This Act expired on 14 Sep 03 \(see section 4A of this Act\)](#)

² The *Labour Relations Reform Act 2002* s. 31 came into operation on 15 Sep 2002.

³ The amendment in the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 is not included because the Schedule it sought to amend had been repealed before the amendment purported to come into operation.

⁴ The *Labour Relations Legislation Amendment Act 1997* s. 26(2) reads as follows:

“

- (2) Notwithstanding subsection (1), subsections (2), (3) and (4) of section 51 of the Workplace Agreements Act as in force immediately before the coming into operation of this section continue to operate in respect of any proceeding arising from an action brought before the coming into operation of this section.

”.

⁵ The *Labour Relations Reform Act 2002* Pt. 3 Div. 2 and 3 read as follows:

“

**Division 2 — Transitional provisions for amendments to the
Workplace Agreements Act 1993 made by Division 1**

Subdivision 1 — Preliminary

73. Definitions

- (1) In this Division —
“**principal Act**” means the *Workplace Agreements Act 1993*.
- (2) Terms used in this Division have the same meanings as they have in the principal Act.

74. Interpretation Act 1984 not affected

The provisions of this Division do not affect the application of the *Interpretation Act 1984*, so far as it is consistent with those provisions, to the amendments made by this Part.

Subdivision 2 — Agreements under principal Act

75. Saving of addition of parties under section 23

- (1) The repeal of section 23 of the principal Act by section 42 does not affect the addition of an employee as a party to a collective workplace agreement that occurred before the

repeal by operation of an agreement under the repealed section.

- (2) Subsection (1) does not limit the operation of section 4G.

76. Provision for unregistered collective workplace agreements

- (1) This section applies to a collective workplace agreement, including an agreement made for the purposes of repealed Part 2A of the principal Act, that was signed by the parties to it but that immediately before the designated day —
- (a) had not been lodged for registration under repealed section 29; or
 - (b) if lodged, had not been registered under repealed section 31 or 32, or refused registration.
- (2) The repeal effected by section 48 makes the agreement incapable of being lodged or registered, as the case may be.
- (3) The repeal of section 26(1) of the principal Act by section 46 does not operate to give any force or effect to a collective workplace agreement that has not been registered.

77. Saving for unregistered agreements under section 24(1)

- (1) This section applies to an agreement under section 24(1) of the principal Act that was signed by the parties to it but that immediately before the designated day —
- (a) had not been lodged for registration under repealed section 29; or
 - (b) if lodged, had not been registered under repealed section 31 or refused registration.
- (2) The agreement has effect according to its terms despite the fact that it is not registered.
- (3) If the commencement of the agreement is expressed in terms that depend on it being registered, the agreement has effect on and after the designated day.

Subdivision 3 — Registration

78. Registrar to take possession of register, documents and records

- (1) As soon as is practicable after the commencement of section 47 the Registrar is to take possession of —
- (a) the register kept for the purposes of section 28 of the principal Act; and

- (b) all documents and records relating to the register, including information stored or recorded by means of a computer.
- (2) A person in possession or control of any thing referred to in subsection (1), or premises on which it is kept, must comply with any reasonable request that the Registrar makes for the purpose of carrying out that subsection.

79. Registration not affected by repeal

The repeal of —

- (a) sections 31 and 32 of the principal Act by section 48; and
- (b) sections 40I and 40J of the principal Act by section 51,

does not, after the repeal, affect the force and effect that any agreement had immediately before the repeal as an agreement registered under the principal Act.

80. Continuation of status as excluded party

The repeal of section 32(4) of the principal Act by section 48 does not, after the repeal, affect the status that a person had immediately before the repeal as an excluded party under that subsection, including the exclusion of the person from the operation of section 12(1)(a) of the principal Act.

81. Review under section 34 discontinued

A review under section 34 of the principal Act that is in progress immediately before the repeal of that section by section 48 is automatically discontinued by the repeal.

82. Appeal under section 35 discontinued

An appeal under section 35 of the principal Act that has been commenced but not completed before the repeal of that section by section 48 is automatically discontinued by the repeal.

Subdivision 4 — Remedies and offences

83. Recovery of amounts where section 4E or 4G applies

- (1) This section applies if an individual workplace agreement or an agreement under repealed section 23(1) ceases to have effect under section 4E or 4G of the principal Act.

- (2) Either party to the agreement may recover from the other any amount which, if the agreement had not taken effect, he or she —
 - (a) would have been entitled to receive; or
 - (b) would not have been required to pay,as the case may be, in respect of the period when the agreement had effect.
- (3) The entitlement of an employee is to be determined for the purposes of subsection (2)(a) as if any relevant award provision applied to the employer and the employee during the period concerned.
- (4) An amount referred to in subsection (2) is recoverable in accordance with section 85.

84. Proceedings in progress under repealed section 51

- (1) An action under section 51 of the principal Act that —
 - (a) was commenced in an industrial magistrate's court; and
 - (b) immediately before the commencement of section 57 had not been finally determined,may be continued and dealt with by that court as if Part 5 Division 1 of the principal Act had not been amended by this Part.
- (2) The continued jurisdiction of an industrial magistrate's court under subsection (1) is to be treated as general jurisdiction of the court for the purposes of section 81CA of the *Industrial Relations Act 1979*.
- (3) An appeal or further appeal may be brought under repealed section 61 of the principal Act by a party to proceedings referred to in subsection (1) as if the repeal had not occurred.

85. Amounts may be recovered under repealed section 52

- (1) A person may, despite the repeal of section 52 of the principal Act by section 59, bring an action under the repealed section for the recovery of an amount referred to in —
 - (a) that section; or
 - (b) section 83 of this Act,and for that purpose Part 5 Division 1 applies as if it had not been amended by this Part.

- (2) The jurisdiction of an industrial magistrate's court under subsection (1) is to be treated as general jurisdiction of the court for the purposes of section 81CA of the *Industrial Relations Act 1979*.

86. Proceedings for offences

- (1) Proceedings for an offence against section 67(2) of the principal Act that were commenced before the amendment of that section by section 67 may be continued as if the amendment had not been made.
- (2) Proceedings for an offence against section 67(2) of the principal Act may be brought in respect of an act or omission that occurred before the amendment of that section by section 67 as if the amendment had not been made.
- (3) Proceedings for an offence against section 68(1), 68(2), 69 or 70(1) that were commenced before the amendment of section 66 of the principal Act by section 66 may be continued as if the amendment had not been made.
- (4) Proceedings for an offence against section 68(1), 68(2), 69 or 70(1) may be brought in respect of an act or omission that occurred before the amendment of section 66 of the principal Act by section 66 as if the amendment had not been made.
- (5) A person may be punished on conviction for an offence in proceedings referred to in subsection (1), (2), (3) or (4) despite section 11 of *The Criminal Code*.

Subdivision 5 — Provisions relating to the Commissioner

87. Definitions

In this Subdivision —

“**commencement day**” means the day on which section 69 comes into operation;

“**Commissioner**” means the official appointed under repealed section 82 of the principal Act.

88. References to Commissioner in agreements and instruments

On and after the commencement day agreements and instruments —

- (a) to which the Commissioner is a party; or
(b) which contain a reference to the Commissioner,

have effect, by operation of this section, as if —

- (c) the Registrar were substituted for the Commissioner as a party to the agreement or instrument; and
- (d) any reference to the Commissioner were, unless the context otherwise requires, a reference to the Registrar.

89. Proceedings and remedies

On and after the commencement day —

- (a) the Registrar is a party to any proceedings by or against the Commissioner commenced before that day; and
- (b) any proceedings or remedy that might have been commenced by, or available against or to, the Commissioner may be commenced by, and are available against or to, the Registrar.

90. Other things in progress

- (1) Any act, matter or thing done, or omitted to be done, before the commencement day by, to or in respect of the Commissioner is to be taken to have been done or omitted by, to or in respect of the Registrar.
- (2) Subsection (1) applies only to the extent that the act, matter or thing has any force, effect or significance after the commencement day.

91. Annual report for part of year

- (1) The Commissioner is to report as required by section 66 of the *Financial Administration and Audit Act 1985* for the period from the preceding 1 July to the commencement day, and Part II Division 14 of that Act applies as if that period were a full financial year.
- (2) Despite section 69, the Commissioner continues in office so far as is necessary for the purposes of subsection (1).

92. Completion of things commenced

Anything commenced to be done by the Commissioner under the principal Act before the commencement day may be continued by the Registrar so far as the doing of that thing is within the functions of the Registrar after that day.

Subdivision 6 — Miscellaneous

- 93. Offender may be punished despite repeal of section 25**
Despite section 11 of *The Criminal Code*, a person may be punished after the commencement of section 44 for an offence against repealed section 25 of the principal Act.
- 94. Tribunal's arbitration function under repealed section 40E(b)**
- (1) This section applies to a workplace agreement that —
 - (a) is in force immediately before the commencement of section 51; and
 - (b) provides for the appointment of the Tribunal under repealed section 40E of the principal Act as an arbitrator in relation to disputes that arise about the meaning or effect of the agreement.
 - (2) The workplace agreement is to be taken to provide for such disputes to be referred to the Commission for determination.
 - (3) Regulations made for the purposes of section 7F(5)(c) of the *Industrial Relations Act 1979* apply to the practice and procedure for the referral and determination of a dispute to which this section applies in place of the provisions in that behalf contained in the workplace agreement.
- 95. Immunity not affected**
The repeal of Part 6 of the principal Act by section 69 does not affect any immunity that a person had under that Part in respect of an act, matter or thing done before the repeal.
- 96. Offshore application not affected**
An agreement authorised by section 101 of the principal Act is not affected by the repeal of that section by section 70.
- 97. Powers in relation to transitional provisions**
- (1) If there is no sufficient provision in this Division for dealing with a transitional matter the Governor may make that provision by regulations.
 - (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —
 - (a) of this Division; or
 - (b) of the *Interpretation Act 1984* as it applies to the amendments made by this Part,

the Governor may by regulations —

- (c) modify that provision to remove the anomaly; and
 - (d) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Regulations under this section in relation to an amendment made to the principal Act by this Part may be made so as to have effect from the commencement of that amendment.
- (4) To the extent that a provision of any such regulations has effect on a day that is earlier than the day of their publication in the *Gazette*, the provision does not operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.
- (5) In subsection (1) —
- “transitional matter”** means a matter or thing necessary or convenient to give effect to the transition from the principal Act, as in force before the commencement of any provision of this Part, to the principal Act as in force after that commencement.

**Division 3 — Transitional provisions for the expiry of the
*Workplace Agreements Act 1993***

98. Definitions

- (1) In this Division —
- “the Act”** means the *Workplace Agreements Act 1993*.
- (2) Terms used in this Division have the same meanings as they had in the Act immediately before its expiry.

99. *Interpretation Act 1984* not affected

The provisions of this Division do not affect the application of sections 37 and 39 of the *Interpretation Act 1984*, so far as they are consistent with those provisions, in relation to the expiry of the Act.

100. Effect of certain provisions preserved

The provisions of section 4H and Part 2 Division 4 of the Act are to be regarded as continuing to have effect after the expiry of the Act as if they had not expired.

101. Offences under expired Act

Without otherwise limiting the operation of section 37(1)(e) of the *Interpretation Act 1984*, a person who commits an offence against the Act before it expires may be punished after it expires to the same extent as the person could have been punished immediately before the expiry.

102. Application of enforcement provisions

- (1) On the expiry of the Act, Part 5 Division 1 is to be taken to continue in force to the extent necessary for the purpose of—
 - (a) enforcing —
 - (i) any right or entitlement that accrued; or
 - (ii) any obligation or liability that was incurred,
under a workplace agreement before the expiry;
and
 - (b) bringing an appeal against a decision of an industrial magistrate's court under that Division as so continued.
- (2) The continued jurisdiction of an industrial magistrate's court under subsection (1) is to be treated as general jurisdiction of the court for the purposes of section 81CA of the *Industrial Relations Act 1979*.
- (3) Section 84(1)(b) of the *Industrial Relations Act 1979* has effect for the purposes of this section as if it had not been repealed by section 113(4).

103. Keeping of records

A person who was an employer under the Act must ensure that after the expiry of the Act all records required to be kept by section 47 of the Act, as in force immediately before the expiry, are —

- (a) kept —
 - (i) in a legible form and using indelible material; or
 - (ii) in electronic form that is capable of being reproduced in a legible printed format;
and

- (b) retained —
 - (i) in the case of entries relating to long service leave, during the employment of the employee and for not less than 7 years after the termination of that employment; and
 - (ii) in the case of any other entry, for not less than 7 years after it is made.

Penalty: \$5 000.

104. Access to records

- (1) A person who is required to keep records under section 103 relating to a former employee must, on request in writing by a relevant person —

- (a) produce the records to the relevant person; and
 - (b) let him or her inspect them.

Penalty: \$5 000.

- (2) Relevant persons are —

- (a) the former employee concerned;
 - (b) a person authorised in writing by the former employee; and
 - (c) an officer of the Commission authorised in writing by the Registrar.

- (3) The duty under subsection (1) —

- (a) continues so long as the records concerned are required to be kept under section 103; and
 - (b) includes the further duties to let the relevant person —
 - (i) for the purpose of inspecting the records, enter premises of the person who is required to keep them; and
 - (ii) take copies of or extracts from the records;
 - (c) must be complied with not later than 14 days after the request for inspection is received.

105. Consequential amendment of other laws

- (1) The Governor may make regulations having effect after the expiry of the Act amending a written law for the purpose of making that law consistent with the fact that the Act has expired.

- (2) An amendment under subsection (1) may —
 - (a) delete from a written law a provision that relates solely to the Act; and
 - (b) make changes to a provision to ensure that the omission of provisions relating to the Act does not result in an anomaly in the grammar or formal expression of the provision.
- (3) Any provision of regulations made under this section may be expressed to have effect from a time that is earlier than the day on which the regulations are published in the *Gazette*.
- (4) To the extent that a provision has effect as mentioned in subsection (3), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of that publication.

106. Powers in relation to transitional provisions

- (1) If there is no sufficient provision in this Division for dealing with a transitional matter after the expiry of the Act the Governor may make that provision by regulations.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —
 - (a) of this Division; or
 - (b) of section 37 of the *Interpretation Act 1984* as applied by section 39 of that Act,the Governor may, on the recommendation of the Minister, by regulations —
 - (c) modify that provision to remove the anomaly; and
 - (d) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Any provision of regulations made under this section may be expressed to have effect from a time that is earlier than the day on which the regulations are published in the *Gazette*.
- (4) To the extent that a provision has effect as mentioned in subsection (3), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person

existing before the day of publication in the
Gazette; or

- (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of that publication.
- (5) In subsection (1) —
“**transitional matter**” means a matter or thing necessary or convenient to give effect to the transition from the Act being in force to the Act having expired.

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