



Western Australia

Industrial Relations Act 1979

Reprinted as at 4 February 2000

Western Australia

Industrial Relations Act 1979

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Notes
Defined Terms



Western Australia

**Reprinted under the
Reprints Act 1984 as
at 4 February 2000**

Industrial Relations Act 1979

An Act to consolidate and amend the law relating to the prevention and resolution of conflict in respect of industrial matters, the mutual rights and duties of employers and employees, the rights and duties of organizations of employers and employees, and for related purposes.

Part I — Introductory

1. Short title

This Act may be cited as the *Industrial Relations Act 1979*¹.

[Section 1 amended by No. 94 of 1984 s.4.]

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

3. Application off-shore

- (1) Subject to subsections (5) and (6) where any industry is carried on —
- (a) partly within the State and partly within an area to which this subsection applies; or
 - (b) wholly or partly in an area to which this subsection applies, and —
 - (i) facilities for servicing or supporting that industry are maintained in the State by or on behalf of the employer concerned;
 - (ii) the employer concerned is connected with the State;
 - (iii) that industry is carried on from, or on, or by means of, an aircraft, ship, or vessel certificated, registered, or licensed under a law of the State or by a public authority, or which is required to be so certificated, registered, or licensed;
 - (iv) that industry is carried on from, or on, or by means of, a rig or other structure, installation, or equipment, the use or function of which is regulated by the State or by the State and the Commonwealth, or is required to be so regulated;

- (v) that industry is authorized or regulated by the State or by the State and the Commonwealth; or
- (vi) that industry is carried on pursuant to a law of the State,

then this Act applies to and in relation to that industry in so far as any employment relates to the area to which this subsection applies and in any such case this Act also applies to and in relation to any industrial matter or industrial action related thereto, and any jurisdiction, function, duty, or power exercisable, imposed, or conferred by or under this Act extends thereto.

- (2) An employer shall, for the purposes of subsection (1), be connected with the State if that employer —
 - (a) is domiciled in the State;
 - (b) is resident in the State, normally or temporarily;
 - (c) being a body corporate, is registered, incorporated, or established under a law of the State or is for the purposes of the *Companies (Western Australia) Code*² deemed to be related to such a body;
 - (d) in connection with the industry concerned, has an office or a place of business in the State; or
 - (e) is the holder of a licence, lease, tenement, permit, or other authority, granted under a law of the State or by a public authority under or by virtue of which the industry is carried on.
- (3) The areas to which subsection (1) applies are —
 - (a) that area situate west of 129° of east longitude reckoning from the meridian of Greenwich, that is part of the areas known as and comprised within —
 - (i) the Australian fishing zone as defined by the *Commonwealth Fisheries Act 1952*³; or

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- (ii) the continental shelf, within the meaning of the Convention on the Continental Shelf a copy of which in the English language is set out in Schedule 1 to the *Commonwealth Petroleum (Submerged Lands) Act 1967*;
 - (b) any other area seaward of the State to which from time to time the laws of the State apply or, by a law of the Commonwealth, are applied.
- (4) For the purposes of any proceedings under this Act an averment in the application or process —
 - (a) that an employer was, pursuant to subsection (2), at a specified time or during a specified period or at all material times connected with the State; or
 - (b) that any conduct, event, circumstance, or matter occurred, or that any place is situate, within an area referred to in subsection (3),shall, in the absence of proof to the contrary, be deemed to be proved.
- (5) Subsections (1), (2), and (3) shall not be construed as applying this Act to or in relation to any person, circumstance, thing, or place by reason only of the operation of paragraph (c) of the interpretation of the term “industry” set out in section 7(1) unless this Act would also apply by reason of the operation of subsection (1).
- (6) Effect shall be given to subsections (1), (2), and (3) only where this Act or any provision of this Act would not otherwise apply as a law of the State, or be applied as a law of the Commonwealth, to or in relation to any person, circumstance, thing, or place.

[Section 3 amended by No. 10 of 1982 s.28.]

4. Repeal

The *Industrial Arbitration Act 1912-1979* is hereby repealed.

[5. *Repealed by No. 79 of 1995 s.66.*]

6. Objects

The principal objects of this Act are —

- (a) to promote goodwill in industry;
- (b) to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes;
- (c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality;
- (d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes;
- (e) to encourage the formation of representative organizations of employers and employees and their registration under this Act and to discourage, so far as practicable, overlapping of eligibility for membership of such organizations;
- (f) to encourage the democratic control of organizations so registered and the full participation by members of such an organization in the affairs of the organization; and
- (g) to encourage persons, organizations and authorities involved in, or performing functions with respect to, the conduct of industrial relations under the laws of the State to communicate, consult and co-operate with persons, organizations and authorities involved in, or performing functions with respect to, the conduct or regulation of industrial relations under the laws of the Commonwealth.

[Section 6 inserted by No. 94 of 1984 s.5.]

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;

“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 industrial 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;

“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);

“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 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 relating 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;
- (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 industrial 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 industrial training agreement;

[(g) and (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;

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);

“industrial trainee” means an industrial trainee under the *Industrial Training Act 1975*;

“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;

“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*;

“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);

“Minister for Education” means the Minister to whom the administration of the *Education Act 1928* is committed;

“office” in relation to an organization means —

- (a) the office of a member of the committee of management of the organization;

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- (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*¹;

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

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

“pre-strike ballot” means a ballot held under Part VIB;

“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*;

“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;

“teacher” includes —

- (a) any person engaged in teaching in a government school within the meaning of the *Education Act 1928*;
- (b) any person employed by the Minister for Education and engaged in teaching in a pre-school centre within the meaning of the *Education Act 1928*; and
- (c) any person holding or acting in a position in respect of which a teaching academic qualification is required in the department of the Public Service principally assisting the Minister for Education in administering the *Education Act 1928*,

but does not include any public service officer, whether or not that public service officer holds or acts in a position in respect of which a teaching academic qualification is required;

“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) The collection by an employer of subscriptions or levies payable to an organization of employees is not an industrial matter for the purposes of this Act.

- (3) A matter that is within the jurisdiction of a safety and health magistrate under the *Occupational Safety and Health Act 1984* or the *Mines Safety and Inspection Act 1994* —
- (a) is not an industrial matter for the purposes of either of the definitions of “**industrial matter**” in subsection (1);
 - (b) is not capable of being determined under section 24(1) to be an industrial matter; and
 - (c) cannot be referred to the Commission under section 80ZE.
- (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.

[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.29⁴ and 35.]

**Part IA — Effect of *Workplace Agreements Act 1993* on
this Act**

[Heading inserted by No. 15 of 1993 s.5.]

7A. This Act subject to *Workplace Agreements Act 1993*

Without limiting the other provisions of this Part, this Act has effect subject to the *Workplace Agreements Act 1993*.

[Section 7A inserted by No. 15 of 1993 s.5.]

7AA. Certain persons excluded from expression “party”

For the purposes of this Part an employee is not a party to a workplace agreement if the employee is an excluded party, within the meaning in section 32(2) of the *Workplace Agreements Act 1993*, in respect of that agreement.

[Section 7AA inserted by No. 15 of 1993 s.5.]

7B. Definitions of “employer” and “employee” limited

Where any employer and any employee are parties to a workplace agreement, they are not, in relation to one another, within the definitions of “employer” and “employee” respectively in section 7(1).

[Section 7B inserted by No. 15 of 1993 s.5.]

7C. Definition of “industrial matter” limited

(1) Where any employer and any employee are parties to any workplace agreement, a matter that is part of the relationship between that employer and that employee —

(a) is not —

(i) an industrial matter; or

- (ii) capable of being agreed to be an industrial matter,
for the purpose of the definition of “industrial matter” in section 7(1);
 - (b) is not capable of being determined under section 24(1) to be an industrial matter; and
 - (c) cannot be referred to the Commission under section 80ZE.
- (2) Subsections (3) and (4) of section 34 do not apply to a determination that is made contrary to subsection (1)(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.
- (3) Subsection (1) also applies where —
- (a) a workplace agreement has expired; and
 - (b) an arrangement is in force between the parties to that agreement of the kind referred to in section 19(4)(b) of the *Workplace Agreements Act 1993*,

except to the extent that the employer and any employee agree that any matter is to be treated as an industrial matter between them.

[Section 7C inserted by No. 15 of 1993 s.5; amended by No. 1 of 1995 s.5.]

7D. Powers in section 44 excluded

- (1) Where any employer and any employee are parties to —
- (a) an agreement that has been lodged for registration as a collective workplace agreement under Division 4 of Part 2 of the *Workplace Agreements Act 1993*; or

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- (b) a workplace agreement that is in force under that Act, the powers in section 44 shall not be exercised by the Commission —
 - (c) to summon that employer or employee under that agreement to attend at a conference in relation to any matter (including industrial action) affecting, relating to or arising out of —
 - (i) that agreement; or
 - (ii) if that agreement has expired or is about to expire, the making of a new workplace agreement in its place;or
 - (d) to deal with any matter affecting, relating to or arising out of —
 - (i) the relationship of that employer and that employee while that agreement is in force; or
 - (ii) that agreement after it has expired, unless the agreement provides for the Commission to do so.
- (2) Without limiting paragraph (b) of subsection (1), that subsection ceases to apply to an agreement that has been lodged as mentioned in paragraph (a) of that subsection —
- (a) on the refusal of registration and the expiration of the time for appeal against that refusal; or
 - (b) if such an appeal is commenced, on the disposition of the appeal that does not result in registration of the agreement or on the appeal being discontinued or dismissed for want of prosecution.

[Section 7D inserted by No. 15 of 1993 s.5.]

7E. Section 114 affected

A workplace agreement is not a contract to which section 114 applies.

[Section 7E inserted by No. 15 of 1993 s.5.]

7F. Parties may submit question of interpretation to Commission

- (1) The parties to a workplace agreement may by agreement in writing refer to the Commission for determination any question or dispute that has arisen 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) In allocating the work of the Commission under section 16, the Chief Commissioner is to allocate any matter referred for determination under this section to a Commissioner.
- (3) If the parties have requested that a particular Commissioner should make the determination the matter is to be allocated to that Commissioner.
- (4) If the Chief Commissioner considers that it is not practicable to comply with that request, he is to notify the parties of that fact and the referral is stayed by the giving of that notice and is not to be resumed unless the Chief Commissioner and the parties agree that the matter be allocated to some other Commissioner.
- (5) Where a question or dispute is referred to the Commission under subsection (1) the Commission —
 - (a) shall determine the meaning or effect of the agreement;
 - (b) does not have any function other than to make that determination, and shall not exercise any of its powers under this Act in respect of industrial matters;
 - (c) shall in making the determination follow the practice and procedure that is provided for by regulations made under section 7H.
- (6) A party cannot withdraw from or cancel an agreement in writing made for the purposes of subsection (1) except by further agreement in writing made by the parties.

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- (7) Section 49(2) does not apply to a determination made by the Commission under this section.

[Section 7F inserted by No. 15 of 1993 s.5.]

7G. Referral of claim of unfair dismissal

- (1) Where —

- (a) a person who was a party to a workplace agreement as an employee claims to have been harshly, oppressively or unfairly dismissed from employment in breach of the provision implied in the agreement by section 18 of the *Workplace Agreements Act 1993*; and
- (b) the workplace agreement provides for referral of such claims to the Commission under this section,

the person dismissed may, within the time allowed by section 29(2), refer the claim to the Commission for determination.

- (2) The Commission is to enquire into and deal with any claim referred under subsection (1) as if it were an industrial matter referred to it under section 29(1)(b)(i).

[Section 7G inserted by No. 15 of 1993 s.5.]

7H. Regulations

The Governor may make regulations providing for —

- (a) the practice and procedure to be followed by the Commission for the purposes of section 7F;
- (b) an appeal to a body provided for by this Act from a determination under section 7F and the practice and procedure to be followed on an appeal; and
- (c) the payment of fees to the Commission by a party to a workplace agreement where —
 - (i) the Commission performs any function under section 7F or 7G; or

- (ii) an appeal is brought under regulations made under paragraph (b),
and the amount or method of calculating the fees, and for their collection.

[Section 7H inserted by No. 15 of 1993 s.5.]

Part II — The Western Australian Industrial Relations Commission

[Heading amended by No. 94 of 1984 s.7.]

Division 1 — Constitution of the Commission

8. Constitution of Commission

- (1) The Commission by the name The Western Australian Industrial Commission established under the repealed Act is hereby continued in existence subject to this Act under the name The Western Australian Industrial Relations Commission.
- (2) The Commission shall consist of the following members —
 - (a) a President;
 - (b) a Chief Commissioner;
 - (c) a Senior Commissioner; and
 - (d) such number of other Commissioners as may, from time to time, be necessary for the purposes of this Act,who shall be respectively appointed to their offices by the Governor by Commission in Her Majesty's name.
- (3) The order of seniority of Commissioners is —
 - (a) Chief Commissioner;
 - (b) Senior Commissioner;
 - (c) other Commissioners according to the dates of their appointments unless 2 or more of their appointments are made on the same day in which case their order of seniority is such as shall be assigned to them by the Governor when appointing them.

[Section 8 amended by No. 94 of 1984 ss.8 and 66.]

9. Qualifications for appointment of President and Chief Commissioner

- (1) A person shall not be appointed as the President unless he is or has been a barrister or solicitor of the High Court of Australia or of the Supreme Court of a State or Territory of the Commonwealth of not less than 5 years' standing.
- (1a) The President during the term of his or her office —
- (a) is entitled to the style and title of The Honourable (*name*), President of The Western Australian Industrial Relations Commission; and
 - (b) in appropriate circumstances —
 - (i) may be addressed as “Your Honour”; and
 - (ii) may be referred to as “His Honour” or “Her Honour”, as the case may be.
- (2) A person shall not be appointed Chief Commissioner unless —
- (a) he has had experience at a high level in industrial relations; or
 - (b) he has, not less than 5 years previously, obtained a degree of a university or an educational qualification of similar standard after studies considered by the Governor to have substantial relevance to the duties of the Chief Commissioner.

[Section 9 inserted by No. 94 of 1984 s.9; amended by No. 99 of 1990 s.5.]

10. Age limit for members of Commission

A person who has attained the age of 65 years is ineligible for appointment as a member of the Commission and each member of the Commission shall retire from his office upon attaining the age of 65 years.

[Section 10 inserted by No. 94 of 1984 s.9.]

11. Oath of office and secrecy

- (1) Subject to subsection (2), before entering upon his office each member of the Commission shall make oath before a Judge that he will faithfully and impartially perform the duties of his office and that he will not, except in the discharge of those duties, disclose to any person any evidence or other matter brought before the Commission.
- (2) When a Commissioner is appointed the Chief Commissioner or the Senior Commissioner he is not required to make again the oath referred to in subsection (1).

[Section 11 amended by No. 94 of 1984 s.66.]

12. Commission Court of Record

- (1) The Commission is a Court of Record and shall have an official seal.
- (2) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it has been duly so affixed.

13. Protection of members of Commission and others

A person who is —

- (a) a member of the Commission;
- (b) a member of a Board of Reference referred to in section 48; or
- (c) a constituent authority or a member of a constituent authority, as the case requires,

has, in the performance of his functions and duties as such a member or as a constituent authority, as the case requires, the same protection and immunity as a Judge.

[Section 13 inserted by No. 119 of 1987 s.6.]

14. Exercise of powers and jurisdiction of President and Commission

- (1) The President has the jurisdiction expressly conferred on him by this Act and in the exercise of that jurisdiction he constitutes the Commission and he has and may exercise such powers of the Commission as may be necessary or appropriate thereto.
- (2) A Commissioner sitting or acting alone constitutes the Commission and, except as otherwise provided in this Act, he has and may exercise while so sitting or acting, all the powers and jurisdiction of the Commission.
- (3) Where more than one member of the Commission is sitting or acting at the same time in the exercise of the jurisdiction of the Commission, each such member of the Commission constitutes the Commission.

14A. Dual Federal and State appointments

A person who is a member of the Commission may be appointed as a member of the Australian Commission, and a person so appointed may, subject to section 22(2)(c), at the same time hold the offices of member of the Commission and member of the Australian Commission but not otherwise.

[Section 14A inserted by No. 99 of 1990 s.6.]

14B. Performance of duties by dual Federal and State appointees

- (1) As agreed from time to time by the Chief Commissioner and the President of the Australian Commission, a person who holds an office of member of the Commission and an office of member of the Australian Commission —
 - (a) may perform the duties of the secondary office; and
 - (b) may exercise, in relation to a particular matter —
 - (i) any powers that the person has as a member of the Commission; and

- (ii) any powers that the person has as a member of the Australian Commission.
- (2) The Minister may give directions in writing to the Chief Commissioner with respect to agreements under subsection (1) and the Chief Commissioner shall give effect to every such direction and shall not enter into any agreement under subsection (1) that is contrary to those directions.
- (3) Directions under subsection (2) shall be limited to matters of administration and shall not deal with matters of conciliation or arbitration.
- (4) The Minister shall cause a copy of any direction given under subsection (2) to be laid before each House of Parliament within 15 sitting days of that House after the date on which the direction was given.

[Section 14B inserted by No. 99 of 1990 s.6.]

15. Constitution of Full Bench and Commission in Court Session

- (1) The Full Bench shall be constituted by not less than 3 members of the Commission one of whom shall be the President.
- (2) The Commission in Court Session shall be constituted by not less than 3 Commissioners sitting or acting together.

16. Powers and duties of President and Chief Commissioner

- (1) Subject to this Act, the Chief Commissioner may allocate and reallocate the work of the Commission, including the work of constituent authorities, and may assign or appoint Commissioners for the purposes of constituting the Full Bench, the Commission in Court Session, or a constituent authority.
- (1a) The Chief Commissioner may assign a Commissioner to sit or act alone as the Commission or to sit or act as a member of the Full Bench or the Commission in Court Session notwithstanding

that that Commissioner is for the time being appointed as or to a constituent authority.

(2) The Chief Commissioner —

[(a) deleted]

- (b) shall, before 1 October in each year, make a written report to the Minister relating to the operation of this Act up to the last preceding 30 June;
- (c) shall, before making the report referred to in paragraph (b), consult with the President; and
- (d) may require the Commissioners to attend a conference of Commissioners for the purposes of paragraph (b) or for any other purpose.

(3) Where the Chief Commissioner is unable to attend to his duties under this Act, whether on account of illness or otherwise, or where there is a vacancy in the office of Chief Commissioner, the duties and powers of the Chief Commissioner devolve on the Commissioner who is next in order of seniority and not himself absent or unable to perform those duties, unless the Governor appoints some other person to be Acting Chief Commissioner.

[Section 16 amended by No. 121 of 1982 s.4; No. 94 of 1984 ss.10 and 66; No. 1 of 1995 s.53.]

17. Appointment of acting members of Commission

- (1) Where a member of the Commission is, or is expected to be, unable to attend to his duties under this Act, whether on account of illness or otherwise, the Governor may appoint a person to be Acting President, Acting Chief Commissioner, Acting Senior Commissioner or an Acting Commissioner, as the case may require, for such period as the Governor determines.
- (2) A person shall not be appointed Acting President or Acting Chief Commissioner unless he holds the relevant qualifications prescribed in section 9.

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[(3) repealed]

- (4) If, under this section, a person receives an appointment to act in an office, the rights and obligations of the person in relation to the office are, subject to the terms of that appointment, as prescribed for the office.

[Section 17 amended by No. 121 of 1982 s.5; No. 94 of 1984 s.11; No. 1 of 1995 s.53.]

18. Extension of appointment

- (1) Notwithstanding the retirement of a member of the Commission or the expiry of the period for which an acting member of the Commission has been appointed under this Act, the Governor may extend his period of office for such further period as the Governor determines, in order to enable him to complete all matters, proceedings, or inquiries that he has entered upon and has not completed before the retirement or the expiry.
- (2) The Governor may from time to time extend any further period determined by him under subsection (1) notwithstanding the expiry of that further period for such further period or periods as he thinks fit.

[Section 18 amended by No. 94 of 1984 s.12.]

19. Duty of members of Commission

Each member of the Commission shall keep himself acquainted with industrial affairs and conditions.

20. Conditions of service of members of Commission

- (1) The President shall receive salary and allowances or reimbursements at the same rate as a Puisne Judge.
- (2) The Chief Commissioner shall receive salary and allowances or reimbursements at the same rate as a District Court Judge other than the Chief Judge.

- (3) The Senior Commissioner shall receive —
- (a) salary at a rate that is 95% of the rate of salary received by the Chief Commissioner;
 - (b) an annual expense allowance at a rate that is 66.67% of the rate of annual expense allowance received by the Chief Commissioner; and
 - (c) other allowances or reimbursements as the Governor may from time to time approve.
- (4) A Commissioner, other than the Chief Commissioner and the Senior Commissioner, shall receive —
- (a) salary at a rate that is 90% of the rate of salary received by the Chief Commissioner;
 - (b) an annual expense allowance at a rate that is 50% of the rate of annual expense allowance received by the Chief Commissioner; and
 - (c) other allowances or reimbursements as the Governor may from time to time approve.
- (5) In subsection (6) “**current rate**” in relation to the salary of the holder of an office means the rate that was, immediately before the coming into operation of section 3 of the *Industrial Arbitration Amendment Act (No. 2) 1984*¹, the rate of salary determined under the *Salaries and Allowances Act 1975* for the equivalent office in The Western Australian Industrial Relations Commission.
- (6) Notwithstanding subsection (2), (3) or (4), whichever is applicable, a person holding office as Chief Commissioner, Senior Commissioner or one of the other Commissioners shall receive salary at a rate not less than the current rate.
- [(7) *repealed*]
- (8) A Commissioner shall, while he holds his office, be deemed to be an employee within the meaning of and for the purposes of the *Superannuation and Family Benefits Act 1938*.

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- (8a) For the purposes of any calculation or determination under the *Superannuation and Family Benefits Act 1938* the duration of —
- (a) any service by a person as a Commissioner that occurs after the commencement day;
 - (b) any period for which a person is deemed to have continued in service under the State following his retirement as a Commissioner on or after the commencement day; and
 - (c) any period for which a person might have remained in service under the State but for —
 - (i) his death after the commencement day while serving as a Commissioner; or
 - (ii) his retirement as a Commissioner on or after the commencement day on the ground of invalidity or physical or mental incapacity to perform his duties,
- shall be deemed to be increased by 100%.
- (8b) In subsection (8a) “**commencement day**” means the day of the coming into operation of section 3 of the *Industrial Arbitration Amendment Act (No. 2) 1984*¹.
- (8c) If a person is a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* immediately before that person is appointed the President, that person may continue to be such a contributor notwithstanding that appointment.
- (8d) While a person to whom subsection (8c) applies continues to be a contributor under the *Superannuation and Family Benefits Act 1938*, that Act applies to and in relation to that person, and if that person ceases to be a contributor —
- (a) before attaining the age of 60 years that person shall be deemed to have resigned;

- (b) on or after attaining the age of 60 years but before attaining the age of 65 years that person shall be deemed to have elected to retire; or
- (c) on attaining 65 years that person shall be deemed to have retired,

under that Act on the day that person so ceases to be a contributor and, in each case referred to in paragraphs (b) and (c), a pension is payable to that person, and that person's widow or widower and children after the death of that person, but the pension otherwise payable under the last-mentioned Act to him or her, and that person's widow or widower and children after his or her death, shall be reduced in accordance with that Act by the amount of the State share of the first-mentioned pension paid to him or her, and that person's widow or widower and children after his or her death.

- (9) Where a Commissioner was immediately before his appointment as a Commissioner, an officer of the Public Service of the State, he retains his existing and accruing rights and for the purpose of determining those rights, his service as a Commissioner shall be taken into account as if it were service within the Public Service of the State.
- (10) The rights of a Commissioner to paid leave of absence and to lump sum payments on ceasing to hold office for the money equivalent of leave of absence shall be not less than those of a permanent officer under the *Public Service Act 1978*⁵.
- (11) The President is entitled to the same conditions in respect of leave of absence as a Judge.
- (12) The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions apply, with such modifications as are necessary, to and in relation to the President, and to and in relation to the widow or widower and children of the President after the death of the President, in the same manner as they apply to and in relation to a Judge to whom that Act applies, and

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to and in relation to the widow or widower and children of such a Judge, and for that purpose the term “**Judge**” in that Act includes the President.

- (13) In subsections (11) and (12) “**President**” includes any person who acted or held office as President after the coming into operation of section 3 of the *Industrial Arbitration Amendment Act (No. 2) 1984*¹.

[Section 20 amended by No. 121 of 1982 s.6; No. 92 of 1984 ss.3 and 4; No. 82 of 1987 s.8; No. 99 of 1990 s.7.]

21. Resignation from office

A member of the Commission may resign his office by writing under his hand addressed to the Governor and the resignation takes effect on the day on which it is received by the Governor or such later day as is specified in the writing.

22. Tenure subject to good behaviour

- (1) Subject to subsection (2)(c), the members of the Commission shall hold their offices during good behaviour, subject to a power of removal by the Governor upon the address of both Houses of Parliament.
- (2) The office of a member of the Commission shall become vacant if —
- (a) he is removed from the office pursuant to subsection (1);
 - (b) he retires pursuant to section 10 or resigns pursuant to section 21; or
 - (c) except with the approval of the Governor, he accepts the office of member of the Australian Commission.

[Section 22 amended by No. 94 of 1984 s.13; No. 99 of 1990 s.8; No. 1 of 1995 s.53.]

Division 2 — General jurisdiction and powers of the Commission

22A. Interpretation

In this Division —

“**Commission**” means the Commission constituted otherwise than as a constituent authority;

“**industrial matter**” does not include a matter in respect of which, subject to Division 3, a constituent authority has exclusive jurisdiction under this Act.

[Section 22A inserted by No. 94 of 1984 s.14.]

23. Jurisdiction of Commission under this Act

- (1) Subject to this Act, the Commission has cognizance of and authority to enquire into and deal with any industrial matter.
- (2) Where by or under any other Act power is conferred on a person or body to appoint officers or employees for the purposes of that Act or to fix or determine the salaries, wages, or other remuneration, or other conditions of employment, of officers or employees appointed for those purposes, or to do both of those things —
 - (a) the jurisdiction that the Commission would have but for that other Act to hear and determine any matter or dispute relating to the salaries, wages, or other remuneration, or other conditions of employment, of those officers or employees is not affected by that power conferred by or pursuant to that other Act; and
 - (b) where there is any inconsistency between a decision of the Commission relating to any such matter or dispute and any decision in the exercise or purported exercise of that power conferred by or under that other Act, to the extent of the inconsistency the former prevails and the latter is of no force or effect.

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- (2a) Notwithstanding subsections (1) and (2), the Commission does not have jurisdiction to enquire into or deal with any matter in respect of which a procedure referred to in section 97(1)(a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.
- (3) The Commission in the exercise of the jurisdiction conferred on it by this Part shall not —
- (a) prohibit the employment of employees on any day of the week or restrict in any other way the number of days or hours in the week during which any operation may be carried on in any industry or by any employer but nothing in this paragraph —
 - (i) prevents the registration with the Commission of any industrial agreement that contains or provides for any such prohibition or restriction; or
 - (ii) prevents the Commission from fixing the rates for overtime, work on holidays, shift work, weekend work, and other special work, including allowances as compensation for overtime or any such work;
 - (b) regulate the rates of salary or wages, or the conditions of employment of any person who holds an office for which the remuneration payable is determined or recommended pursuant to the *Salaries and Allowances Act 1975*;
 - (c) make an award or order empowering a representative of an organization to enter any part of —
 - (i) the premises of an employer, the principal use of which premises is for habitation by the employer and his household;
 - (ii) a private home in which a person engaged in domestic service is employed by an employer, who is not the owner or occupier of that private

- home, but who provides that owner or occupier with the services of the person so engaged; or
- (iii) the premises of an employer unless the employer is the employer, or former employer, of a member of the organization;
- (d) regulate the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee or any one of a class of employees if there is provision, however expressed, by or under any other Act for or in relation to a matter of that kind and there is provision, however expressed, by or under that other Act for an appeal in a matter of that kind;
- (e) provide for —
- (i) compulsion to join an organization to obtain or hold employment; or
- (ii) non-employment by reason of being or not being a member of an organization;
- (f) provide for preference of employment at the time of, or during, employment by reason of being or not being a member of an organization;
- (g) limit the working hours of employees engaged in the agricultural and pastoral industry but nothing in this paragraph prevents the registration with the Commission of any industrial agreement that contains or provides for any such limitation;
- (h) on a claim of harsh, oppressive or unfair dismissal make any order except an order that is authorized by section 23A.

[Section 23 amended by No. 82 of 1980 s.2; No. 121 of 1982 s.7; No. 94 of 1984 ss.15 and 66; No. 119 of 1987 s.7; No. 15 of 1993 s.6; No. 1 of 1995 ss.27 and 40; No. 3 of 1997 s.30.]

[23AA. Repealed by No. 3 of 1997 s.22⁶.]

23A. Powers of Commission on claims of unfair dismissal

- (1) On a claim of harsh, oppressive or unfair dismissal, the Commission may —
 - (a) order the payment to the claimant of any amount to which the claimant is entitled;
 - (b) order the employer to reinstate or re-employ a claimant who has been harshly, oppressively or unfairly dismissed;
 - (ba) subject to subsections (1a) and (4), order the employer to pay compensation to the claimant for loss or injury caused by the dismissal; and
 - (c) make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this subsection.
- (1a) The Commission is not to make an order under subsection (1)(ba) unless —
 - (a) it is satisfied that reinstatement or re-employment of the claimant is impracticable; or
 - (b) the employer has agreed to pay the compensation instead of reinstating or re-employing the claimant.
- (2) An order under subsection (1) may require that it be complied with within a specified time.
- (3) If an employer fails to comply with an order under subsection (1)(b) the Commission may, upon further application, revoke that order and, subject to subsection (4), make an order for the payment of compensation for loss or injury caused by the dismissal.
- (4) The amount ordered to be paid under subsection (1)(ba) or (3) is not to exceed 6 months' remuneration of the claimant, and for the purposes of this subsection the Commission may calculate the amount on the basis of an average rate received during any relevant period of employment.

- (5) For avoidance of doubt, an order under subsection (1)(ba) may permit the employer concerned to pay the compensation required in instalments specified in the order.

[Section 23A inserted by No. 15 of 1993 s.7; amended by No. 1 of 1995 s.42⁷; No. 3 of 1997 s.23.]

23B. Jurisdiction to hear Education Act appeals

- (1) The Commission has jurisdiction to hear and determine —
- (a) an appeal by a teacher against any punishment for alleged misconduct imposed on the teacher under the *Education Act 1928* other than a punishment that is a reprimand or a fine that does not exceed \$50;
 - (b) an appeal by a teacher (not being a person to whom subsection (2) applies) against the dismissal, or reduction to a position carrying a lower salary or remuneration, of the teacher for inefficiency under any regulations relating to the assessment of inefficiency and made under the *Education Act 1928*; and
 - (c) an appeal under section 7D(4) of the *Education Act 1928*.
- (2) This subsection applies to a person who is —
- (a) a teacher appointed on probation; or
 - (b) a teacher who is reduced to a position carrying a lower salary or lower remuneration but whose salary or remuneration is not by reason only of that reduction reduced to the level of the lower salary or lower remuneration.
- (3) Without limiting the generality of subsection (1) the Commission may confirm, modify or reverse any decision, determination, finding or declaration appealed against.

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- (4) No record relating to an appeal against a punishment imposed on a teacher shall be open to public inspection.

[Section 23B inserted by No. 1 of 1995 s.6.]

24. Jurisdiction to decide whether matter is industrial

- (1) The Commission has jurisdiction to determine in any proceedings before it whether any matter to which those proceedings relate is an industrial matter and a finding by the Commission on that question is, subject to sections 49 and 90, final and conclusive with respect to those proceedings.
- (2) A determination under subsection (1) is not a decision for the purposes of section 49 or 90 unless and until —
- (a) those proceedings have been concluded; or
 - (b) leave to appeal is granted by the Commission making that determination.
- (3) This section has effect subject to section 7C.

[Section 24 amended by No. 15 of 1993 s.8.]

25. Allocation of industrial matters

- (1) In allocating the work of the Commission under this Division the Chief Commissioner may —
- (a) allocate matters to a Commissioner;
 - (b) allocate matters directly to the Commission in Court Session; and
 - (c) notwithstanding that he has allocated a matter to a Commissioner, revoke that allocation and allocate the matter to another Commissioner or directly to the Commission in Court Session.
- (2) Nothing in subsection (1) affects the operation of Part IIC.

[Section 25 inserted by No. 94 of 1984 s.16.]

26. Commission to act according to equity and good conscience

- (1) In the exercise of its jurisdiction under this Act the Commission —
- (a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms;
 - (b) shall not be bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just;
 - (c) shall have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole; and
 - (d) shall take into consideration to the extent that it is relevant —
 - (i) the state of the national economy;
 - (ii) the state of the economy of Western Australia;
 - (iii) the capacity of employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration and to bear the cost of improved or additional conditions of employment;
 - (iv) the likely effects of its decision on the economies referred to in subparagraphs (i) and (ii) and, in particular, on the level of employment and on inflation;
 - (v) any changes in productivity that have occurred or are likely to occur.
- (2) In granting relief or redress under this Act the Commission is not restricted to the specific claim made or to the subject matter of the claim.

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- (3) Where the Commission, in deciding any matter before it proposes or intends to take into account any matter or information that was not raised before it on the hearing of the matter, the Commission shall, before deciding the matter, notify the parties concerned and afford them the opportunity of being heard in relation to that matter or information.
- (4) Subsections (1) to (3) inclusive do not, in any particular case, prevent the use by the Commission, with the consent of the parties concerned, of final offer arbitration.

[Section 26 amended by No. 121 of 1982 s.9; No. 94 of 1984 s.17; No. 79 of 1995 s.9.]

26A. Workplace agreements not to be taken into account

In the exercise of its jurisdiction the Commission shall not —

- (a) receive in evidence or inform itself of any workplace agreement or any provision of a workplace agreement; or
- (b) award particular conditions of employment to employees who are not parties to a workplace agreement merely because those conditions apply to any other employees who are parties to a workplace agreement.

[Section 26A inserted by No. 15 of 1993 s.9.]

27. Powers of Commission

- (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —
 - (a) at any stage of the proceedings dismiss the matter or any part thereof or refrain from further hearing or determining the matter or part if it is satisfied —
 - (i) that the matter or part thereof is trivial;
 - (ii) that further proceedings are not necessary or desirable in the public interest;

- (iii) that the person who referred the matter to the Commission does not have a sufficient interest in the matter; or
 - (iv) that for any other reason the matter or part should be dismissed or the hearing thereof discontinued, as the case may be;
- (b) take evidence on oath or affirmation;
 - (c) order any party to the matter to pay to any other party such costs and expenses including expenses of witnesses as are specified in the order, but so that no costs shall be allowed for the services of any legal practitioner, or agent;
 - (d) proceed to hear and determine the matter or any part thereof in the absence of any party thereto who has been duly summoned to appear or duly served with notice of the proceedings;
 - (e) sit at any time and place;
 - (f) adjourn to any time and place;
 - [(g) deleted]*
 - (h) direct any person, whether a witness or intending witness or not, to leave the place wherein the proceedings are being conducted;
 - (i) refer any matter to an expert and accept his report as evidence;
 - (j) direct parties to be struck out or persons to be joined;
 - (k) permit the intervention, on such terms as it thinks fit, of any person who, in the opinion of the Commission has a sufficient interest in the matter;
 - (l) allow the amendment of any proceedings on such terms as it thinks fit;
 - (m) correct, amend, or waive any error, defect, or irregularity whether in substance or in form;

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- (n) extend any prescribed time or any time fixed by an order of the Commission;
- (o) make such orders as may be just with respect to any interlocutory proceedings to be taken before the hearing of any matter, the costs of those proceedings, the issues to be submitted to the Commission, the persons to be served with notice of proceedings, delivery of particulars of the claims of all parties, admissions, discovery, inspection, or production of documents, inspection or production of property, examination of witnesses, and the place and mode of hearing;
- (p) enter upon any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place, or premises of any kind whatsoever, wherein or in respect of which any industry is or is reputed to be carried on, or any work is being or has been done or commenced, or any matter or thing is taking or has taken place, which is the subject of a matter before the Commission or is related thereto;
- (q) inspect and view any work, material machinery, appliance, article, book, record, document, matter, or thing whatsoever being in any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises of a kind referred to in paragraph (p);
- (r) question any person who may be in or upon any such manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises in respect or in relation to any such matter or thing;
- (s) consolidate or divide proceedings relating to the same industry and all or any matters before the Commission;
- (t) with the consent of the Chief Commissioner refer the matter or any part thereof to the Commission in Court Session for hearing and determination by the Commission in Court Session;

- (u) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organization, arising in the matter; and
 - (v) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.
- (1a) Except as otherwise provided in this Act, the Commission shall, in relation to any matter before it, conduct its proceedings in public unless the Commission, at any stage of the proceedings, is of the opinion that the objects of the Act will be better served by conducting the proceedings in private.
- (2) The powers contained in subsection (1)(p), (q) and (r) may, if the Commission so directs in any case, be exercised by an officer of the Commission or by an expert to whom any matter has been referred by the Commission.

[Section 27 amended by No. 121 of 1982 s.10; No. 94 of 1984 ss.18 and 66.]

28. Exercise of powers prior to hearing and determination of matter

The powers conferred on the Commission by section 27 may be exercised in relation to a matter at any time after the matter has been lodged in the Commission notwithstanding that the procedures prescribed under this Act have not at that time been complied with to the extent necessary to enable the matter to be heard and determined by the Commission.

29. By whom matters may be referred

- (1) An industrial matter may be referred to the Commission —
- (a) in any case, by —
 - (i) an employer with a sufficient interest in the industrial matter;

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- (ii) an organization in which persons to whom the industrial matter relates are eligible to be enrolled as members or an association that represents such an organization; or
 - (iii) the Minister;
- and
- (b) in the case of a claim by an employee —
 - (i) that he has been harshly, oppressively or unfairly dismissed from his employment; or
 - (ii) that he has not been allowed by his employer a benefit, not being a benefit under an award or order, to which he is entitled under his contract of service,by the employee.
- (1a) An appeal to the Commission under section 23B may be instituted —
 - (a) by the teacher concerned; or
 - (b) on behalf of the teacher by an organization in which the teacher is eligible to be enrolled as a member or an association that represents such an organization.
- (2) A referral by an employee under subsection (1)(b)(i) cannot be made more than 28 days after the day on which the employee's employment terminated.

[Section 29 inserted by No. 94 of 1984 s.19; amended by No. 15 of 1993 s.10; No. 1 of 1995 ss.7 and 43; No. 3 of 1997 s.24.]

29A. Service of claims and applications

- (1) Where an industrial matter has been referred to the Commission pursuant to section 29, the claimant or applicant shall specify the nature of the relief sought.
- (2) Subject to any direction given under subsection (2a), if the reference of an industrial matter to the Commission seeks the

issuance of an award, or the variation of the area of operation or the scope of an award or industrial agreement, or the registration of an industrial agreement, the Commission shall not hear the claim or application until those parts of the proposed award, variation or industrial agreement that relate to area of operation or scope have been published in the *Industrial Gazette* and a copy of the claim or application has been served —

- (a) in the case of a proposed award or variation of an award, on —
 - (i) the Council, the Chamber, the Mines and Metals Association and the Minister; and
 - (ii) such organizations, associations and employers as the Commission may direct being, in the case of employers, such employers as constitute, in the opinion of the Commission, a sufficient number of employers who are reasonably representative of the employers who would be bound by the proposed award or the award as proposed to be varied, as the case may be;
 - (b) in the case of the proposed registration or variation of an industrial agreement, on the Council, the Chamber, the Mines and Metals Association and the Minister.
- (2a) The Chief Commissioner may, if the reference of an industrial matter to the Commission seeks —
- (a) the issuance of an award or the registration of an industrial agreement in substitution for an existing award or industrial agreement the area of operation and scope of which are the same as those of the award or industrial agreement sought to be issued or registered, as the case requires; or
 - (b) the registration of an industrial agreement —
 - (i) the area of operation and scope of which are the same as those of; and

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(ii) the parties to which are the same as the named parties to,

an existing award,

direct that those parts of the proposed award or industrial agreement that relate to area of operation and scope —

(c) may, instead of being published in the *Industrial Gazette*, be published in a newspaper circulating throughout the State; or

(d) need not be published at all,

as he thinks fit.

(2b) Nothing in subsection (2a) affects or dispenses with any requirement of subsection (2) that a copy of a claim or application be served on any person, body or authority referred to in subsection (2)(a) or (b).

(3) Unless otherwise directed by the Commission, where the reference of an industrial matter to the Commission seeks the variation of an award or industrial agreement, other than a variation of the kind mentioned in subsection (1), the Commission shall not hear the claim or application until the named parties to the award or the parties to the industrial agreement, as the case requires, have been served with a copy of the claim.

(4) Where the reference of an industrial matter to the Commission seeks the issuance or variation of an order or declaration, other than of a kind referred to in subsection (2) or (3) the Commission shall not hear the claim or application until the persons sought to be bound by the decision in the proceedings have been served with a copy of the claim or application.

[Section 29A inserted by No. 94 of 1984 s.19; amended by No. 119 of 1987 s.8; No. 15 of 1993 s.31.]

29B. Parties to proceedings

Subject to section 27(1)(j) the parties to proceedings before the Commission shall be —

- (a) the claimant or applicant by whom or which the proceedings were initiated; and
- (b) the other persons, bodies, organizations or associations upon whom or which a copy of the claim or application is served.

[Section 29B inserted by No. 94 of 1984 s.19.]

30. Intervention of Crown

- (1) The Minister may, by giving the Registrar notice in writing of his intention to do so, and by leave of the Commission, intervene on behalf of the State in any proceedings before the Commission in which the State has an interest.
- (2) The Minister of the Commonwealth administering the Department of the Commonwealth that has the administration of the Commonwealth Act may by giving the Registrar notice in writing of his intention to do so, and by leave of the Commission, intervene on behalf of the Commonwealth in any proceedings before the Commission in which the Commonwealth has an interest.

[Section 30 inserted by No. 94 of 1984 s.19.]

31. Representation of parties to proceedings

- (1) Any party to proceedings before the Commission, and any other person or body permitted by or under this Act to intervene or be heard in proceedings before the Commission, may appear —
 - (a) in person;
 - (b) by an agent; or

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- (c) where —
- (i) that party, person or body, or any of the other parties, persons or bodies permitted to intervene or be heard, is the Council, the Chamber, the Mines and Metals Association, the Minister or the Minister of the Commonwealth administering the Department of the Commonwealth that has the administration of the Commonwealth Act; or
 - (ii) the proceedings are in respect of an appeal under section 23B, a claim referred to the Commission under section 29(1)(b) or involve the hearing and determination of an application under section 44(7)(a)(iii); or
 - (iii) all parties to the proceedings expressly consent to legal practitioners appearing and being heard in the proceedings; or
 - (iv) the Commission, under subsection (4), allows legal practitioners to appear and be heard in the proceedings,
by a legal practitioner.
- (2) An organization or association shall be deemed to have appeared in person if it is represented by its secretary or by any officer of the organization or association.
- (3) A person or body appearing by a legal practitioner or agent is bound by the acts of that legal practitioner or agent.
- (4) Where a question of law is raised or argued or is likely in the opinion of the Commission to be raised or argued in proceedings before the Commission, the Commission may allow legal practitioners to appear and be heard.
- (5) The Commission may make regulations prescribing the manner in which authorization of any agent is to be given, either generally or for a particular case.

- (6) A person who is not a legal practitioner within the meaning of this Act but engages in the practice of the law in a place outside the State shall not appear as an agent in proceedings before the Commission.

[Section 31 amended by No. 121 of 1982 s.12; No. 94 of 1984 ss.20 and 66; No. 15 of 1993 s.31; No. 1 of 1995 s.8.]

32. Reference of industrial matters for conciliation

- (1) Where an industrial matter has been referred to the Commission the Commission shall, unless it is satisfied that the resolution of the matter would not be assisted by so doing, endeavour to resolve the matter by conciliation.
- (2) In endeavouring to resolve an industrial matter by conciliation the Commission shall do all such things as appear to it to be right and proper to assist the parties to reach an agreement on terms for the resolution of the matter.
- (3) Without limiting the generality of subsection (2) the Commission may, for the purposes of that subsection —
- (a) arrange conferences of the parties or their representatives presided over by the Commission;
 - (b) arrange for the parties or their representatives to confer among themselves at a conference at which the Commission is not present;
 - (c) give such directions and make such orders as will in the opinion of the Commission —
 - (i) prevent the deterioration of industrial relations in respect of the matter until conciliation or arbitration has resolved the matter;
 - (ii) enable conciliation or arbitration to resolve the matter; or
 - (iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter;

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(d) give any direction or make any order or declaration which the Commission is otherwise authorized to give or make under this Act.

(4) The Commission shall —

(a) if it gives or makes a direction, order or declaration orally under subsection (3), (8) or (9), reduce the direction, order or declaration to writing as soon as is practicable thereafter;

(b) preface each direction, order or declaration given or made by it under subsection (3), (8) or (9) —

(i) if so given or made in writing, at the time of that giving or making; or

(ii) if so given or made orally, at the time of the reduction of that direction, order or declaration to writing,

with a preamble in writing setting out the circumstances which led to the giving or making of that direction, order or declaration; and

(c) make the text of each direction, order or declaration given or made by it under subsection (3), (8) or (9) and of the preamble thereto available to the parties as soon as is practicable after that giving or making.

[(5) repealed]

(6) Where the Commission does not endeavour to resolve a matter by conciliation or, having endeavoured to do so —

(a) is satisfied that further resort to conciliation would be unavailing; or

(b) is requested by all the parties to the proceedings to decide the matter by arbitration,

the Commission may decide the matter by arbitration.

- (7) Where a matter is decided by arbitration the Commission shall endeavour to ensure that the matter is resolved on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.
- (8) Despite any other provision of this Act, if it appears at any time to the Commission that an industrial matter referred to the Commission involves a strike which constitutes, or will constitute, a breach of —
- (a) any award, order or agreement to which an organization of employees whose members are participating in the strike is a party; or
 - (b) any understanding, undertaking or procedure entered into, given or agreed by an organization of employees whose members are participating in the strike,
- the Commission shall order that organization, and those members, to ensure that normal work resumes immediately.
- (9) Despite any other provision of this Act and subject to subsection (8), if it appears at any time to the Commission that an industrial matter referred to the Commission involves a strike matter (as defined in subsection (12)), the Commission shall use its best endeavours to ensure that normal work resumes immediately, and for that purpose may order the members of an organization participating in the strike, and that organization, to ensure that normal work resumes immediately.
- (10) In this section an order under subsection (8) or (9) requiring an organization and members of it to ensure that normal work resumes immediately is referred to as a “**resume work order**”.
- (11) It is a defence to any proceedings instituted against an organization of employees for enforcement of a resume work order, or in respect of contravention of a resume work order, for the organization to prove that it used its best endeavours to ensure that normal work resumed immediately.

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(12) The following matters are “**strike matters**” —

- (a) a strike is occurring in respect of which a pre-strike ballot has not been ordered to be held under section 97F(2) or (4);
- (b) a strike is occurring in respect of which participation is not endorsed by a pre-strike ballot;
- (c) a strike is occurring in respect of which participation is endorsed by a pre-strike ballot and —
 - (i) that participation is taking place more than 28 days after the declaration of the result of that pre-strike ballot; or
 - (ii) notice of intention to participate has not been given by a member of an organization in accordance with section 97I(2);

or

- (d) a strike is occurring in which participation is endorsed by a pre-strike ballot and it appears to the Commission that subsection (13) does not apply and that the strike —
 - (i) is not related to the furtherance of claims relating to the wages and conditions of employment of the employees participating in the strike;
 - (ii) threatens directly or indirectly the safety or welfare of the employees participating;
 - (iii) may seriously disrupt the supply of essential services to a significant number of members of the public; or
 - (iv) may cause undue hardship to any of the parties to the dispute.

(13) The occurrence of a strike is not a “strike matter” under subsection (12)(d) if —

- (a) there is in force between each organization of employees whose members are participating in the strike and each

employer in respect of whom the strike is occurring an agreement —

- (i) that complies with regulations made by the Governor for the purposes of this paragraph; and
- (ii) in which the organization of employees has agreed on behalf of its members that the normal supply of goods or services by its members will be maintained despite any strike;

and

- (b) the Commission is satisfied that the terms of each such agreement are being met.

(14) The Commission may perform its functions under subsection (8) or (9) of its own motion or on the application of —

- (a) any person who could have referred the industrial matter to the Commission; or
- (b) any person who is directly affected, or who is likely to be directly affected, by the strike.

(15) The Commission shall hear and determine an application for it to perform its functions under subsection (8) or (9) as quickly as practicable.

(16) An appeal under section 49 from a resume work order does not operate to suspend the operation or effect of the resume work order and the Full Bench shall not order the suspension of the operation or effect of the resume work order.

(17) The functions conferred on the Commission by subsections (8) and (9) are in addition to, and not in derogation of, the functions conferred on the Commission by the rest of this Act.

(18) The Supreme Court may, on an application under this section of a person or organization affected by a resume work order, grant an injunction in such terms as the Supreme Court thinks fit if the Supreme Court is satisfied that another person or organization —

- (a) has engaged in conduct that constitutes a contravention of the resume work order; or

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(b) is proposing to engage in conduct that would constitute such a contravention of the resume work order.

(19) An interim or interlocutory injunction may be granted before final determination of an application under subsection (18).

(20) The Minister, and an applicant referred to in subsection (14), have standing to apply to the Supreme Court for a grant of mandamus enforcing the performance of any function of the Commission under subsection (8), (9) or (15).

(21) Despite any other provision of this Act, the Supreme Court may, on application under subsection (20), grant a mandamus enforcing the performance of a function of the Commission.

(22) In this section —

“**strike**” means a strike within the meaning of section 97A(2).

[Section 32 inserted by No. 94 of 1984 s.21; amended by No. 119 of 1987 s.9; No. 3 of 1997 s.36.]

33. Evidence before Commission

(1) With respect to evidence in proceedings before the Commission —

(a) the Registrar shall, on the application of any party, or by direction of the Commission, issue a summons in the prescribed form to any person to appear and give evidence before the Commission and the summons may require that person to produce before the Commission any books, papers, or other documents in his possession, or under his control, in any way relating to the proceedings;

(b) a person who attends the Commission in accordance with such summons shall be entitled to receive from the party at whose instance he was summoned an allowance for expenses as determined by the Commission;

- (c) subject to subsection (2), a person duly served with such summons, shall not without good cause, proof of which is on him, fail to attend or to duly produce any book, paper, or document as required or refuse to be sworn as a witness or to answer any question which he is required by the Commission to answer;
 - (d) the Commission may, whenever it shall appear just or convenient so to do, make any order for the examination upon oath or otherwise before the Commission or any officer of the Commission, or any other person, and at any place of any witness or person, and may empower any party to give the deposition of such witness or person in evidence on such terms, if any, as the Commission may direct; and
 - (e) the Commission shall take evidence on oath or affirmation.
- (2) Where a summons is issued to, and duly served on, a person to appear and give evidence before the Commission, the person may make application to the Commission for cause to be shown for him to so appear and, if on the hearing of the application such cause is not shown, he is not required to so appear.
- (3) Evidence relating to any trade secret, or to the profits or financial position of any witness or party, shall not be disclosed except to the Commission, or published without the consent of the person entitled to the trade secret or non-disclosure.
- (4) The evidence referred to in subsection (3) shall, if the witness or party so requests, be taken in private.
- (5) All books, papers, and other documents produced in evidence before the Commission may be inspected by the Commission and also by such of the parties as the Commission allows, but the information obtained therefrom shall not be made public without the permission of the Commission, and such parts of the documents as in the opinion of the Commission do not relate to the matter at issue may be sealed up, but such books, papers,

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and documents relating to any trade secret or to the profits or financial position of any witness or party shall not, without the consent of that witness or party, be inspected by any party.

- (6) Subsection (1)(a), (b), and (c) do not apply to or in relation to a summons issued pursuant to section 44.

[Section 33 amended by No. 121 of 1982 s.13; No. 94 of 1984 ss.22 and 65.]

34. Decision to be in form of award, order, or declaration

- (1) The decision of the Commission shall be in the form of an award, order, or declaration and shall in every case be signed and delivered by the Commissioner constituting the Commission that heard the matter to which the decision relates or, in the case of a decision of the Commission in Court Session, shall be signed and delivered by the Senior Commissioner among the Commissioners constituting the Commission in Court Session.
- (2) When the members of the Commission in Court Session are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.
- (3) Proceedings before the President, the Full Bench, or the Commission shall not be impeached or held bad for want of form nor shall they be removable to any court by *certiorari* or otherwise.
- (4) Except as provided by this Act, no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court on any account whatsoever.

[Section 34 amended by No. 94 of 1984 s.23.]

35. Decision to be first drawn up as minutes

- (1) Subject to this section, the decision of the Commission, except a direction, order or declaration under section 32 or an order for dismissal shall, before it is delivered, be drawn up in the form of minutes which shall be handed down to the parties concerned and, unless in any particular case the Commission otherwise determines, its reasons for decision shall be published at the same time.
- (2) At the discretion of the Commissioner giving the decision the minutes and reasons for decision may be handed down by the Registrar.
- (3) The parties concerned shall, at a time fixed by the Commission, be entitled to speak to matters contained in the minutes of the decision and the Commission may, after hearing the parties, vary the terms of those minutes before they are delivered as the decision of the Commission.
- (4) The Commission, with the consent of the parties, may waive the requirements of this section in any case in which it is of the opinion that the procedures therein prescribed are inappropriate or unnecessary.

[Section 35 amended by No. 121 of 1982 s.14; No. 94 of 1984 ss.24 and 66.]

36. Decision to be sealed and deposited

Every decision of the Commission shall —

- (a) be sealed with the seal of the Commission;
- (b) be deposited in the office of the Registrar; and
- (c) be open to inspection without charge during office hours by any person interested.

37. Effect, area and scope of awards

- (1) An award has effect according to its terms, but unless and to the extent that those terms expressly provide otherwise it shall, subject to this section —
- (a) extend to and bind —
 - (i) all employees employed in any calling mentioned therein in the industry or industries to which the award applies; and
 - (ii) all employers employing those employees;
 - and
 - (b) operate throughout the State, other than in the areas to which section 3(1) applies.

[(2) and (3) repealed]

- (4) An award, and any provision of an award, whether or not it has been made for a specified term, shall, subject to any variation made under this Act, remain in force until cancelled, suspended, or replaced under this Act unless, in the case of an award or a provision made for a specified term, it is expressly provided that the award or the provision, as the case may be, shall cease to operate upon the expiration of that term.
- (5) Subsection (4) does not prevent the cancellation, suspension, or replacement of an award in part.

[Section 37 amended by No. 94 of 1984 s.66.]

37A. Minister may suspend award where Commonwealth award applies

- (1) If in the opinion of the Minister a number of the employees to whom a particular award under this Act (“**the State award**”) extends are bound by an award under the Commonwealth Act the Minister may by order published in the *Industrial Gazette* suspend the State award.

- (2) An award may be wholly or partially suspended by an order under subsection (1) and the nature and effect of the suspension shall be set out in the order.
- (3) The Minister may at any time revoke an order under subsection (1) by further order published in the *Industrial Gazette*.
- (4) An order under this section shall be laid before each House of Parliament under section 42 of the *Interpretation Act 1984* as if it were a regulation.
- (5) While an order is in force under this section in respect of an award the Commission does not have power under this Act —
 - (a) to make an award that extends to employees to whom the award would apply if the order were not in force; or
 - (b) to make an order that would have a like effect.
- (6) The Commission may, on application by the Minister, cancel an award that is wholly suspended under this section.

[Section 37A inserted by No. 15 of 1993 s.11.]

38. Named parties to awards

- (1) The parties to proceedings before the Commission in which an award is made, other than the Council, the Chamber, the Mines and Metals Association and the Minister, shall be listed in the award as the named parties to the award.
- (1a) If after the commencement of section 12 of the *Industrial Relations Amendment Act 1993*¹—
 - (a) any party to proceedings in which an award is made, other than the Council, the Chamber, the Mines and Metals Association and the Minister, is not listed in the award as a named party as required by subsection (1); and
 - (b) the Commission has not ordered that the party is not to be a party to the award,

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the party is to be taken to be a named party to the award.

- (1b) In subsections (1) and (1a) “**party**” does not include an intervener.
- (2) At any time after an award has been made the Commission may, by order made on the application of —
- (a) any employer who, in the opinion of the Commission, has a sufficient interest in the matter;
 - (b) any organization which is registered in respect of any calling mentioned in the award or in respect of any industry to which the award applies; or
 - (c) any association on which any such organization is represented,

add as a named party to the award any employer, organization or association.

- (3) Where an employer who is added as a named party to an award under subsection (2) is engaged in an industry to which the award did not previously apply, the variation to the scope of that award by virtue of that addition shall for the purposes of section 37(1) be expressly limited to that employer.

[Section 38 inserted by No. 94 of 1984 s.25; amended by No. 15 of 1993 ss.12 and 31.]

39. Date of operation of award

- (1) An award comes into operation on the day on which it is delivered or on such later date as the Commission determines and declares when delivering the award.
- (2) Subject to subsection (3), the provisions of an award have effect on such day or days as is or are, respectively, specified in the award.

- (3) The Commission may, by its award, give retrospective effect to the whole or any part of the award —
- (a) if and to the extent that the parties to the award so agree;
or
 - (b) if, in the opinion of the Commission, there are special circumstances which make it fair and right so to do,

but in a case to which paragraph (b) applies, not beyond the date upon which the application leading to the making of the award was lodged in the Commission.

- (4) For the purpose of subsection (3), an award or a provision of it has retrospective effect if and only if it has effect from a date earlier than the day on which the award is delivered.

40. Power to vary or cancel award

- (1) Subject to subsections (2), (3) and (4) and to sections 29A and 38, the Commission may by order at any time vary an award.
- (2) An application to the Commission to vary an award may be made by any organization or association named as a party to the award or employer bound by the award.
- (3) Where an award or any provision thereof is limited as to its duration the Commission —
 - (a) may, subject to such conditions as it considers fit, reserve to any party to the award liberty to apply to vary the award or that provision, as the case may be;
 - (b) shall not, within the specified term, vary the award or that provision, as the case may be, unless and to the extent that —
 - (i) it is satisfied that, by reason of circumstances which have arisen since the time at which the specified term was fixed, it would be inequitable and unjust not to do so;

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- (ii) on an application made under paragraph (a), it is satisfied that it is fair and right so to do; or
 - (iii) the parties to the award agree that the award or provision should be varied;
 - and
 - (c) may within the specified term cancel the award if the parties to the award agree that it be cancelled.
- (4) Section 39 applies, with such modifications as are necessary, to and in relation to an order made under this section.

[Section 40 amended by No. 94 of 1984 s.66.]

41. Industrial agreements

- (1) An agreement with respect to any industrial matter or for the prevention or resolution under this Act of disputes, disagreements, or questions relating thereto may be made between an organization or association of employees and any employer or organization or association of employers.
- (2) Subject to subsection (3) and section 41A, where the parties to an agreement referred to in subsection (1) apply to the Commission for registration of the agreement as an industrial agreement the Commission shall register the agreement as an industrial agreement.
- (3) Before registering an industrial agreement the Commission may require the parties thereto to effect such variation as the Commission considers necessary or desirable for the purpose of giving clear expression to the true intention of the parties.
- (4) An industrial agreement extends to and binds —
 - (a) all employees who are employed —
 - (i) in any calling mentioned in the industrial agreement in the industry or industries to which the industrial agreement applies; and

- (ii) by an employer who is —
 - (I) a party to the industrial agreement; or
 - (II) a member of an organization of employers that is a party to the industrial agreement or that is a member of an association of employers that is a party to the industrial agreement;

and

- (b) all employers referred to in paragraph (a)(ii),
and no other employee or employer, and its scope shall be expressly so limited in the industrial agreement.
- (5) An industrial agreement shall operate —
 - (a) in the area specified therein; and
 - (b) for the term specified therein.
 - (6) Notwithstanding the expiry of the term of an industrial agreement, it shall, subject to this Act, continue in force in respect of all parties thereto, except those who retire therefrom, until a new agreement or an award in substitution for the first-mentioned agreement has been made.
 - (7) At any time after, or not more than 30 days before, the expiry of an industrial agreement any party thereto may file in the office of the Registrar a notice in the prescribed form signifying his intention to retire therefrom at the expiration of 30 days from the date of such filing, and such party shall on the expiration of that period cease to be a party to the agreement.

[Section 41 inserted by No. 94 of 1984 s.26; amended by No. 15 of 1993 s.13.]

41A. Restriction on power to register industrial agreements

- (1) The Commission shall not under section 41 register an agreement as an industrial agreement if —
 - (a) the agreement applies to more than a single enterprise; and

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- (b) any term of the agreement is contrary to this Act or any General Order made under section 51, or any principles formulated in the course of proceedings in which a General Order is made under section 51.
- (1a) The Commission shall not under section 41 register an agreement as an industrial agreement unless the agreement includes an estimate of the number of employees who will be bound by the agreement upon registration.
- (2) For the purposes of subsection (1)(a) an agreement applies to more than a single enterprise if it applies to —
 - (a) more than one business, project or undertaking; or
 - (b) the activities carried on by more than one public authority.

[Section 41A inserted by No. 15 of 1993 s.14; amended by No. 79 of 1995 s.10.]

[42. Repealed by No. 15 of 1993 s.15⁸.]

43. Power to vary, renew or cancel industrial agreement

- (1) An industrial agreement may be varied, renewed, or cancelled by a subsequent agreement made by and between all the parties thereto and in so far as the agreement relates to an employer, organization or association of employers, on the one hand, and to an organization or association of employees, on the other hand, it may be varied, renewed or cancelled by a subsequent agreement between that employer, organization or association of employers and that organization or association of employees.
- (2) The Commission may vary an industrial agreement for the purpose of including, omitting or varying a provision, however expressed, that authorizes an employer to stand-down an employee.
- (3) An application to the Commission to vary an industrial agreement for a purpose mentioned in subsection (2) may be

made by any organization, association or employer which or who is a party to the agreement.

[Section 43 inserted by No. 94 of 1984 s.26; amended by No. 15 of 1993 s.16; No. 1 of 1995 s.50.]

44. Compulsory conference

- (1) Subject to this section, the Commission constituted by a Commissioner may summon any person to attend, at a time and place specified in the summons, at a conference before the Commission.
- (2) A summons under this section —
 - (a) may be given in the prescribed manner; and
 - (b) when so given shall, in any proceedings under this Act relating thereto, be deemed to have been served on the person to whom it is directed unless that person, in those proceedings, satisfies the Commissioner who caused the summons to be given or the Full Bench, as the case may be, that he did not receive the summons.
- (3) Any person so summoned shall, except for good cause, proof of which is on him, attend the conference at the time and place specified in the summons and continue his attendance thereat as directed by the Commission.
- [(4) repealed]*
- (5) A conference under this section shall be held in private unless the Commission, at any stage of the conference, is of the opinion that the objects of the Act will be better served by holding the conference in public.
- (5a) In endeavouring to resolve any matter by conciliation the Commission shall do all such things as appear to it to be right and proper to assist the parties to a conference under this section to reach an agreement on terms for the resolution of the matter.

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(5b) Despite any other provision of this Act if, at or in relation to a conference under this section, it appears to the Commission that a strike is occurring which constitutes, or will constitute, a breach of —

- (a) any award, order or agreement to which an organization of employees whose members are participating in the strike is a party; or
- (b) any understanding, undertaking or procedure entered into, given or agreed by an organization of employees whose members are participating in the strike,

the Commission shall order that organization, and those members, to ensure that normal work resumes immediately.

(5c) Despite any other provision of this Act and subject to subsection (5b) if, at or in relation to a conference under this section, it appears to the Commission that a strike matter (as defined in section 32(12)) is occurring, the Commission shall use its best endeavours to ensure that normal work resumes immediately, and for that purpose may order the members of an organization participating in the strike, and that organization, to ensure that normal work resumes immediately.

- (6) The Commission may, at or in relation to a conference under this section, make such suggestions and give such directions as it considers appropriate and, without limiting the generality of the foregoing may —
- (a) direct the parties or any of them to confer with one another or with any other person and without a chairman or with the Registrar or a Deputy Registrar as chairman;
 - (b) direct that disclosure of any matter discussed at the conference be limited in such manner as the Commission may specify;

- (ba) with respect to industrial matters, give such directions and make such orders as will in the opinion of the Commission —
 - (i) prevent the deterioration of industrial relations in respect of the matter in question until conciliation or arbitration has resolved that matter;
 - (ii) enable conciliation or arbitration to resolve the matter in question; or
 - (iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter in question;
 - (bb) with respect to industrial matters, give any direction or make any order or declaration which the Commission is otherwise authorized to give or make under this Act; and
 - (c) exercise such of the powers of the Commission referred to in section 27(1) as the Commission considers appropriate.
- (6a) An order made under subsection (6)(ba) or (bb) —
- (a) binds only the parties to the relevant conference under this section; and
 - (b) may vary the operation of an existing award or industrial agreement in respect of the parties referred to in paragraph (a).
- (6b) Subsections (16) to (21) of section 32 apply, with such modifications as are necessary, to —
- (a) an order made under subsection (5b) as if that order were a resume work order made under section 32(8); and
 - (b) an order made under subsection (5c) as if that order were a resume work order made under section 32(9).

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- (7) The Commission may exercise the power conferred on it by subsection (1) —
- (a) on the application of —
 - (i) any organization, association or employer;
 - (ii) the Minister on behalf of the State; or
 - (iii) an employee in respect of a dispute relating to his entitlement to long service leave;
 - or
 - (b) on the motion of the Commission itself whenever industrial action has occurred or, in the opinion of the Commission, is likely to occur.
- (8) Where, at a conference held in accordance with this section, agreement is reached between the parties or any of them in relation to any industrial matter the Commission may —
- (a) make an order in the terms of that agreement binding only on those parties who consented thereto; or
 - [(b) and (c) deleted]*
 - (d) where the nature or subject matter of the agreement does not, in the opinion of the Commission, require that an order in terms of the agreement be made, make, sign, and file a memorandum of the terms of the agreement.
- (9) Where at the conclusion of a conference held in accordance with this section any question, dispute, or disagreement in relation to an industrial matter has not been settled by agreement between all of the parties, the Commission may hear and determine that question, dispute, or disagreement and may make an order binding only the parties in relation to whom the matter has not been so settled.
- (10) Subject to subsections (11) and (12), the Commission may, for the hearing and determination of a matter under subsection (9), be constituted by the Commissioner who presided over the conference.

- (11) Where the Commissioner referred to in subsection (10) proposes to constitute the Commission for the purpose mentioned in that subsection, he shall, at the conclusion of the conference advise the parties thereto of his intention so to do, and, if any party thereupon objects to the Commission being so constituted for that purpose, that Commissioner shall not enter upon the hearing of the matter concerned unless —
- (a) he has discussed with the Chief Commissioner the propriety of his so doing; and
 - (b) the Chief Commissioner, after interviewing the objecting party, has directed him so to do.
- (12) Where the Chief Commissioner does not give the direction referred to in subsection (11)(b), he may —
- (a) allocate the matter in dispute for hearing and determination by the Commission constituted by a Commissioner other than the Commissioner who presided over the conference; and
 - (b) exercise in relation to the matter such powers of the Commission referred to in section 27(1) as he considers appropriate and are not inconsistent with the hearing and determination under paragraph (a).
- (12a) Where, at the conclusion of a conference held in accordance with this section, any question, dispute, or disagreement in relation to an industrial matter has not been settled by agreement between all of the parties, and the parties in relation to whom the matter has not been so settled all consent in writing to the Commissioner who presided over the conference conclusively determining that question, dispute or disagreement, that Commissioner may hear and determine that question, dispute, or disagreement and make an order binding on the parties who so consented.
- (12b) Nothing in subsection (12a) authorizes the Commissioner to use final offer arbitration without the express consent, in writing, of all of the parties concerned.

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- (12c) Notwithstanding section 49 no appeal shall lie from an order made under subsection (12a).
- (13) Section 39 applies, with such modifications as are necessary, to an order made under this section.
- (14) This section has effect subject to section 7D.
- (15) In this section —
“**strike**” means a strike within the meaning of section 97A(2).
[Section 44 amended by No. 121 of 1982 s.18; No. 94 of 1984 ss.27, 65 and 66; No. 119 of 1987 s.10; No. 15 of 1993 s.17; No. 3 of 1997 s.37.]

[45. Repealed by No. 94 of 1984 s.66.]

46. Interpretation of awards and orders

- (1) At any time while an award is in force under this Act the Commission may, on the application of any employer, organization, or association bound by the award —
- (a) declare the true interpretation of the award; and
 - (b) where that declaration so requires, by order vary any provision of the award for the purpose of remedying any defect therein or of giving fuller effect thereto.
- (2) A declaration under this section may be made in the Commission’s reasons for decision but shall be made in the form of an order if, within 7 days of the handing down of the Commission’s reasons for decision, any organization, association, or employer bound by the award so requests.
- (3) Subject to this Act, a declaration made under this section is binding on all courts and all persons with respect to the matter the subject of the declaration.
- (4) Section 35 does not apply to or in relation to this section unless an order is made under subsection (1)(b) or under subsection (2).

- (5) In this section “**award**” includes an order, including a General Order, made by the Commission under any provision of this Act other than this section and an industrial agreement.

[Section 46 amended by No. 94 of 1984 s.66.]

47. Cancellation of defunct awards, and deletion of employers from awards in certain cases

- (1) Subject to subsections (3), (4) and (5), where, in the opinion of the Commission, there is no employee to whom an award or industrial agreement applies, the Commission may on its own motion, by order, cancel that award or industrial agreement.
- (2) Subject to subsections (3), (4) and (5), where the Commission is of the opinion that a party to an award who is named as an employer is no longer carrying on business as an employer in the industry to which the award applies or is, for any other reason, not bound by the award, the Commission may on its own motion, by order, strike out that party as a named party to the award.
- (2a) Subject to subsections (3), (4) and (5), where the Commission is of the opinion that a party to an industrial agreement is no longer carrying on business as an employer referred to in section 41(4)(a)(ii) in relation to the agreement or is, for any other reason, not bound by the agreement, the Commission may on its own motion, by order, strike out that party to the agreement.
- (3) The Commission shall not make an order under subsection (1), (2) or (2a) unless before making the order —
- (a) it has directed the Registrar to make such enquiries as it considers necessary, and the Registrar has reported on the result of those enquiries to the Commission in writing; and

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- (b) after receiving the report of the Registrar, the Commission has —
 - (i) caused the Registrar to give general notice in a newspaper circulating in the area of the State in which the award or industrial agreement operates and in the *Industrial Gazette* of the intention of the Commission to make the order; and
 - (ii) directed the Registrar to serve copies of the notice on such persons as the Commission may specify.
- (4) Any person may, within 30 days of the publication in the newspaper or in the *Industrial Gazette*, whichever is the later, of the notice referred to in subsection (3), object to the Commission making the order referred to in the notice.
- (5) If the Commission does not uphold an objection to the making of the order referred to in the notice the Commission may make the order and shall, as soon as practicable thereafter, direct the Registrar to serve a copy of the order —
 - (a) where the order relates to an award, on each organization of employees that is a named party to the award, on such other persons as are bound by the award as the Commission thinks fit, and on the Council, the Chamber and the Mines and Metals Association;
 - (b) where the order relates to an industrial agreement, on each party to the agreement.

[Section 47 amended by No. 94 of 1984 ss.28 and 66; No. 15 of 1993 s.31; No. 1 of 1995 s.53.]

48. Boards of Reference to be established

- (1) For each award in force under this Act there shall be a Board of Reference.
- (2) Subject to subsection (5), each Board of Reference shall consist of a Chairman appointed by the Chief Commissioner and an

equal number of employers' and employees' members nominated and appointed in the manner prescribed, not being more than 2 in number on each side unless the Chief Commissioner, in any particular case or for the purposes of a specified award, approves the appointment of a greater number.

[(3) and (4) repealed]

- (5) The Chief Commissioner may appoint a person as Chairman of a Board of Reference —
- (a) for the purpose of dealing with a particular matter; or
 - (b) for a specified period of time,

and, in the case of an appointment in accordance with paragraph (b) may terminate such appointment and make another appointment within that specified period, or may extend that specified period.

- (6) A Board of Reference may allow, approve, fix, determine, or deal with —
- (a) any matter or thing that, under the award, may require to be allowed, approved, fixed, determined, or dealt with by a Board of Reference; and
 - (b) any matter or thing arising under or out of the provisions of an award, not involving the interpretation of any such provision, which the Commission may at any time, by order, authorize a Board of Reference to allow, approve, fix, determine, or deal with,

in the manner and subject to the conditions specified in the award or order, as the case may be.

- (7) The powers conferred on a Board of Reference under the provisions of this section may be exercised by the Commission constituted by a Commissioner.
- (8) Where the nominated employers' and employees' members of a Board of Reference are equally divided in opinion on any matter before the Board of Reference the decision of the Board of

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Reference shall be in accordance with the opinion of the Chairman.

- (9) The Chairman shall, after consultation with the nominated members, record in a memorandum signed by him —
- (a) all facts found by the Board of Reference; and
 - (b) the decision of the Board of Reference,

and shall forward that memorandum to the Registrar for filing in his office.

- (10) Subject to subsection (11), the decision referred to in subsection (9) is upon being filed as prescribed therein, enforceable under this Act as if it were an award.
- (11) Subject to subsection (12), any organization, association, or employer affected by a decision of a Board of Reference may, within 21 days from the date of that decision appeal against that decision to the Commission in Court Session in the manner prescribed.
- (12) An appeal under subsection (11) shall be heard and determined on the facts referred to in subsection (9)(a) and the Commission in Court Session may, if it upholds the appeal, rescind or vary the decision in such manner as it sees fit or may remit the matter to the Board of Reference for further hearing and determination.

[(13) and (14) repealed]

- (15) The Commission may, in any order made by it under this Act, provide that any matter or thing arising under or out of the provisions of the order, not involving the interpretation of any such provision, may be allowed, approved, fixed, determined, or dealt with by a Board of Reference and the provisions of this section apply to such an order in all respects as if it were an award.

[Section 48 amended by No. 94 of 1984 ss.29 and 66; No. 119 of 1987 s.11.]

49. Appeals to Full Bench from decision of Commission under this Act

- (1) In this section “**the Commission**” means the Commission constituted by a Commissioner, but does not include the Commission exercising jurisdiction under section 80ZE.
- (2) Subject to this section, an appeal lies to the Full Bench in the manner prescribed from any decision of the Commission.
- (2a) An appeal does not lie under this section from a finding unless, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, an appeal should lie.
- (2b) An appeal does not lie under this section from a decision of the Commission on an appeal under section 23B.
- (3) An appeal under this section shall be instituted within 21 days of the date of the decision against which the appeal is brought and may be instituted by —
 - (a) any party to the proceedings wherein the decision was made; or
 - (b) any person who was an intervener in those proceedings.
- (4) An appeal under this section —
 - (a) shall be heard and determined on the evidence and matters raised in the proceedings before the Commission; and
 - (b) shall, if brought by a person referred to in subsection (3)(b), be dismissed unless, on the hearing of the appeal, that person obtains leave of the Full Bench,and, for the purpose of paragraph (a), “**proceedings**” includes any proceedings arising under section 35(3).
- (5) In the exercise of its jurisdiction under this section the Full Bench may, by order —
 - (a) dismiss the appeal;

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- (b) uphold the appeal and quash the decision or, subject to subsection (6), vary it in such manner as the Full Bench considers appropriate; or
 - (c) suspend the operation of the decision and remit the case to the Commission for further hearing and determination.
- (6) Where the Full Bench varies a decision under subsection (5)(b) the decision as so varied shall be in terms which could have been awarded by the Commission that gave the decision.
 - (7) The decision of the Full Bench shall be signed and delivered by the President.
 - (8) When the members of the Full Bench are divided on a question, the question shall be decided according to the decision of a majority of the members unless the members are evenly divided on the question in which case the question shall be decided according to the decision of the President.
 - (9) When any question of law arises in any proceedings before the Full Bench, the President may state a case for the decision of the Court thereon and shall do so if a majority of the members of the Full Bench so request.
 - (10) Subsections (7), (8), and (9) apply to and in relation to all proceedings before the Full Bench whether under this section or otherwise.
 - (11) At any time after an appeal to the Full Bench has been instituted under this section a person who has a sufficient interest may apply to the Commission for an order that the operation of the decision appealed against be stayed, wholly or in part, pending the hearing and determination of the appeal.
 - (12) An application under subsection (11) shall be heard and determined by the President.

[Section 49 amended by No. 121 of 1982 s.20; No. 94 of 1984 ss.30 and 66; No. 119 of 1987 s.12; No. 1 of 1995 s.9.]

Division 2A — Miscellaneous provisions relating to awards etc.

[Heading inserted by No. 79 of 1995 s.11.]

49A. Awards and agreements to make provision for resolution of disputes

- (1) In exercising its jurisdiction under this Part the Commission shall not make an award or applicable order, or register an industrial agreement, unless the award, order or industrial agreement makes provision for procedures to be followed in connection with questions, disputes or difficulties arising under the award, order or industrial agreement.
- (1a) The procedures referred to in subsection (1) shall provide for the persons involved in the question, dispute or difficulty to confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.
- (2) The Commission may order persons involved in a question, dispute or difficulty arising under an award, order or industrial agreement that is before the Commission to comply with the dispute settling procedures provided for in that award, order or industrial agreement.
- (3) In subsection (1) “**applicable order**” means an order with respect to which, in the opinion of the Commission, a question, dispute or difficulty capable of resolution by dispute settling procedures may arise.

[Section 49A inserted by No. 79 of 1995 s.11; amended by No. 3 of 1997 s.31.]

49AB. Power of entry

- (1) Where an award, order or industrial agreement empowers a representative of an organization to enter the premises of the employer or former employer of a member of the organization, that power may only be exercised by the representative for the

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purpose of dealing with an industrial matter involving that member.

- (2) If a representative of an organization intends to exercise a power referred to in subsection (1), the representative may —
 - (a) give to the Registrar a declaration made by the representative before a justice —
 - (i) stating that the representative intends to exercise that power and will not enter the premises for other purposes; and
 - (ii) annexed to which is a list of members of the organization in respect of whom the power is to be exercised;
 - and
 - (b) before exercising the power, give the employer or former employer a copy of the declaration, without the annexure, endorsed on behalf of the Commission.
- (3) An employer, former employer or organization may apply to the Commission to determine any question or dispute that has arisen between the employer and the organization as to whether a representative of the organization is empowered to enter the premises of the employer for a purpose specified in the application.
- (4) If an application is made under subsection (3) the Commission shall determine the question or dispute as if it were an application under section 46, and section 46 shall apply to a declaration made by the Commission under this section as if it were made under that section.
- (5) If —
 - (a) a representative of an organization —
 - (i) exercises a power referred to in subsection (1) in a way that exceeds the ambit of that power; or

(ii) purports to exercise a power referred to in subsection (1) in circumstances in which the representative is not entitled to do so;

or

(b) an employer or former employer who has received a copy of a declaration from a representative of an organization under subsection (2) refuses to allow the representative to exercise a power referred to in subsection (1) that the representative is entitled to exercise,

that person contravenes the award, order or industrial agreement under which the power is exercised or purportedly exercised.

(6) A representative who makes a statement or provides information in a declaration or the annexure to a declaration under subsection (2), knowing the statement or information to be false, commits an offence.

Penalty: \$10 000 or imprisonment for 2 years.

(7) Subject to subsection (8), a declaration or an annexure given under subsection (2) is not admissible in evidence in any proceedings other than proceedings in respect of an offence under subsection (6).

(8) A copy of a declaration given to an employer or former employer under subsection (2)(b) is admissible in proceedings in respect of a contravention of an award, order or industrial agreement referred to in subsection (5)(b).

[Section 49AB inserted by No. 3 of 1997 s.33.]

49B. Inspection of records

(1) In exercising its jurisdiction under this Part the Commission shall not make an award or order, or register an industrial agreement, empowering a representative of an organization of employees to inspect the time and wages records of an

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employee or former employee unless the award, order or industrial agreement provides that —

- (a) the employer may refuse the representative access to the records if —
 - (i) the employer is of the opinion that access to the records by the representative of the organization would infringe the privacy of persons who are not members of the organization; and
 - (ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative;
- (b) the power of inspection may only be exercised by a representative of an organization of employees authorized for the purpose in accordance with the rules of the organization; and

[(c) and (d) repealed]

- (e) before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.
- (2) An Industrial Inspector shall give extracts from records produced to that Industrial Inspector pursuant to an undertaking referred to in subsection (1)(a)(ii) to the relevant organization as soon as is practicable after the records are so produced.
 - (3) An extract referred to in subsection (2) —
 - (a) shall be of such matters as are prescribed;
 - (b) shall be made in the prescribed manner; and
 - (c) shall not include information in respect of a person who is not a member of the relevant organization.
 - (4) The Governor may make regulations —
 - (a) with respect to the manner and form in which time and wages records are maintained; and

(b) for the purposes of subsection (3).

[Section 49B inserted by No. 79 of 1995 s.11⁹; amended by No. 3 of 1997 s.34.]

49C. Superannuation

(1) In this section —

“complying superannuation fund or scheme” means a superannuation fund or scheme —

- (a) that is a complying superannuation fund or scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; and
- (b) to which, under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme.

(2) In exercising its jurisdiction under this Part the Commission shall not make an award or order, or register an industrial agreement, which requires contribution to a superannuation fund or scheme by an employee or by an employer in respect of an employee unless the award, order or industrial agreement —

- (a) permits the employee to nominate a complying superannuation fund or scheme;
- (b) requires the employer to notify the employee of the entitlement to nominate a complying superannuation fund or scheme;
- (c) requires the employer —
 - (i) if the award, order or industrial agreement specifies one or more complying superannuation funds or schemes to which contributions may be made, to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer, until the employee

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- nominates a complying superannuation fund or scheme; or
 - (ii) if the award, order or industrial agreement does not specify a complying superannuation fund or scheme to which contributions may be made, to make contributions to a complying fund or scheme nominated by the employer until the employee nominates such a fund or scheme;
 - (d) requires the employee and employer to be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made; and
 - (e) provides that an employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee.
- (3) The Governor may make regulations —
- (a) prescribing procedures to be followed by an employer in notifying an employee of entitlement to nominate a complying superannuation fund or scheme; and
 - (b) prescribing procedures to be followed by an employee in nominating a complying superannuation fund or scheme.
- (4) A person shall not by threats or intimidation persuade or attempt to persuade —
- (a) an employee or prospective employee to nominate a particular superannuation fund or scheme; or
 - (b) an employer to make contributions to a particular superannuation fund or scheme.

Penalty:

- (a) in the case of an individual, \$1 000;
- (b) in any other case, \$5 000.

- (5) In subsection (4) —
“**threats**” includes any conduct by an employer that clearly indicates to an employee or prospective employee that employment or promotion is conditional upon the employee nominating, or changing to, a complying superannuation fund or scheme suggested by the employer.

[Section 49C inserted by No. 79 of 1995 s.13(1).]

Division 3 — General Orders

50. Power of Commission to make General Orders

- (1) In this Division “**Commission**” means Commission in Court Session.
- (2) Subject to this Act, the Commission may, of its own motion or on the application of the Council, the Chamber, the Mines and Metals Association or the Minister —
- (a) make General Orders relating to industrial matters in accordance with and subject to this Division; and
 - (b) add to, vary, or rescind any General Order so made.
- (2a) The Commission does not have power under this section to prescribe minimum conditions as to any matter if a minimum condition for that matter is prescribed by the *Minimum Conditions of Employment Act 1993*.
- (3) A General Order may be made to apply generally to employees throughout the State whether or not they are employed under and subject to awards or industrial agreements or may be limited to employees —
- (a) who are employed under and subject to awards or industrial agreements; or
 - (b) who are not so employed,

but shall not apply to any employee whose conditions of employment may not be determined by the Commission.

- (4) A General Order applying to or with respect to employees of the kind referred to in subsection (3)(a) may add to or vary all awards and industrial agreements or may be limited in its effect to such awards and industrial agreements or awards or industrial agreements as may be specified in the General Order.

[(5) and (6) repealed]

- (7) A General Order shall not be made in respect of preference of employment at the time of, or during, employment by reason of being or not being a member of an organization.

[(8) repealed]

- (9) Where the Commission makes a General Order which affects awards and industrial agreements or awards or industrial agreements in force under this Act it may, in respect of each award or industrial agreement so affected, direct the Registrar to prepare and publish in the *Industrial Gazette* the provisions of that award or industrial agreement resulting from the operation of that General Order.

- (10) The Commission shall not make a General Order under this section or under section 51 until it has afforded the Council, the Chamber, the Mines and Metals Association, the Minister, and any other person who, in the opinion of the Commission, has a sufficient interest in the matter, an opportunity to be heard in relation thereto.

[Section 50 amended by No. 94 of 1984 ss.32 and 66; No. 15 of 1993 ss.18 and 31¹⁰.]

51. Powers and duties of Commission in respect of National Wage Decisions

- (1) In this section, “**National Wage Decision**” means a decision which —
- (a) is made by a Full Bench of the Australian Commission;
 - (b) relates to rates of wages; and

- (c) is applicable generally to awards made under the Commonwealth Act.
- (2) Subject to section 50(10), when and as often as a National Wage Decision is made after the coming into operation of this section the Commission shall of its own motion consider that decision and, unless it is satisfied that there are good reasons not to do so, shall make a General Order giving effect to that National Wage Decision in such manner and subject to such conditions as the Commission considers appropriate in awards and, subject to subsection (2a), in industrial agreements in force under this Act.
- (2a) The reference in subsection (2) to industrial agreements is to industrial agreements that, in accordance with section 41A(2), apply to more than a single enterprise.

[Section 51 amended by No. 119 of 1987 s.13; No. 15 of 1993 s.19.]

51A. General Orders as to public sector discipline

- (1) Subject to this Act, the Commission may in respect of a public authority and its employees, on application by the Minister, the Council or an organization with sufficient interest in the matter —
- (a) make a General Order or General Orders with respect to one or more of the following —
- (i) suspension from duty in employment;
 - (ii) discipline in employment;
 - (iii) dismissal from employment; and
 - (iv) termination of employment,
- and with respect to any matter related thereto; and
- (b) add to, vary or rescind any General Order so made.

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- (2) A General Order referred to in subsection (1) may be made so as to apply to —
- (a) public authorities and their employees generally;
 - (b) a specified public authority or specified public authorities and its or their employees;
 - (c) public authorities and their employees bound by a specified award or specified awards;
 - (d) a specified class of employees employed in a public authority or public authorities.
- (3) In subsection (2) “**specified**” means specified in the General Order.
- (4) A General Order in relation to a matter referred to in subsection (1)(a) shall not be made so as to apply to —
- (a) any employee whose conditions of employment may not be determined by the Commission;
 - (b) any employee in relation to whom —
 - (i) there is provision, however expressed, by or under any other Act for or in relation to that matter; and
 - (ii) there is provision by or under that other Act for an appeal in that matter;
 - or
 - (c) any member of the academic staff of a post-secondary education institution.
- (5) A General Order referred to in subsection (1) shall not be made under subsection (2)(c) so as to apply to any employee covered by an award where an organization that is a party to that award does not consent to the General Order being so made.

[Section 51A inserted by No. 94 of 1984 s.33.]

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[Heading amended by No. 119 of 1987 s.14.]

52. Interpretation

In this Division, unless a contrary intention appears —

“collegiate electoral system”, in relation to an election for an office in an organization, means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and a subsequent stage or subsequent stages at which persons are elected by secret ballot by and from the persons elected at the immediately preceding stage;

“direct voting system”, in relation to an election for an office in an organization, means a method of election by secret postal ballot at which all financial members, or all financial members included in such branch, section, or other division, or in such class, as is appropriate, having regard to the nature of the office, are, subject to reasonable provisions with respect to enrolment, eligible to vote;

“one-tier collegiate electoral system” means a collegiate electoral system comprising only one stage after the first stage;

“postal ballot” means a ballot for the purposes of which a ballot paper is sent by prepaid post to each person entitled to vote and facilities are provided for the return of the completed ballot paper by post by the voter without expense to him.

[Section 52 amended by No. 119 of 1987 s.15.]

53. Qualifications for and basis of registration of organizations of employees

- (1) Subject to this Act, any unregistered organization consisting of not less than 200 employees associated for the purpose of protecting or furthering the interests of employees may be registered by authority of the Full Bench.

- (2) Subject to this Act, an unregistered organization consisting of less than 200 employees may be registered by authority of the Full Bench if the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.

[Section 53 inserted by No. 94 of 1984 s.34.]

54. Qualifications for and basis of registration of organizations of employers

- (1) Subject to this Act, an unregistered organization consisting of 2 or more employers who —
- (a) have, in the aggregate throughout the 6 months immediately preceding the date of application for registration employed on an average, taken per month, not less than 200 employees; and
 - (b) are associated for the purpose of protecting or furthering the interests of those employers,

may be registered by authority of the Full Bench.

- (2) Subject to this Act an unregistered organization that does not comply with subsection (1)(a) may be registered by authority of the Full Bench if the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.

[Section 54 inserted by No. 94 of 1984 s.34.]

55. Requirements attaching to organization seeking registration

- (1) An organization seeking registration under section 53 or 54 shall lodge in the office of the Registrar —
- (a) a list of the officers of the organization with their addresses;
 - (b) 3 copies of the rules of the organization; and
 - (c) the prescribed form of application.

- (2) When the organization has complied with the requirements of subsection (1) the Registrar shall publish in the *Industrial Gazette* —
- (a) a notice of the application;
 - (b) a copy of such rules of the organization as relate to the qualification of persons for membership of the organization and, without limiting the generality thereof, including any rule by which the area of the State within which the organization operates, or intends to operate, is limited; and
 - (c) notice that any person who objects to the registration of the organization and who, having given notice of that objection within the time and in the manner prescribed, satisfies the Full Bench that he has a sufficient interest in the matter, may appear and be heard in objection to the application.
- (3) An application under this section shall not be listed for hearing before the Full Bench until after the expiration of 30 days from the date of the issue of the *Industrial Gazette* in which the matters referred to in subsection (2) are published.
- (4) Notwithstanding that an organization complies with section 53(1) or 54(1) or that the Full Bench is satisfied for the purposes of section 53(2) or 54(2), the Full Bench shall refuse an application by the organization under this section unless it is satisfied that —
- (a) the application has been authorized in accordance with the rules of the organization;
 - (b) reasonable steps have been taken to adequately inform the members —
 - (i) of the intention of the organization to apply for registration;
 - (ii) of the proposed rules of the organization; and

(iii) that the members or any of them may object to the making of the application or to those rules or any of them by forwarding a written objection to the Registrar,

and having regard to the structure of the organization and any other relevant circumstance, the members have been afforded a reasonable opportunity to make such an objection;

(c) in relation to the members of the organization —

(i) less than 5% have objected to the making of the application or to those rules or any of them, as the case may be; or

(ii) a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorized or approved the making of the application and the proposed rules;

(d) in relation to the alteration of the rules of the organization, those rules provide for reasonable notice of any proposed alteration and reasons therefor to be given to the members of the organization and for reasonable opportunity for the members to object to any such proposal; and

(e) rules of the organization relating to elections for office —

(i) provide that the election shall be by secret ballot; and

(ii) conform with the requirements of section 56(1), and are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.

(5) Notwithstanding that an organization complies with section 53(1) or 54(1), the Full Bench shall refuse an application by the organization under this section if a registered organization whose rules relating to membership enable it to

enrol as a member some or all of the persons eligible, pursuant to the rules of the first-mentioned organization, to be members of the first-mentioned organization unless the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.

[Section 55 amended by No. 94 of 1984 ss.35 and 66; No. 79 of 1995 s.31.]

56. Rules to provide for secret ballots, etc.

- (1) The rules of an organization —
- (a) shall provide for the conduct of every election to an office within the organization (including the acceptance or the rejection of nominations) by a returning officer, not being the holder of any other office in, and not being an employee of, the organization;
 - (b) shall provide that, if the returning officer conducting such election finds a nomination to be defective, he shall before rejecting the nomination, notify the person concerned of the defect, and where it is practicable to do so, give him the opportunity of remedying the defect within such period as is applicable under the rules, which shall, where practicable, be not less than 7 days after his being so notified;
 - (c) shall provide for the election of the holder of each office within the organization, such election to be either by —
 - (i) a direct voting system; or
 - (ii) a collegiate electoral system being, in the case of an office the duties of which are of a full-time nature, a one-tier collegiate electoral system;
 - (d) shall, in relation to any election for office —
 - (i) provide that the election shall be by secret ballot;
 - (ii) make provision for —
 - (I) absent voting;

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- (II) the manner in which persons may become candidates for election;
 - (III) the appointment, conduct and duties of returning officers;
 - (IV) the conduct of the ballot;
 - (V) the appointment, conduct, and duties of scrutineers to represent the candidates at the ballot; and
 - (VI) the declaration of the result of the ballot;
- and
- (iii) ensure, as far as practicable, that no irregularity can occur in connection with the election;
 - (e) shall not permit a person to be elected to hold an office within the organization for a period exceeding 4 years without being re-elected; and
 - (f) shall not permit a person to be elected to fill a casual vacancy in an office for a period exceeding the unexpired portion of the term of the person who has vacated the office.
- (2) Where the rules of an organization which was registered immediately prior to the coming into operation of this section do not, in the opinion of the Registrar, conform with the requirements of subsection (1), the Registrar may, after inviting the organization to consult with him on the matter, allow the organization such time as he determines within which to bring them into conformity with those requirements or determine such alterations of the rules as will in his opinion bring them into conformity with those requirements.
- (3) The Registrar shall register the alterations determined by him, or made by the organization to his satisfaction, pursuant to subsection (2) and thereupon the rules shall be deemed to be altered accordingly.

[Section 56 inserted by No. 94 of 1984 s.36.]

56A. Rules may provide for casual vacancies to be filled in alternative manner

- (1) This section has effect notwithstanding any other provision of this Act.
- (2) Subject to subsection (3), rules made by an organization under this subsection may provide for the filling of a casual vacancy in such manner as is provided in those rules.
- (3) Rules made under subsection (2) shall include provision to the effect that a casual vacancy may be filled in a manner provided in those rules —
 - (a) where the original term did not exceed 12 months — for the unexpired portion of the original term; or
 - (b) where the original term exceeded 12 months — for so much of the unexpired portion of the original term as does not exceed three-quarters of the original term.
- (4) In subsection (3) “**original term**”, in relation to a casual vacancy in an office, means the period in respect of which the last person to have been elected to that office to fill a vacancy other than a casual vacancy was elected.
- (5) Where a vacancy in an office is filled in a manner provided in rules made under subsection (2), the person so filling the vacancy shall be taken for the purposes of this Act (other than this section) and the provisions of the rules of the organization (other than the first-mentioned rules), to have been elected to that office in accordance with those provisions.

[Section 56A inserted by No. 94 of 1984 s.36.]

57. Elections to be by secret postal ballot

- (1) Every election by a direct voting system for an office in an organization shall be by secret postal ballot.
- (2) The regulations may make provision for and in relation to the conduct of an election in accordance with the requirements of this section.

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- (3) Where the rules of an organization as in force at the date of the coming into operation of this section provide for an election or elections to which this section applies to be by a secret ballot other than a secret postal ballot, the Registrar may, upon application by the organization in accordance with the regulations, by instrument in writing under his hand, exempt the organization in respect of an election from the application of this section if he is satisfied that the conduct of the election in accordance with those rules —
- (a) is likely to result in a fuller participation by members of the organization in the ballot than would result from a postal ballot; and
 - (b) will afford members entitled to vote an adequate opportunity of voting without intimidation.
- (4) This section, and the regulations made for the purposes of this section, have effect notwithstanding anything contained in the rules of an organization.
- (5) This section does not apply to an election any step in which was taken, in accordance with the rules of the organization, before the date of the coming into operation of this section.

[Section 57 amended by No. 94 of 1984 s.66.]

58. Registration of organization

- (1) Where, under this Act, the Registrar is authorized by the Full Bench to register an organization he shall so register it by registering —
- (a) its name;
 - (b) its rules; and
 - (c) the address of the office where the business of the organization is conducted,

and shall thereupon give to the organization a certificate in the prescribed form which until cancelled is, subject to this Act, conclusive evidence of the registration of the organization under

this Act and of the organization having complied with the prescribed conditions that entitle it to be so registered.

- (2) Where the Full Bench authorizes the Registrar to register an organization it may do so —
 - (a) unconditionally; or
 - (b) subject to the compliance by the organization with any direction given to it by the Full Bench in dealing with the application by the organization for registration.
- (3) On an application for the registration of an organization the agent or representative of the applicant may request the Full Bench to authorize the rules of the organization to be registered in terms that exclude certain persons or classes of persons from the description of persons who would have been eligible for enrolment as members of the organization under the rules as lodged under section 55(1)(b) and, if so requested, the Full Bench may authorize the Registrar to register the rules in those terms.

[Section 58 amended by No. 94 of 1984 ss.37 and 66.]

59. Registered name

- (1) The Full Bench shall not authorize the registration of an organization under a name identical with that by which any other organization has been registered or which by reason of its resemblance to the name of another organization or body or for any other reason is, in the opinion of the Full Bench, likely to deceive or mislead any person.
- (2) The registered name shall clearly indicate whether the organization is an organization of employers or an organization of employees.
- (3) This section does not prevent the Full Bench from authorizing an organization to which a certificate has been issued under section 71 to change its name so as to correspond with the name of its Counterpart Federal Body under that section.

[Section 59 amended by No. 94 of 1984 s.66.]

60. Incorporation of organization upon registration

- (1) An organization shall, upon and during registration, become and be, for the purposes of this Act, a body corporate by the registered name, having perpetual succession and a common seal, but, subject to this Act, an organization may at any time, with the consent of the Full Bench, change its name.
- (2) An organization may sue and be sued and may purchase, take on lease, hold, sell, lease, mortgage, exchange, and otherwise own, possess, and deal with any real or personal property.
- (3) The service on an organization of any process, notice, or document of any kind may be effected by delivering it to the secretary or principal executive officer of the organization or by leaving it at the office referred to in section 58 or by posting it to that office by certified mail addressed to the secretary of the organization or in such other manner as may be prescribed.

[Section 60 amended by No. 94 of 1984 s.66; No. 119 of 1987 s.16.]

61. Effect of registration

Upon and after registration, the organization and its members for the time being shall be subject to the jurisdiction of the Court and the Commission and to this Act; and, subject to this Act, all its members shall be bound by the rules of the organization during the continuance of their membership.

[Section 61 amended by No. 94 of 1984 s.66.]

62. Alteration of registered rules

- (1) Upon and after the registration of rules in accordance with section 58(1), an alteration to those rules by the organization concerned shall not be or become effective until the Registrar has given to the organization a certificate that the alteration has been registered.

- (2) The Registrar shall not register any alteration to the rules of an organization that relates to its name, qualifications of persons for membership, or a matter referred to in section 71(2) or (5) unless so authorized by the Full Bench.
- (3) Subject to section 71(8), the Registrar shall not register an alteration to any rule unless, after consulting with the President, he is satisfied that —
- (a) the application has been authorized in accordance with the rules of the organization;
 - (b) reasonable steps have been taken to adequately inform the members —
 - (i) of the proposal for alteration and the reasons therefor; and
 - (ii) that the members or any of them may object to the proposed alteration by forwarding a written objection to the Registrar,and, having regard to the structure of the organization, and any other relevant circumstance, the members have been afforded a reasonable opportunity to object to the alteration; and
 - (c) less than 5% of the members of the organization has objected to the proposed alteration or a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorized or approved the proposed alteration.
- (4) Sections 55, 56 and 58(3) apply, with such modifications as are necessary, to and in relation to an application by an organization for alteration of a rule of a kind referred to in subsection (2).

[Section 62 amended by No. 94 of 1984 ss.38 and 66.]

63. Records to be kept by organization

- (1) An organization shall keep the following records —
 - (a) a register of its members showing the name and residential address of each member and details of the financial status of each member in respect of his membership;
 - (b) a list of the names, residential addresses, and occupations of the persons holding offices in the organization;
 - (c) accounting records that are in accordance with generally accepted accounting principles and truly record and explain the financial transactions and financial position of the organization; and
 - (d) such other records as are prescribed.
- (2) An organization shall file with the Registrar once in each year, at such time as is prescribed, a copy of the records required to be kept under subsection (1)(b) and a record of the number of members in the organization, certified by statutory declaration by the Secretary or other prescribed officer of the organization to be a correct statement of the information contained therein.
- (3) An organization shall file with the Registrar in such manner and within such time as is prescribed notification of changes in the holding of offices.

[(4) and (5) repealed]

- (6) All documents filed with the Registrar pursuant to this section and section 65 shall be made available for inspection at the office of the Registrar as prescribed.
- (7) The register of members of an organization shall be made available by the organization for inspection by such persons as are authorized by the Registrar, at such times as are appointed by him, at the office of the organization.

*[Section 63 amended by No. 94 of 1984 ss.39, 65 and 66;
No. 79 of 1995 s.5.]*

64. Registrar may direct that form of membership register be altered

- (1) Where it appears to the Registrar that the register of members of an organization is not being maintained in such a form and manner as to provide, for the purpose of the conduct of a ballot or election pursuant to this Act, a convenient form of the accurate particulars of the membership of the organization, he may direct the organization to make such rectifications in the register and such changes in the form or manner in which the register is being maintained, as he considers necessary for that purpose.
- (2) An organization to which a direction is given under subsection (1) shall comply therewith.
- (3) A certificate from the Registrar stating that a person specified in the certificate was at a time so specified a member or officer of an organization so specified is, in all courts and proceedings, evidence of the facts so stated.

[Section 64 amended by No. 94 of 1984 ss.65 and 66.]

64A. Resignation from an organization

- (1) A member of an organization may end that membership by written notice of resignation addressed to the organization.
- (2) A notice of resignation shall be served on the organization by —
 - (a) delivering it personally to the organization's office at the address registered under section 58(1)(c); or
 - (b) sending it by certified mail to the address mentioned in paragraph (a) or to the address of the organization as ascertained by referring to a current directory of telephone numbers.
- (3) A notice of resignation takes effect on the day on which it is served on the organization or on a later day specified in the notice.

[Section 64A inserted by No. 1 of 1995 s.51.]

64B. Membership to end if subscription not paid

- (1) Where —
- (a) a period in respect of which a subscription has been paid to an organization for a person's membership of the organization expires; and
 - (b) no subscription to continue or renew that membership has been paid to the organization before, or within 3 months after, that expiry,

that membership ends by operation of this subsection at the end of that 3 month period.

- (2) Subsection (1) does not apply if the membership has already ended under section 64A or under the rules of the organization.

[Section 64B inserted by No. 1 of 1995 s.51.]

64C. Effect of sections 64A and 64B in relation to rules

- (1) The ways of ending membership of an organization set out in sections 64A and 64B are in addition to any ways of ending that membership provided for in the rules of the organization.
- (2) The ending of membership of an organization under section 64A or 64B has effect despite anything in the rules of the organization.

[Section 64C inserted by No. 1 of 1995 s.51.]

64D. Purging the register

The rules of an organization shall provide for the register referred to in section 63 to be purged on not less than 4 occasions in each year by striking off the names of members whose membership has ended under section 64A or 64B or under the rules.

[Section 64D inserted by No. 79 of 1995 s.32.]

65. Audit and filing of accounts of organization

The secretary of each organization shall —

- (a) cause the accounting records of that organization to be properly audited by a person registered as an auditor under section 18 of the *Companies (Western Australia) Code*² (in this section called “**the auditor**”) within 6 calendar months after the end of each financial year of that organization; and
- (b) within one calendar month after the completion of the audit referred to in paragraph (a), deliver to the Registrar —
 - (i) a balance sheet of the assets and liabilities of that organization audited by the auditor and made up to the date of the closing of the accounts of that organization in respect of the financial year concerned;
 - (ii) a statement of the receipts and expenditure of that organization during the financial year concerned audited by the auditor; and
 - (iii) a sources and application of funds statement of the organization for the financial year concerned audited by the auditor.

[Section 65 inserted by No. 121 of 1982 s.22; amended by No. 94 of 1984 ss.65 and 66; No. 79 of 1995 s.6.]

65A. Powers of auditor

For the purposes of auditing the accounting records of an organization or of performing any function conferred on the auditor under this Act, the auditor of an organization is entitled —

- (a) to have full and free access at all reasonable times to all records or documents relating to the receipt or expenditure of moneys by the organization, or the acquisition, use or disposal of assets of the organization, or the incurring of liabilities by the organization; and

- (b) to require any officer or employee of the organization to provide the auditor with any information or explanation that the auditor wants.

[Section 65A inserted by No. 79 of 1995 s.7.]

66. Power of President to deal with complaints by members, certain other persons or Registrar against organization

- (1) The following persons may apply to the President for an order or direction under this section —
 - (a) a person who is or has been a member of an organization; or
 - (b) a person who has applied for and not been admitted to membership in an organization; or
 - (c) the Registrar acting on the complaint of or on behalf of a person referred to in paragraph (a) or of his own motion.
- (2) On an application made pursuant to this section, the President may make such order or give such directions relating to the rules of the organization, their observance or non-observance or the manner of their observance, either generally or in the particular case, as he considers to be appropriate and without limiting the generality of the foregoing may —
 - (a) disallow any rule which, in the opinion of the President —
 - (i) is contrary to or inconsistent with any Act or law, or an award, industrial agreement, order or direction made, registered or given under this Act;
 - (ii) is tyrannical or oppressive;
 - (iii) prevents or hinders any member of the organization from observing the law or the provisions of an award, industrial agreement, order or direction made, registered or given under this Act;
 - (iv) imposes unreasonable conditions upon the membership of a member or upon an applicant for membership; or

- (v) is inconsistent with the democratic control of the organization by its members;
 - (b) instead of disallowing a rule under paragraph (a), direct the organization to alter that rule within a specified time in such manner as the President may direct;
 - (c) disallow any rule which has not been altered by the organization after a direction to do so pursuant to paragraph (b);
 - (ca) where the President disallows any rule under paragraph (a) or (c), give such directions as the President considers necessary to remedy, rectify, reverse or alter or to validate or give effect to, any act, matter or thing that has been done in pursuance of the disallowed rule;
 - (d) declare the true interpretation of any rule;
 - (e) inquire into any election for an office in the organization if it is alleged that there has been an irregularity in connection with that election and make such orders and give such directions as the President considers necessary —
 - (i) to cure the irregularity including rectifying the register of members of the organization; or
 - (ii) to remedy or alter any direct or indirect consequence thereof;
- and
- (f) in connection with an inquiry under paragraph (e) —
 - (i) give such directions as the President considers necessary to the Registrar or to any other person in relation to ballot papers, envelopes, lists, or other documents of any kind relating to the election;
 - (ii) order that any person named in the order shall or shall not, as the case may be, for such period as the President considers reasonable in the circumstances and specifies in the order, act or

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continue to act in and be deemed to hold an office to which the inquiry relates;

(iii) declare any act done in connection with the election to be void or validate any act so done.

(3) The decision of the President shall be signed and delivered by him.

(4) Any person to whom an order or direction given or made under this section applies shall comply with that order or direction whether or not it is contrary to or inconsistent with any rule of the organization concerned.

[(5) repealed]

(6) A rule disallowed pursuant to subsection (2)(a) or (c) is void.

(7) When 6 months have elapsed after the coming into operation of section 51 of the *Industrial Legislation Amendment Act 1995*¹ the Registrar shall review the rules of each organization and shall, by application pursuant to this section, bring before the President the rules of any organization if, in the opinion of the Registrar, any such rule is contrary to or inconsistent with section 64A or 64B.

(8) Within 6 months of the coming into operation of section 10 of the *Labour Relations Legislation Amendment Act 1997*¹ the Registrar shall review the rules of each organization of employees and shall, by application pursuant to this section, bring before the President the rules of any organization of employees if, in the opinion of the Registrar, any of those rules is contrary to or inconsistent with Part VIB.

(9) The power of the President under subsection (2)(d) may, on a reference made under section 27(1)(u), be exercised by the Full Bench.

[Section 66 amended by No. 94 of 1984 ss.40 and 66; No. 119 of 1987 s.17; No. 1 of 1995 ss.52 and 53; No. 79 of 1995 s.33; No. 3 of 1997 s.12.]

67. Registration of industrial associations

- (1) A council or other body, however designated, formed by and for the purpose of representing 2 or more organizations to the extent that they have industrial interests in common may, subject to this Act, be registered as an association under this Act.
- (2) An association registered pursuant to subsection (1) may act on behalf of all employees eligible for membership of any of the organizations represented by the association in respect of a calling or industry in respect of which the association was formed.
- (3) Subject to this section, the provisions of this Act relating to organizations, their rules, records, officers and members shall extend and apply, with such modifications as are necessary, to an association, its rules, records, officers and members respectively.

[Section 67 inserted by No. 94 of 1984 s.41.]

68. Declaration by Full Bench as to certain functions

The Full Bench may, on its own motion or on the application of a person of a kind referred to in section 66(1), declare all or any of the functions of an office to be those of an office in an organization.

[Section 68 amended by No. 94 of 1984 s.66.]

69. Conduct of election by Registrar or Electoral Commissioner

- (1) An election for an office in an organization may be conducted pursuant to this section where the Registrar decides that a request that the election be so conducted has been duly made.
- (2) A request is duly made if it is made in writing within the time prescribed —
 - (a) by an officer of an organization on behalf of the organization; or

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- (b) by a person authorized to make the request by and on behalf of not less than one-twentieth of the members of, or 250 of the members of the organization, whichever is the lesser number.
- (3) Where a request is made or purports to be made in accordance with this section, the Registrar shall, after making such inquiries, if any, as he considers necessary, decide whether or not the request has been duly made.
- (4) Where the Registrar decides that a request has been duly made, he shall inform the organization, and, where the request was made by a person referred to in subsection (2)(b), that person, accordingly, and make arrangements with the Electoral Commissioner appointed under the *Electoral Act 1907* for the conduct of the election by an officer holding office under that Act or by some other person authorized in writing by the Electoral Commissioner.
- (5) Notwithstanding anything contained in the rules of the organization, the person conducting the election may take such action and give such directions as he considers necessary in order —
 - (a) to ensure that no irregularities occur in or in connection with the election;
 - (b) to rectify the register of members of the organization; or
 - (c) to remedy procedural defects which appear to him to exist in those rules.
- (6) A person shall not —
 - (a) refuse or fail to comply with a direction given in accordance with subsection (5); or
 - (b) obstruct or hinder —
 - (i) the person conducting an election under this section in the conduct of the election or the taking of any action in accordance with subsection (5); or

- (ii) any other person in the carrying out of a direction given in accordance with subsection (5).
- (7) An election conducted pursuant to this section is not invalid by reason only of an irregularity in the request in pursuance of which the election was conducted or by reason of a breach of the rules of the organization involved in anything done or omitted, or in compliance with a direction given, in accordance with this section.
- (8) The expense of any election conducted in accordance with this section shall be borne by the State; and the Consolidated Fund is to the necessary extent appropriated accordingly.
- (9) The Secretary of the organization shall, within such time as the Registrar may require, lodge with the Registrar a copy of the register of members referred to in section 63 and that register shall be open for inspection and extracts may be taken therefrom, at the office of the person conducting the election, by any member of the organization or candidate at the election.
- (10) In proceedings before the Commission or any court in connection with anything done or proposed to be done by reason of a request duly made in accordance with this section the copy register referred to in subsection (9) is evidence that the persons shown therein as members of the organization were, at the date on which that request was so made, members of the organization.
- (11) Where the Registrar decides that a request has not been duly made under this section he shall inform the organization and, where the request has been made by a person referred to in subsection (2)(b), that person, accordingly.
- (12) The officer or person who made the request for the conduct of the election under this section may, within 7 days of the organization or that person, as the case may be, being informed by the Registrar of his decision that the request has not been

duly made, appeal to the Full Bench in the manner prescribed against that decision.

[Section 69 amended by No. 94 of 1984 ss.42, 65 and 66; No. 98 of 1985 s.3; No. 6 of 1993 s.11; No. 1 of 1995 s.53.]

70. Offences in relation to elections

- (1) A person shall not, without lawful authority or excuse, in or in connection with an election for an office —
 - (a) personate another person to secure a ballot paper to which the personator is not entitled, or personate another person for the purpose of voting;
 - (b) destroy, deface, alter, take, or otherwise interfere with a nomination paper, ballot paper, or envelope;
 - (c) put or deliver a ballot paper or other paper —
 - (i) into a ballot box or other ballot receptacle;
 - (ii) into the post; or
 - (iii) to a person receiving ballot papers for the purposes of the election;
 - (d) record a vote which he is not entitled to record;
 - (e) record more than one vote;
 - (f) forge or utter, knowing it to be forged, a nomination paper, ballot paper, or envelope;
 - (g) supply a ballot paper;
 - (h) obtain, or have in his possession, a ballot paper; or
 - (i) destroy, take, open, or otherwise interfere with a ballot box.
- (2) A person shall not, in or in connection with an election for an office —
 - (a) threaten, offer or suggest violence, injury, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of, or to induce —
 - (i) candidature or withdrawal of candidature;

- (ii) a vote or an omission to vote;
- (iii) support or opposition to a candidate; or
- (iv) a promise of a vote, or an omission to vote, or of support for, or of opposition to a candidate;

or

- (b) use, cause, inflict, or procure violence, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of any such candidature, withdrawal, vote, omission, support, or opposition.

[Section 70 amended by No. 94 of 1984 s.65; No. 1 of 1995 s.53.]

71. Provisions relating to State branches of Federal organizations

- (1) In this section —

“Branch” means the Western Australian Branch of an organization of employees registered under the Commonwealth Act;

“Counterpart Federal Body”, in relation to a State organization, means a Branch the rules of which —

- (a) relating to the qualifications of persons for membership; and
- (b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with this section, are deemed to be, the same as the rules of the State organization relating to the corresponding subject matter; and

“State organization” means an organization of employees that is registered under Division 4 of Part II.

- (2) The rules of the State organization and its Counterpart Federal Body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same.

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- (3) The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is —
- (a) eligible to be a member of the State organization is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organization's Counterpart Federal Body; or
 - (b) eligible to be a member of the Counterpart Federal Body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organization.
- (4) The rules of a Counterpart Federal Body prescribing the offices which shall exist in the Branch are deemed to be the same as the rules of the State organization prescribing the offices which shall exist in the State organization if, for every office in the State organization there is a corresponding office in the Branch.
- (5) Where, after the coming into operation of this section —
- (a) the rules of a State organization are altered pursuant to section 62 to provide that each office in the State organization may, from such time as the Committee of Management of the State organization may determine, be held by the person who, in accordance with the rules of the State organization's Counterpart Federal Body, holds the corresponding office in that body; and
 - (b) the Committee of Management of the State organization decides and, in the prescribed manner notifies the Registrar accordingly, that from a date specified in the notification all offices in the State organization will be filled in accordance with the rule referred to in paragraph (a),

the Registrar shall issue the State organization with a certificate which declares —

- (c) that the provisions of this Act relating to elections for office within a State organization do not, from the date

referred to in paragraph (b), apply in relation to offices in that State organization; and

- (d) that, from that date, the persons holding office in the State organization in accordance with the rule referred to in paragraph (a) shall, for all purposes, be the officers of the State organization,

and the certificate has effect according to its tenor.

- (6) A State organization to which a certificate issued under this section applies may, notwithstanding any provision in its rules to the contrary, make an agreement with the organization of which the State organization's Counterpart Federal Body is the Branch, relating to the management and control of the funds or property, or both, of the State organization.
- (7) Where a memorandum of an agreement referred to in subsection (6) is —
 - (a) sealed with the respective seals of the State organization and the other organization concerned;
 - (b) signed on behalf of the State organization and the other organization by the persons authorized under their respective rules to execute such an instrument; and
 - (c) lodged with the Registrar,

the Full Bench may, if it is satisfied that the terms of the agreement are not detrimental to the interests of persons who are eligible to be members of the State organization and of its Counterpart Federal Body and will not prevent or hinder the State organization from satisfying any debt or obligation howsoever arising, approve the agreement.

- (8) Where the Full Bench approves an agreement under subsection (7) the Registrar shall —
 - (a) register the memorandum as an alteration to the rules of the State organization;

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- (b) amend, where necessary, the certificate issued to the State organization under subsection (5) by declaring that the State organization is, from the date of registration of the memorandum, exempted from compliance with such provisions of this Act and to such an extent as the Full Bench may, having regard to the terms of the memorandum, direct; and
 - (c) notify the State organization in writing of the matters referred to in paragraphs (a) and (b).
- (9) After the issue to a State organization of a certificate or an amended certificate under this section —
- (a) the rule referred to in subsection (5)(a) and a memorandum registered under subsection (8)(a) shall not be altered unless the alteration is approved by the Full Bench;
 - (b) an alteration to any rule of the State organization other than the rule referred to in paragraph (a) may be registered by the Registrar if he is satisfied that the rule as so altered is the same as a rule of the State organization's Counterpart Federal Body; and
 - (c) every member of the State organization's Counterpart Federal Body who is eligible to be a member of the State organization shall, for all the purposes of this Act and of any award, industrial agreement or order, be deemed to be a member of the State organization.
- (10) Before granting approval to an alteration of the rule or memorandum referred to in subsection (9)(a), the Full Bench may require compliance by the State organization with such conditions as the Full Bench considers appropriate.

[Section 71 amended by No. 94 of 1984 s.66; No. 119 of 1987 s.18; No. 1 of 1995 s.53.]

71A. Adoption of rules of Federal organizations

- (1) In this section —
 “Counterpart Federal Body” and **“State organization”** have the same respective meanings as in section 71.
- (2) Subject to this section, a State organization may alter its rules (in this section referred to as **“the State rules”**) by including in the State rules a provision (in this section referred to as **“the adopting provision”**) stating that all of the rules of its Counterpart Federal Body other than —
 - (a) a rule relating to the name of the State organization;
 - (b) a rule relating to the qualifications of persons for membership; and
 - (c) any rule specifically excluded in the adopting provision,are by force of this section adopted as rules of the State organization.
- (3) Subject to subsection (5) where a State organization alters its rules under subsection (2) the rules adopted by that State organization are by force of this section, and notwithstanding anything to the contrary in section 62, deemed to be rules of the State organization.
- (4) The rules adopted under subsection (2) include, unless provision to the contrary is made by the State organization in the adopting provision —
 - (a) any amendments made to those rules; and
 - (b) any further rules made by the Counterpart Federal Body,after the coming into operation of the adopting provision.
- (5) Where a State organization makes an adopting provision under subsection (2) —
 - (a) the Registrar shall register that adopting provision as an alteration to the rules of that State organization; and

- (b) that adopting provision shall not be or become effective until registered under paragraph (a).
- (6) Section 62 does not apply to or in relation to the alteration of State rules under or by force of this section.

[Section 71A inserted by No. 99 of 1990 s.9.]

72. Amalgamation of organizations

- (1) Where 2 or more organizations (in this section referred to as the amalgamating organizations) apply for the registration of a new organization and the rules of the proposed new organization are such that the only persons eligible for membership of the new organization will be persons who, if the amalgamating organizations had remained in being, would have been eligible for membership of at least one of the amalgamating organizations, the new organization may be registered by authority of the Full Bench.
- (2) An application under this section shall be made under the respective seals of the amalgamating organizations and shall be signed by the secretary and principal executive officer of each of those organizations.
- (3) The provisions of this Division applying to and in relation to the registration of organizations under section 53(1) or 54(1), other than section 55(5), shall apply with such modifications as are necessary, to and in relation to the registration of an organization under this section.
- (4) Subsection (1) does not prevent the alteration, pursuant to this Act, at any time after an organization has been registered under this section, of the rules referred to in that subsection.
- (5) On and from the date on which an organization is registered under this section —
 - (a) the registration of each of the amalgamating organizations is cancelled;

- (b) all the property, rights, duties, and obligations whatever held by, vested in, or imposed on each of those organizations shall be held by, vested in, or imposed on, as the case may be, the new organization;
- (c) actions and other proceedings already commenced by or against any of those organizations may be continued by or against the new organization and the new organization is substituted for each of those organizations as a party; and
- (d) actions and other proceedings that could have been brought by or against any of those organizations may be brought by or against the new organization.

[Section 72 inserted by No. 94 of 1984 s.43; amended by No. 1 of 1995 s.53; No. 79 of 1995 s.34.]

72A. Coverage of employee organizations

- (1) In this section —

“enterprise” means —

- (a) a business, or part of a business, that is carried on by a single employer;
- (b) a business, or part of a business, that is carried on by 2 or more employers as a joint venture or single enterprise;
- (c) activities carried on by a public authority, or part of those activities; or
- (d) a single project, undertaking or place of work;

“organization” means an organization of employees and includes the Western Australian Branch of the Australian Medical Association Incorporated.

- (2) An organization, an employer or the Minister may apply to the Full Bench for an order —
- (a) that an organization has the right, to the exclusion of another organization or other organizations, to represent

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under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization;

- (b) that an organization that does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise has that right;
 - (c) that an organization does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organization.
- (3) The Full Bench shall not hear an application under subsection (2) until the application has been published in the *Industrial Gazette* and 30 days have expired since the day of publication.
 - (4) On an application under subsection (2), the Full Bench may make one or more of the orders applied for, and may make any such order subject to any condition or limitation.
 - (5) The Full Bench shall not make any order described in subsection (2) without giving persons who, in the opinion of the Full Bench, have a sufficient interest in the matter an opportunity of being heard.
 - (6) Where an order is made under subsection (4), the Full Bench is to refer the matter to the President unless the Full Bench is satisfied that the rules of the organizations concerned do not need to be altered.
 - (7) On a referral under subsection (6) the President shall, after giving the organizations concerned an opportunity of being heard, make such alterations (if any) to the rules of the organizations as are, in the President's opinion, necessary to reflect the order made by the Full Bench.

- (8) An alteration shall be made by instrument in writing signed by the President and shall take effect on a day specified in the instrument.

[Section 72A inserted by No. 15 of 1993 s.20; amended by No. 79 of 1995 s.35.]

72B. AMA may represent interests of medical practitioners

- (1) In this section —
“**medical practitioner**” means a medical practitioner as defined in the *Medical Act 1894*;
“**WA Branch of the AMA**” means the Western Australian Branch of the Australian Medical Association Incorporated.
- (2) The WA Branch of the AMA may represent under this Act the industrial interests of medical practitioners as if it were an organization of employees and for that purpose —
- (a) the references to “**organization**” in paragraphs (e), (i), (j), (k) and (l) of the definition of “industrial matter” in section 7(1) include the WA Branch of the AMA; and
 - (b) Divisions 2 and 3 of Part II, sections 80C(4) and 80F and Parts III and VIA apply to the WA Branch of the AMA as if it were an organization of employees.
- (3) The WA Branch of the AMA does not have the right, to the exclusion of an organization or organizations, to represent under this Act the industrial interests of medical practitioners, unless an order to that effect is made under section 72A.
- (4) Within 30 days of the coming into operation of section 36 of the *Industrial Relations Legislation Amendment and Repeal Act 1995*¹ the WA Branch of the AMA shall lodge with the Registrar a copy of its rules as then in force.
- (5) The WA Branch of the AMA shall lodge with the Registrar, within 30 days of the making of the alteration, any alteration made to the rules lodged under subsection (4) as altered from time to time.

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- (6) The WA Branch of the AMA shall file with the Registrar once in each year, at such time as is prescribed —
- (a) a list of the names, residential addresses, and occupations of the persons holding offices in the Branch; and
 - (b) a record of the number of members of the Branch,

certified by statutory declaration by the Executive Director of the Branch to be a correct statement of the information contained in the list and the record.

[Section 72B inserted by No. 79 of 1995 s.36.]

73. Summons for cancellation or suspension of registration of organization

- (1) Subject to this section, the Commission may of its own motion or at the request of the Minister or any employer or organization at any time direct the Registrar in writing to issue to an organization a summons to appear before the Full Bench on a date specified in the summons, and show cause why the registration of the organization under this Act should not be cancelled or suspended, as the case may be, either generally or with respect to any employee or group or class of employees.
- (2) The Registrar shall ascertain from the President the date to be specified in the summons referred to in subsection (1) and that date shall not, without good cause, be less than 14 days from the date on which the summons is issued by the Registrar.
- (3) In respect of a request made under subsection (1) —
- (a) where the request is made by the Minister and is accompanied by a declaration made by him that in his opinion —
 - (i) the safety, health, or welfare of the community or a part of it is at risk; or

- (ii) a number of a group or class of employees who are, or are eligible to be, members of the organization is bound by an award under the Commonwealth Act; or
 - (iii) there is sufficient evidence of breaches by the organization of section 67, 68, 69, 70 or 71 of the *Workplace Agreements Act 1993* or section 97B(2) of this Act,
the Commission shall give a direction under that subsection; and
 - (b) in any other case, the Commission may give a direction under that subsection if, by reason of the conduct of the organization or its officers or members or any of them, either generally or in a particular case, it appears to the Commission that the continuance of the registration is not consistent with or will not serve the objects of this Act, but the Commission shall not give such a direction in a case to which this paragraph applies unless it has advised the organization of its intention to do so and has invited such officers of the organization as the Commission considers appropriate to consult with it in respect of that conduct.
- (4) A direction to the Registrar under subsection (1) shall include a statement of the reasons for which the direction is given and a copy of that statement shall be attached to the summons referred to in that subsection and served therewith.
 - (5) The organization concerned may apply to the Registrar for further particulars of the statement of reasons referred to in subsection (4) and the Registrar shall supply such further particulars as the Commissioner who constituted the Commission that gave the direction may direct.
 - (6) For the hearing and determination of a matter under this section the Commissioner referred to in subsection (5) shall not be a member of the Full Bench.

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- (7) On the return of the summons (not being a summons to which subsection (7b) applies) if it appears to the Full Bench that by reason of the conduct of the organization or its officers or members or any of them, either generally or in any particular case, the continuance of the registration is not consistent with or will not serve the objects of this Act, the Full Bench —
- (a) shall make one of the orders described in subsection (7a); and
 - (b) may make one or both of the orders described in subsection (8).
- (7a) The orders referred to in subsection (7)(a) are —
- (a) an order cancelling the registration of the organization;
 - (b) an order cancelling the rights of the organization under this Act either generally or with respect to any employee or group or class of employees specified in the order; or
 - (c) an order suspending for a time specified in the order or without limit of time and, in either case, subject to such conditions or exceptions, or both, as the Full Bench thinks fit, that registration or those rights.
- (7b) On the return of a summons issued following a declaration by the Minister under subsection (3)(a)(ii), if it appears to the Full Bench that a number of a group or class of employees who are, or are qualified to be, members of an organization is bound by an award under the Commonwealth Act, the Full Bench —
- (a) shall make an order cancelling the rights of the organization under this Act with respect to that group or class of employees; and
 - (b) may make an order under subsection (8)(a).

- (8) For the purposes of subsection (7) and notwithstanding anything in this Act, the orders which the Full Bench may make include —
- (a) an order with respect to the rules of the organizations cancelling or suspending or varying in any way the rules or any part of the rules referred to in section 55(2); and
 - (b) an order cancelling or suspending an award, industrial agreement or order or any provision of an award, industrial agreement or order.
- (8a) For the purposes of this section a breach of section 67, 68, 69, 70 or 71 of the *Workplace Agreements Act 1993* —
- (a) that is committed by an officer, employee or member of an organization is also committed by the organization if —
 - (i) it is proved that the organization or the committee of management of the organization instigated or encouraged the breach; or
 - (ii) where subparagraph (i) does not apply, the organization does not prove that it took all reasonable steps available to it to prevent the breach;
- or
- (b) that is committed by a person who is eligible to be a member of an organization is also committed by the organization if it is proved that the organization or the committee of management of the organization instigated or encouraged the breach.
- (9) An order made under this section comes into operation and has effect from such date on or after the making of the order as the Full Bench may determine and specify therein, but it may be prescribed in the order that the order shall not commence to operate from the date specified therein if, before that date, the organization satisfies the Full Bench that it has complied or is

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complying with conditions or requisitions made by the Full Bench when making the order.

- (10) An order made under this section may provide for the cancellation of the registration of an organization after such period of suspension of rights under this Act as the Full Bench considers necessary to enable any debts, liabilities, or obligations incurred by the organization to be met and the period of suspension under this subsection may be extended by the Full Bench to such extent as may appear to the Full Bench to be necessary.
- (10a) Subsection (10) does not apply to an order made under this section for the cancellation of the registration of an organization pursuant to an application under subsection (12)(aa).
- (10b) In making an order for cancellation of registration pursuant to an application under subsection (12)(aa) the Full Bench may direct that the order is not to take effect until the expiration of such period as the Full Bench considers necessary to enable any debts, liabilities, or obligations incurred by the organization to be met.
- (11) An order made under this section has effect according to its tenor and the Registrar shall, where necessary, amend his records accordingly.
- (12) The Full Bench shall cancel the registration of an organization if it is satisfied on the application of the Registrar that —
- (a) the number of members of the organization or, the number of employees of the members of the organization would not entitle it to registration under section 53 or section 54, as the case may be;
 - (aa) the rights of the organization generally have been cancelled;
 - (b) the organization is defunct; or
 - (c) the organization has, in the manner prescribed, requested that its registration be cancelled.

- (12a) The Registrar shall make an application under subsection (12) in every case where it appears to him or her that there are sufficient grounds for doing so.
- (13) Proceedings for the cancellation or suspension of the registration of an organization, or any of its rights under this Act, shall not be instituted otherwise than under this section or Part IIIA.
- (14) During any period in which —
- (a) an organization of employees is not registered; or
 - (b) the registration of an organization of employees is suspended,

an employer shall not deduct from the wages of any employee any amount for or in respect of membership of the organization.

Penalty: \$2 000.

[Section 73 amended by No. 121 of 1982 s.23; No. 94 of 1984 ss.44 and 66; No. 119 of 1987 s.19; No. 15 of 1993 s.21; No. 3 of 1997 ss.9 and 19.]

Division 5 — Duties of officers and employees of organizations

[Heading inserted by No. 79 of 1995 s.8(1); amended by No. 3 of 1997 s.4.]

74. Duties

- (1) In this section and in section 77 —
- “**finance official**” means an officer or employee of an organization who is entitled to participate directly in the financial management of the organization and includes an employee who is entitled to so participate in a representative or advisory capacity.
- (2) A finance official is to act honestly at all times in the performance of the functions of the finance official’s office or employment.

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- (3) A finance official is to exercise a reasonable degree of care and diligence at all times in the performance of the functions of the finance official's office or employment.
- (4) The degree of care and diligence required by subsection (3) is the degree of care and diligence that a reasonable person in the finance official's position would reasonably be expected to exercise.
- (5) Each finance official of an organization is to ensure that the organization keeps and maintains accounting records as required by section 63(1)(c).
- (6) A person who is or has been a finance official of an organization is not to make use of information acquired by virtue of the person's position as a finance official to obtain or seek to obtain directly or indirectly, a pecuniary advantage for the person or for any other person or to cause or seek to cause detriment, loss or damage to the organization.
- (7) Subsection (6) does not apply to acts done —
 - (a) in and for the purposes of the performance of the functions of a finance official's office or employment; or
 - (b) with the consent of the committee of management of the organization.
- (8) Details of any matter about which consent is given under subsection (7)(b) are to be disclosed by the committee of management to the members of the organization in accordance with the rules of the organization.
- (9) A finance official of an organization is not to make use of the finance official's position as a finance official to obtain or seek to obtain, directly or indirectly, a pecuniary advantage for the official or for any other person or to cause or seek to cause detriment, loss or damage to the organization.
- (10) Subsection (9) does not apply to acts done in and for the purposes of the performance of the functions of a finance official's office or employment.

- (11) A finance official of an organization is to provide the committee of management of the organization with returns of the finance official's pecuniary interests at such times and in such form as are prescribed by the rules of the organization.
- (12) A finance official of an organization who has a material personal interest in a matter involving the organization is to disclose the nature of the interest to the committee of management of the organization as soon as is practicable after the relevant facts come to the finance official's knowledge.
- (13) Subject to section 79, this section is in addition to, and not in derogation of, any rule of law relating to the duties or liabilities of a finance official and does not prevent the institution of civil proceedings in respect of a breach of such a duty or in respect of such a liability.

[Section 74 inserted by No. 79 of 1995 s.8(1); amended by No. 3 of 1997 s.5.]

75. Auditor to report on compliance with duties

- (1) In reporting on the accounting records of an organization under section 65 the auditor is to express an opinion as to whether any person has contravened or failed to comply with section 74.
- (2) If the auditor finds that the accounting records are not in a form that enables an informed opinion to be expressed as required by subsection (1), the auditor is to report that finding.

[Section 75 inserted by No. 79 of 1995 s.8(1).]

76. Rules are not to conflict with section 74 or 75

Within 6 months of the coming into operation of section 8 of the *Industrial Relations Legislation Amendment and Repeal Act 1995*¹ the Registrar shall review the rules of each organization of employees and shall, by application pursuant to section 66, bring before the President the rules of any

organization of employees if, in the opinion of the Registrar, any of those rules is contrary to or inconsistent with section 74 or 75.

[Section 76 inserted by No. 79 of 1995 s.8(1).]

77. Proceedings for breach of duty

- (1) If a person who is or has been a finance official of an organization (“**the respondent**”) contravenes or fails to comply with section 74 —

- (a) the organization;
- (b) an officer of the organization;
- (c) a member of the organization;
- (d) the Registrar or a Deputy Registrar; or
- (e) an Industrial Inspector,

may apply in the prescribed manner to an industrial magistrate’s court for the enforcement of section 74.

- (2) On the hearing of an application under subsection (1) the industrial magistrate’s court may, if the contravention or failure to comply is proved, do any one or more of the following —

- (a) by order, issue a caution to the respondent;
- (b) subject to subsection (3) and section 79(5)(a), by order impose a penalty on the respondent of such amount as the industrial magistrate’s court considers just, but not exceeding \$5 000;
- (c) order the respondent to pay compensation to the organization in respect of any loss or damage suffered by the organization as a result of the contravention or failure to comply;
- (d) order the restitution or forfeiture of any pecuniary advantage obtained by any person as a result of the contravention or failure to comply;
- (e) order the respondent to do any specified thing or to cease any specified activity.

- (3) Only one penalty can be imposed on the respondent under subsection (2)(b) in respect of contraventions or failures to comply arising out of one course of conduct.
- (4) The industrial magistrate's court may, by order, dismiss an application under subsection (1).
- (5) Subject to subsection (6) an order under subsection (2) or (4) may be made with or without costs.
- (6) Costs shall not be given against the Registrar, a Deputy Registrar or an Industrial Inspector in relation to proceedings under this section.
- (7) Where the industrial magistrate's court orders money to be paid under this section by way of a penalty, compensation, restitution, forfeiture or costs the industrial magistrate's court shall state in the order the name of the person liable to pay the money and the name of the person to whom the money is to be paid.

[Section 77 inserted by No. 79 of 1995 s.8(1); amended by No. 3 of 1997 s.6.]

78. Failure to comply with order

A person who fails to comply with an order under section 77(2)(e) is guilty of an offence and liable to a penalty of \$5 000 and a daily penalty of \$500.

[Section 78 inserted by No. 3 of 1997 s.7.]

79. Effect on or of other proceedings

- (1) Subject to subsection (3), where an application is made to an industrial magistrate's court under section 77, the matter to which the application relates (whether as shown in the application or as emerging in the course of the determination of the application) is not justiciable by another court in civil proceedings unless —
 - (a) that matter was before that other court at the time when the application was made to the industrial magistrate's court; or

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- (b) the application to the industrial magistrate's court is withdrawn or not pursued.
- (2) Where a matter that an industrial magistrate's court has jurisdiction to determine under section 77 is before another court in civil proceedings, that other court may order that the matter be transferred to and determined by the industrial magistrate's court.
- (3) Where a matter that a court has jurisdiction to determine in civil proceedings is before an industrial magistrate's court, the industrial magistrate's court may order that the matter be transferred to and determined by that other court.
- (4) In making an order for compensation, restitution or forfeiture under section 77(2)(c) or (d) an industrial magistrate's court is to have regard to any amount that the respondent has been ordered to pay in civil proceedings relating to the same matter in another court.
- (5) If criminal proceedings are instituted under any other enactment in respect of conduct that also constitutes a contravention of or failure to comply with section 74 —
 - (a) an industrial magistrate's court is not to impose a penalty under section 77(2)(b) in proceedings under section 77 in respect of the matter; but
 - (b) the outcome of the criminal proceedings is not to be taken into consideration in the determination of proceedings under section 77 in respect of the matter.

[Section 79 inserted by No. 3 of 1997 s.7.]

80. Disqualification for breach of duty

- (1) If an order is made against an officer of an organization under section 77(2)(b), (c), (d) or (e), the industrial magistrate's court may, on the application of the Registrar, order —
 - (a) that the officer's office becomes vacant when the order is made; and

- (b) that, from the time when the order is made, the officer is disqualified from holding or acting in any office in the organization during such period of not more than 3 years as is specified in the order.
- (2) The industrial magistrate's court may include in an order under subsection (1) any provision that it considers necessary to ensure the operation of the order and to provide for the election or appointment of a person to replace the officer whose office becomes vacant under the order.
- (3) A person who performs or attempts to perform the functions of an office in the organization while disqualified by an order under subsection (1) from holding or acting in the office commits an offence punishable by the Supreme Court as for a contempt.

[Section 80 inserted by No. 3 of 1997 s.7.]

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[Heading inserted by No. 94 of 1984 s.47.]

[Division 1 (sections 73A, 80A, 80B.) repealed by No. 1 of 1995 s.10.]

Division 2 — Public Service Arbitrator and appeal boards

[Heading inserted by No. 94 of 1984 s.47.]

80C. Interpretation, construction and application of this Division

- (1) For the purposes of this Division, unless the contrary intention appears —

“**Arbitrator**” means the Commission constituted by a Public Service Arbitrator appointed under this Division;

“**Association**” means the organization registered as the Civil Service Association of Western Australia Incorporated;

“**Board**” means the Commission constituted as a Public Service Appeal Board established under this Division;

“**employer**”—

- (a) in relation to a Government officer who is a public service officer, means the employing authority of that public service officer; and
- (b) in relation to any other Government officer, means the public authority by whom or by which that Government officer is employed;

“**employing authority**” means employing authority within the meaning of the *Public Sector Management Act 1994*;

“**Government officer**” means —

- (a) every public service officer;
- (aa) each member of the Governor’s Establishment within the meaning of the *Governor’s Establishment Act 1992*;

- (ab) each member of a department of the staff of Parliament referred to in, and each electorate officer within the meaning of, the *Parliamentary and Electorate Staff (Employment) Act 1992*;
 - (b) every other person employed on the salaried staff of a public authority; and
 - (c) any person not referred to in paragraph (a) or (b) who would have been a Government officer within the meaning of section 96 of this Act as enacted before the coming into operation of section 58 of the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984*¹,
- but does not include —
- (d) any teacher;
 - (e) any railway officer as defined in section 80M; or
 - (f) any member of the academic staff of a post-secondary education institution.
- (2) This Division shall be read in conjunction with the *Public Service Act 1978*⁵.
 - (3) Sections 80E and 80F do not apply to a Government officer if and when he occupies —
 - (a) an office for which the remuneration payable is determined or recommended pursuant to the *Salaries and Allowances Act 1975*; or
 - (b) an office for which the remuneration is determined by an Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.
 - (4) Where any industrial matter in relation to a Government officer or group of Government officers is being dealt with under this Act and a question arises between 2 or more organizations as to which of them or whether or not one of them, should be named as a party to an award or order or should become a party to an

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industrial agreement, regard shall be had, when that question is being determined, to the past coverage of such Government officers by organizations under awards, orders and industrial agreements and under unregistered industrial agreements that the Commission considers to be relevant.

[Section 80C inserted by No. 94 of 1984 s.47; amended by No. 40 of 1992 s.9(1)¹¹; No. 32 of 1994 s.14; No. 103 of 1994 s.18; No. 1 of 1995 s.11; No. 79 of 1995 s.36.]

80D. Appointment of Public Service Arbitrators

- (1) At least one Public Service Arbitrator shall be appointed within the Commission.
- (2) An additional Public Service Arbitrator or additional Public Service Arbitrators may be appointed within the Commission.
- (3) An Arbitrator shall be appointed by the Chief Commissioner from amongst the other Commissioners.
- (4) An Arbitrator shall hold office for such period not exceeding 2 years as is specified in the instrument of his appointment and is eligible for reappointment.
- (5) The office of an Arbitrator becomes vacant if —
 - (a) he ceases to be a Commissioner; or
 - (b) his appointment as an Arbitrator is terminated pursuant to subsection (6).
- (6) The Chief Commissioner may at any time terminate the appointment of an Arbitrator.

[Section 80D inserted by No. 94 of 1984 s.47.]

80E. Jurisdiction of Arbitrator

- (1) Subject to Division 3 of Part II and subsections (6) and (7), an Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a Government officer, a group of Government officers or Government officers generally.

- (2) Without limiting the generality of subsection (1) the jurisdiction conferred by that subsection includes jurisdiction to deal with —
- (a) a claim in respect of the salary, range of salary or title allocated to the office occupied by a Government officer and, where a range of salary was allocated to the office occupied by him, in respect of the particular salary within that range of salary allocated to him; and
 - (b) a claim in respect of a decision of an employer to downgrade any office that is vacant.

[(3) and (4) deleted]

- (5) Nothing in subsection (1) or (2) shall affect or interfere with the exercise by an employer in relation to any Government officer, or office under his administration, of any power in relation to any matter within the jurisdiction of an Arbitrator, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by an Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Division.
- (6) Notwithstanding subsection (1), but subject to subsection (7), an Arbitrator may —
- (a) with the consent of the Chief Commissioner refer an industrial matter referred to in subsection (1) or any part of that industrial matter to the Commission in Court Session for hearing and determination by the Commission in Court Session; and
 - (b) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organization, arising in a matter before the Arbitrator,

and the Commission in Court Session or the Full Bench, as the case may be, may hear and determine the matter, or part thereof, or question, so referred.

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- (7) Notwithstanding subsections (1) and (6), an Arbitrator does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench, any matter in respect of which a procedure referred to in section 97(1)(a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.

[Section 80E inserted by No. 94 of 1984 s.47; amended by No. 99 of 1990 s.12; No. 1 of 1995 s.28.]

80F. By whom matters may be referred to Arbitrator

- (1) Subject to subsections (2) and (3) an industrial matter may be referred to an Arbitrator under section 80E by an employer, organization or association or by the Minister.
- (2) A claim mentioned in section 80E(2)(a) may be referred to an Arbitrator by the Government officer concerned, or by an organization on his behalf, or by his employer.
- (3) A claim mentioned in section 80E(2)(b) may be referred to an Arbitrator by an organization or an employer.

[Section 80F inserted by No. 94 of 1984 s.47.]

80G. Provisions of Part II, Division 2, to apply

- (1) Subject to this Division, the provisions of Division 2 of Part II that apply to or in relation to the exercise of the jurisdiction of the Commission constituted by a Commissioner shall apply with such modifications as are prescribed and such other modifications as may be necessary or appropriate, to the exercise by an Arbitrator of his jurisdiction under this Act.
- (2) For the purposes of subsection (1), section 49 shall not apply to a decision of an Arbitrator on a claim mentioned in section 80E(2).

[Section 80G inserted by No. 94 of 1984 s.47.]

80H. Public Service Appeal Board

- (1) For the purpose of an appeal under section 80I there shall be established, within and as part of the Commission, a Board to be known as a Public Service Appeal Board.
- (2) A Board shall consist of 3 members.
- (3) In the case of an appeal referred to in section 80I(1)(a), (b) or (c), the members of a Board shall be —
 - (a) the President, who shall be the Chairman;
 - (b) an employer’s representative appointed by the employer of the appellant; and
 - (c) an employee’s representative appointed by the relevant organization.
- (4) In the case of an appeal referred to in section 80I(1)(d) or (e), the members of a Board shall be —
 - (a) a Public Service Arbitrator, who shall be the Chairman;
 - (b) an employer’s representative appointed by the employer of the appellant; and
 - (c) an employee’s representative appointed by the relevant organization.
- (5) In subsections (3) and (4) “**relevant organization**” means the Association unless the appellant is a member of another organization in which case it means that organization.
- (6) In this section and section 80J “**organization**” means an organization of employees registered under Division 4 of Part II, an association of employees registered as an organization pursuant to the provisions of the Commonwealth Act or, in the case of an appeal by a medical practitioner employed in a public hospital, the Western Australian Branch of the Australian Medical Association Incorporated.

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- (7) In subsection (4) “**Public Service Arbitrator**” means a Commissioner who is, for the time being, a Public Service Arbitrator appointed under section 80D.

[Section 80H inserted by No. 94 of 1984 s.47; amended by No 32 of 1994 s.14; No. 79 of 1995 s.67(2).]

80I. Appeals

- (1) Subject to section 52 of the *Public Sector Management Act 1994* and subsection (3) of this section, a Board has jurisdiction to hear and determine —
- (a) an appeal by any public service officer against any decision of an employing authority in relation to an interpretation of any provision of the *Public Sector Management Act 1994*, and any provision of the regulations made under that Act, concerning the conditions of service (other than salaries and allowances) of public service officers;
 - (b) an appeal by a Government officer, who is the holder of an office included in the Special Division of the Public Service for the purposes of section 6(1) of the *Salaries and Allowances Act 1975*, under section 78 of the *Public Sector Management Act 1994* against a decision referred to in subsection (1)(b) of that section;
 - (c) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any Government officer who occupies a position that carries a salary not lower than the prescribed salary from a decision, determination or recommendation of the employer of that Government officer that the Government officer be dismissed;
 - (d) an appeal by a Government officer, other than a person referred to in paragraph (b), under section 78 of the *Public Sector Management Act 1994* against a decision referred to in subsection (1)(b) of that section;

- (e) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any Government officer who occupies a position that carries a salary lower than the prescribed salary from a decision, determination or recommendation of the employer of that Government officer that the Government officer be dismissed,

and to adjust all such matters as are referred to in paragraphs (a), (b), (c), (d) and (e).

- (2) In subsection (1) “**prescribed salary**” means the lowest salary for the time being payable in respect of a position included in the Special Division of the Public Service for the purposes of section 6(1) of the *Salaries and Allowances Act 1975*.
- (3) A Board does not have jurisdiction to hear and determine an appeal by a Government officer from a decision made under regulations referred to in section 94 of the *Public Sector Management Act 1994*.

[Section 80I inserted by No. 94 of 1984 s.47; amended by No. 32 of 1994 s.14; No. 1 of 1995 s.29.]

80J. Institution of appeals

An appeal under section 80I —

- (a) shall be instituted in the prescribed manner and within the prescribed time;
- (b) may be instituted by the public service officer or other Government officer concerned or by an organization on his behalf.

[Section 80J inserted by No. 94 of 1984 s.47; amended by No. 32 of 1994 s.14.]

80K. Proceedings of Boards

- (1) For the purposes of exercising its jurisdiction a Board may sit at any time and place appointed by the Chairman of the Board and may adjourn to any time and place appointed by him.
- (2) The decision of a Board shall be given in writing and shall be signed and delivered by the Chairman of the Board.
- (3) The jurisdiction of a Board shall be exercised by all the members sitting together and when the members are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.
- (4) To the extent to which it is not prescribed a Board may regulate its own procedure.

[Section 80K inserted by No. 94 of 1984 s.47.]

80L. Certain provisions of Part II, Division 2, to apply

- (1) Subject to this Division the provisions of sections 26(1) and (3), 27, 28, 31(1), (2), (3), (5) and (6), 34(3) and (4) and 36 that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a Commissioner shall apply, with such modifications as are prescribed and such other modifications as may be necessary, to the exercise by a Board of its jurisdiction under this Act.
- (2) For the purposes of subsection (1) section 31(1) shall apply as if paragraph (c) were deleted and the following paragraph were substituted —
 - “ (c) by a legal practitioner. ”.

[Section 80L inserted by No. 94 of 1984 s.47.]

Division 3 — Railways Classification Board

[Heading inserted by No. 94 of 1984 s.47.]

80M. Interpretation of this Division

- (1) In this Division unless the contrary intention appears —
- “**Board**” means the Commission constituted by the Railways Classification Board established under this Division;
- “**head of branch**” means an officer in control of one of the recognized divisions of the staff of the Railways Commission who receives his instructions from and communicates with the Railways Commission directly;
- “**member**” means any member of the Board and includes the Chairman;
- “**Minister for Railways**” means the Minister to whom the administration of the *Government Railways Act 1904* is for the time being committed;
- “**railway officer**” means any person —
- (a) holding or acting in a salaried position; or
 - (b) receiving a daily rate of pay as a temporary clerk in the service of the Railways Commission;
- “**Railways Commission**” means The Western Australian Government Railways Commission constituted pursuant to the provisions of the *Government Railways Act 1904*;
- “**salaried position**” means a position in the service of the Railways Commission to which an annual salary is assigned but does not include —
- (a) the position of head of branch or sub-head of branch; or
 - (b) a position held by a person engaged in a professional capacity;

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“**sub-head of branch**” means an officer in control of some recognized section of a division of the staff of the Railways Commission who receives his instructions from and communicates with the head of the branch directly;

“**Union**” means the body known as the West Australian Railway Officers Union.

- (2) Subject to this Division, the Union shall be deemed to be, and shall have and enjoy all of the rights, privileges and duties of, an organization registered under this Act.
- (3) Forthwith after the coming into operation of section 47 of the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984*¹ the Union shall lodge with the Registrar a true copy of its constitution and rules as then in force, certified in writing under the hands of its President and Secretary, and thereafter those rules shall be deemed to be the registered rules of the Union and shall not be altered other than in accordance with this Act.

[Section 80M inserted by No. 94 of 1984 s.47.]

80N. Railways Classification Board established

- (1) There shall be established, within and as part of the Commission, a Board to be known as the Railways Classification Board.
- (2) Subject to this Act, the Board shall consist of 3 members, of whom —
 - (a) one shall be appointed by the Chief Commissioner from amongst the other Commissioners, after consultation with the Minister for Railways and the Union, and shall be Chairman of the Board;
 - (b) one shall be a person nominated for appointment by the Railways Commission and appointed by the Governor; and
 - (c) one shall be a person nominated for appointment by the Union and appointed by the Governor.

- (3) Whenever it is necessary for a person to be nominated for appointment to an office referred to in subsection (2)(b) or (c) the Minister shall, in writing, request the Railways Commission, or the Union, as the case requires, to submit to him, in writing, the name of a person willing to act as a member of the Board.
- (4) Where a request under subsection (3) is made to the Union the Electoral Commissioner appointed under the *Electoral Act 1907*, or some other officer appointed by him in writing, shall conduct an election in the prescribed manner amongst the members of the Union for the purposes of determining the name of the person to be nominated by that body for appointment to the office of member, but if, for any reason, a person is not elected for nomination within the period prescribed in that behalf the Union may determine that name in accordance with its rules.
- (5) Where the Railways Commission or the Union has been requested under subsection (3) to submit the name of a person to the Minister —
- (a) if such a name is submitted to the Minister within the prescribed period of the Railways Commission or the Union, as the case requires, receiving the request, the person whose name appears on the submission shall be appointed to the office of member; and
 - (b) if default is made within that time in submitting a name to the Minister, the Minister may nominate for appointment to the office of member such person as he thinks fit.
- (6) A person who has been dismissed from the service of the Railways Commission for misconduct is not eligible for appointment as a member or the deputy of a member of the Board.

[Section 80N inserted by No. 94 of 1984 s.47.]

80O. Terms of office, etc.

- (1) Subject to this Act —
 - (a) a person appointed as Chairman or as a member pursuant to section 80N(2)(b) shall hold office for such period, not exceeding 2 years as is specified in the instrument of his appointment and is eligible for reappointment;
 - (b) a person appointed as a member pursuant to section 80N(2)(c) shall hold office for a period of 2 years and is eligible for reappointment.
- (2) The office of the Chairman becomes vacant if —
 - (a) he ceases to be a Commissioner; or
 - (b) his appointment as a member of the Board is terminated pursuant to subsection (3).
- (3) The Chief Commissioner may, after consultation with the Union, at any time terminate the appointment of the Chairman as a member of the Board.
- (4) The Governor may terminate the appointment of a member referred to in section 80N(2)(b) or (c) for inability, inefficiency or misbehaviour.
- (5) The office of a member referred to in section 80N(2)(b) or (c) shall become vacant if —
 - (a) in the case of a member referred to in section 80N(2)(b), the nomination of the Railways Commission of the member is withdrawn;
 - (b) he resigns pursuant to subsection (6);
 - (c) he is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
 - (d) his appointment is terminated pursuant to subsection (4);
or

- (e) he is dismissed from the service of the Railways Commission for misconduct.
- (6) A member referred to in section 80N(2)(b) or (c) may resign his office by written notice signed by him and addressed to the Minister and the resignation takes effect on the day on which it is received by the Minister or on such later day as is specified in the notice.
- (7) The Chief Commissioner may, after consultation with the Minister for Railways and the Union, appoint a Commissioner to be the deputy of the Chairman and may at any time terminate that appointment.
- (8) The Governor may —
 - (a) appoint as deputy of a member, other than the Chairman, a person who has been nominated in the manner in which the member was nominated; and
 - (b) terminate any appointment under paragraph (a) at any time.
- (9) A person appointed pursuant to subsection (7) or (8) has all the functions, powers and duties of the member for whom he is the deputy, in his capacity as a member, in the event of —
 - (a) that member being unable to attend to his duties under this Division, whether on account of illness or otherwise; or
 - (b) the office of that member being vacant.

[Section 80O inserted by No. 94 of 1984 s.47.]

80P. Continuation in office

- (1) Notwithstanding the expiry of the period of appointment of a member or deputy of a member, the Chief Commissioner or the Governor, as the case may be, may continue him in office for such period as the Chief Commissioner or the Governor determines in order to enable the Board to complete all matters,

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proceedings or inquiries that it has entered upon while he was a member or deputy.

- (2) The Chief Commissioner or the Governor, as the case may be, may from time to time extend a period determined by him under subsection (1), notwithstanding the expiry of that period, for such further period or periods as he thinks fit.

[Section 80P inserted by No. 94 of 1984 s.47.]

80Q. Validity of acts of Board

An act, proceeding, decision or determination of the Board is not invalid by reason of any defect or irregularity in the election, nomination or appointment of any member or deputy of a member.

[Section 80Q inserted by No. 94 of 1984 s.47.]

80R. Jurisdiction of Board

- (1) Subject to Division 3 of Part II and subsections (2a) and (3), the Board has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a railway officer, a group of railway officers or railway officers generally.
- (2) Without limiting the generality of subsection (1), but subject to subsection (2a), the jurisdiction conferred by that subsection includes jurisdiction —
- (a) to classify all salaried positions;
 - (b) to create classes and to provide the minimum and maximum salaries of all salaried positions in any class;
 - (c) to prescribe the method by which railway officers shall be advanced from the minimum to the maximum of the salary assigned to their positions, or from class to class;
 - (d) to hear and determine any application by any railway officer or class of railway officers in respect of the classification, reclassification, or salary of that railway

- officer or class of railway officers, or his or their position or positions;
- (e) to hear and determine any appeal by the Union in respect of the reclassification of a salaried position by the Railways Commission pursuant to section 80U(1); and
 - (f) to hear and determine any application by the Railways Commission in respect of the classification, reclassification or salary of any railway officer or class of railway officers or his or their position.
- (2a) Where the Westrail Enterprise Bargaining Agreement provides that an industrial matter is to be included in an umbrella enterprise award established in accordance with that Agreement, that industrial matter —
- (a) is, for the purposes of enabling such an award to be made by the Commission, taken to be an industrial matter in respect of which the Board does not have jurisdiction; and
 - (b) ceases to be an industrial matter in respect of which the Board has jurisdiction upon the making by the Commission of such an award including that industrial matter.
- (2b) In subsection (2a) “**Westrail Enterprise Bargaining Agreement**” means the Westrail Enterprise Bargaining Agreement 1992 registered by the Commission on 18 February 1993, as renewed from time to time, or any Agreement expressed to be made in substitution for that Agreement.
- (3) Notwithstanding subsection (1) the Board may —
- (a) with the consent of the Chief Commissioner refer an industrial matter referred to in subsection (1) or any part of that industrial matter to the Commission in Court Session for hearing and determination by the Commission in Court Session; and

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- (b) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of an organization, arising in a matter before the Board,

and the Commission in Court Session or the Full Bench, as the case may be, may hear and determine the matter, or part thereof, or question, so referred.

[Section 80R inserted by No. 94 of 1984 s.47; amended by No. 99 of 1990 s.13; No. 1 of 1995 s.36.]

80S. By whom matters may be referred to Board

- (1) Subject to section 80R(2)(d), (e) and (f) an industrial matter may be referred to the Board by the Union or the Railways Commission.
- (2) An application referred to in section 80R(2)(d) may be made by the railway officer or officers concerned or by the Union on his or their behalf.

[Section 80S inserted by No. 94 of 1984 s.47.]

[80T. Repealed by No. 1 of 1995 s.30.]

80U. Reclassification of vacant offices by Railways Commission

- (1) Where any salaried position becomes vacant by reason of the retirement, resignation or voluntary transfer of an officer from that position, the Railways Commission may reclassify that position.
- (2) Notwithstanding that a salaried position has been classified or reclassified by or under a decision or award of the Board, the Railways Commission shall not be regarded as having —
- (a) failed to give due effect to that decision; or

- (b) failed to comply with the provisions of that award, by reason only that it has reclassified that position pursuant to subsection (1).
- (3) Where the Board is notified by the Railways Commission that a salaried position classified under an award of the Board has been reclassified pursuant to subsection (1) then, unless the Board upholds an appeal against that reclassification under section 80R(2)(e), the Board shall vary the award in accordance with that reclassification.

[Section 80U inserted by No. 94 of 1984 s.47.]

80V. Proceedings of Board

- (1) For the purposes of exercising its jurisdiction the Board may sit at any time and place appointed by the Chairman and may adjourn to any time and place appointed by him.
- (2) The jurisdiction of the Board shall be exercised by all the members sitting together and when the members are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.
- (3) The decision of the Board shall be in the form of an award, order, determination or declaration and shall be signed and delivered by the Chairman.
- (4) To the extent to which it is not prescribed the Board may regulate its own procedure.

[Section 80V inserted by No. 94 of 1984 s.47.]

80W. Provisions of Part II, Division 2 and Division 2A, to apply

- (1) Subject to this Division, the provisions of Division 2 and Division 2A of Part II that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a Commissioner shall apply, with such modifications as are prescribed and such other modifications as

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Part IIA Constituent authorities

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may be necessary or appropriate, to the exercise by the Board of its jurisdiction under this Act.

- (2) For the purposes of subsection (1), section 49 does not apply to a decision of the Board referred to in section 80R(2).

[Section 80W inserted by No. 94 of 1984 s.47; amended by No. 79 of 1995 s.14.]

[Division 4 (sections 80X, 80Y, 80Z, 80ZA, 80ZB, 80ZC and 80ZD) repealed by No. 1 of 1995 s.31.]

Part IIB — Enquiries

[Heading inserted by No. 94 of 1984 s.47.]

80ZE. Enquiries

- (1) The Minister may refer to the Commission for enquiry and report under this section any matter that, in the opinion of the Minister, affects or may affect industrial relations and the Commission shall enquire into that matter and report to the Minister thereon.
- (2) Subsection (1) does not apply to an industrial matter or a matter that is otherwise within the jurisdiction of the Commission under this Act.
- (3) This section has effect subject to section 7C.

[Section 80ZE inserted by No. 94 of 1984 s.47; amended by No. 15 of 1993 s.22.]

Part IIC — Arrangements with other industrial authorities

[Heading inserted by No. 94 of 1984 s.47.]

80ZF. References to “Australian Commission”

In this Part a reference to the “**Australian Commission**” includes a reference to a member of the Australian Commission.

[Section 80ZF inserted by No. 94 of 1984 s.47.]

80ZG. Joint proceedings

- (1) If in the opinion of the Chief Commissioner it is appropriate to do so, the Commission may, notwithstanding anything in this Act, exercise, in the presence of —
 - (a) the Australian Commission;
 - (b) the parties to an industrial dispute in relation to which the Australian Commission is exercising power; and
 - (c) any witness summoned by the Australian Commission,any of the powers of the Commission that are exercisable by it in relation to an industrial matter.
- (2) Where the Commission is exercising, as provided by subsection (1), in relation to an industrial matter, any of the powers of the Commission that are exercisable by it, it may, without limiting the generality of section 26(1)(a) and (b), have regard to any evidence given, in its presence and in the presence of the parties to the industrial matter, to the Australian Commission, being evidence that is relevant to the exercise of those powers.
- (3) Nothing in this section shall be taken to prevent the Commission from exercising powers in relation to an industrial matter in the presence of any person other than the Australian Commission or a person referred to in subsection (1)(b) or (c).

[Section 80ZG inserted by No. 94 of 1984 s.47.]

80ZH. Reference of industrial matters to Australian Commission for determination under this Act

- (1) The Chief Commissioner may, where in his opinion it is appropriate to do so, request the President of the Australian Commission to nominate a member of the Australian Commission to deal with the whole or any part of an industrial matter which has arisen or is threatened or impending.
- (2) Where, in accordance with a request under subsection (1), the President of the Australian Commission nominates a member of the Australian Commission, the Chief Commissioner may refer the whole or part of the industrial matter in respect of which the request was made to the member to be inquired into and to be dealt with under this Act by conciliation, by arbitration or by conciliation and, if necessary, by arbitration, and may, at any time before a decision is made by the member in relation to the industrial matter, revoke the reference.
- (3) For the purposes of inquiring into and dealing with the whole or part of an industrial matter that has been referred to him under subsection (2), the member of the Australian Commission may exercise all the powers of the Commission under this Act that are exercisable by a Commissioner or by a constituent authority and in the exercise of those powers shall be deemed to be the Commission.
- (4) Without limiting subsection (3), a decision made by a member of the Australian Commission in relation to an industrial matter referred to him under subsection (2) shall, for the purposes of this Act, be deemed to be an award, order or declaration as the case may require, made by the Commission under this Act.

[Section 80ZH inserted by No. 94 of 1984 s.47.]

80ZI. Conferences with other industrial authorities

- (1) Where it appears to the Chief Commissioner to be desirable, in relation to a matter falling within the jurisdiction of the Commission, that a conference be held with a corresponding

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authority, he may, if that authority is willing, confer with that authority, or arrange for another member of the Commission to confer with that authority, with a view to securing coordination between any decision made or to be made under this Act and any decision made or to be made by that authority.

- (2) Where it appears to the Chief Commissioner to be desirable, he may confer with the Australian Commission in relation to the exercise, or the proposed exercise, of the powers of the Commission under section 80ZG.
- (3) In subsection (1) “**corresponding authority**” means the Australian Commission or any Board or Court of Conciliation or Arbitration or other tribunal, body or persons having authority under the laws of another State or a Territory of the Commonwealth to exercise any power of conciliation or arbitration with reference to industrial relations, or any Special Board constituted under any law of another State or a Territory relating to factories, or any other Board, Court, tribunal or body of another State or Territory prescribed for the purposes of this section.

[Section 80ZI inserted by No. 94 of 1984 s.47.]

80ZJ. Exercise of powers conferred under Commonwealth Act

- (1) Subject to this Act the Commission may exercise the powers conferred on it by or under such of the provisions as may be prescribed of the Commonwealth Act or of any other prescribed enactment.
- (2) A decision made by the Commission in exercise of the powers referred to in subsection (1) shall, for the purposes of this Act, be deemed not to have been made by the Commission under this Act.

[Section 80ZJ inserted by No. 94 of 1984 s.47.]

Part III — Enforcement of Act, awards, industrial agreements and orders

[Heading amended by No. 94 of 1984 s.48.]

81. Establishment of industrial courts

- (1) The Governor may by proclamation establish an industrial magistrate's court at any place within the State.
- (2) An industrial magistrate's court is a court of record and shall have an official seal of which judicial notice shall be taken.
- (3) The Governor may by proclamation disestablish an industrial magistrate's court.
- (4) When an industrial magistrate's court is disestablished, all proceedings pending in the industrial magistrate's court and all records of the industrial magistrate's court shall be transferred to such other industrial magistrate's court as the Governor in the relevant proclamation referred to in subsection (3) directs.

[Section 81 inserted by No. 44 of 1991 s.6¹².]

81A. Jurisdiction under this Act

An industrial magistrate's court has the jurisdiction conferred on it by sections 77, 80(1) and (2), 83, 83A, 84K, 96J, 97T, 97U, 110, 111 and 112.

[Section 81A inserted by No. 79 of 1995 s.19; amended by No. 3 of 1997 ss.8, 18, and 21(1).]

81AA. Jurisdiction under *Workplace Agreements Act 1993* etc.

In addition to its jurisdiction under this Act, an industrial magistrate's court has the jurisdiction conferred on it by —

- (a) Division 1 of Part 5 of the *Workplace Agreements Act 1993*;
- (b) section 100 of that Act; and

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- (ba) Part IV of the *Long Service Leave Act 1958*;
- (bb) section 36 of that Act;
- (bc) section 107C(2) of the *Child Welfare Act 1947*;
- (c) section 46 of the *Minimum Conditions of Employment Act 1993*.

[Section 81AA inserted by No. 15 of 1993 s.24; amended by No. 79 of 1995 s.20.]

81B. Constitution of industrial courts

- (1) An industrial magistrate's court shall be constituted by an industrial magistrate.
- (2) The Governor may, on the joint recommendation of the President and the Chief Stipendiary Magistrate, appoint a person holding office as a stipendiary magistrate to be an industrial magistrate.
- (3) An industrial magistrate ceases to hold office as such when —
 - (a) he ceases to be a stipendiary magistrate; or
 - (b) he resigns his office as industrial magistrate by writing delivered to the Governor.
- (4) When an industrial magistrate is, or is expected to be, for any reason unable to perform the functions of his office, the Governor may, on the joint recommendation of the President and the Chief Stipendiary Magistrate, appoint a person holding office as a stipendiary magistrate to act in the office of the industrial magistrate for the period, or the remainder of the period, as the case requires, during which the industrial magistrate is, or is expected to be, so unable.
- (5) An industrial magistrate or acting industrial magistrate shall, if the industrial magistrate's court constituted by him has not completed the hearing and determination of any application when he ceases to be an industrial magistrate or acting industrial magistrate, as the case requires, be deemed notwithstanding that

cessation to continue to hold office as an industrial magistrate or acting industrial magistrate until that hearing and determination are completed.

(6) In this section —

“Chief Stipendiary Magistrate” has the meaning given by the *Stipendiary Magistrates Act 1957*.

[Section 81B inserted by No. 44 of 1991 s.6¹².]

81C. **Sittings**

(1) Notwithstanding anything in section 81(1), an industrial magistrate’s court may sit and act at any time and place.

(2) Notice of the time when an industrial magistrate’s court will sit shall be posted in a public place at —

- (a) the place referred to in section 81(1); and
- (b) if the place referred to in section 81(1) is not the place where the industrial magistrate’s court will be sitting at the time, the place where the industrial magistrate’s court will be sitting at that time.

[Section 81C inserted by No. 44 of 1991 s.6.]

81CA. **Procedure, enforcement etc.**

(1) In this section —

“general jurisdiction” means the jurisdiction of an industrial magistrate’s court under —

- (a) section 77, 80(1) and (2), 83, 84K, 96J, 97U, 110, 111 or 112;
- (b) Part IV of the *Long Service Leave Act 1958*; or
- (c) Division 1 of Part 5 of the *Workplace Agreements Act 1993*;

“prosecution jurisdiction” means the jurisdiction of an industrial magistrate’s court under —

- (a) section 83A;

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- (aa) section 97T;
 - (b) section 100 of the *Workplace Agreements Act 1993*;
 - (c) section 36 of the *Long Service Leave Act 1958*;
 - (d) section 107C(2) of the *Child Welfare Act 1947*; or
 - (e) section 46 of the *Minimum Conditions of Employment Act 1993*.
- (2) Except as otherwise prescribed by or under this Act or another law —
- (a) the powers of an industrial magistrate’s court; and
 - (b) the practice and procedure to be observed by an industrial magistrate’s court,
- when exercising general jurisdiction are those provided for by the *Local Courts Act 1904* as if the proceedings were an action within the meaning of that Act.
- (3) Without limiting subsection (2), regulations may extend the circumstances in which an industrial magistrate’s court exercising general jurisdiction may hear and determine an action under Part VIA of the *Local Courts Act 1904*.
- (4) Section 88 applies to and in relation to an industrial magistrate’s court exercising general jurisdiction as if —
- (a) each reference to the Court in that section were a reference to the industrial magistrate’s court; and
 - (b) “or the Presiding Judge” in section 88(4) were deleted.
- (5) When exercising prosecution jurisdiction an industrial magistrate’s court constitutes a court of summary jurisdiction.
- (6) An order or other decision of an industrial magistrate’s court made in exercise of prosecution jurisdiction shall be enforced in accordance with the *Justices Act 1902*.

- (7) Subject to subsection (6), a judgment, order, direction or other decision of an industrial magistrate's court may be enforced in accordance with regulations made under section 113(3).
- (8) In the absence of evidence to the contrary, anything done by an industrial magistrate's court shall be taken to have been done within its jurisdiction.

[Section 81CA inserted by No. 79 of 1995 s.21; amended by No. 3 of 1997 ss.8, 18 and 21(2).]

81D. Clerks of industrial courts

- (1) Each industrial magistrate's court shall have a clerk, who shall be an officer of the Public Service.
- (2) An industrial magistrate may perform any function of a clerk of the industrial magistrate's court constituted by the industrial magistrate.
- (3) For the purposes of prosecution jurisdiction, the clerk of an industrial magistrate's court has in relation to the industrial magistrate's court like powers to those of a clerk of petty sessions acting under the *Justices Act 1902* in relation to the court of petty sessions to which he is attached.
- (4) For the purposes of general jurisdiction, the clerk of an industrial magistrate's court has in relation to that court like powers to those of a clerk of a Local Court acting under the *Local Courts Act 1904* in relation to the Local Court to which he is attached.

[Section 81D inserted by No. 44 of 1991 s.6; amended by No. 15 of 1993 s.25; No. 79 of 1995 s.22.]

81E. Representation

In proceedings before an industrial magistrate's court a party may —

- (a) appear in person;

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

[Section 81E inserted by No. 79 of 1995 s.15.]

82. Jurisdiction of Full Bench

- (1) The Full Bench has jurisdiction to hear and determine any application made to it under section 84A.
- (2) An application for the enforcement of a provision of this Act or of a direction, order or declaration made or given under section 32, 44(6) or 66 shall not be made otherwise than to the Full Bench.
- (3) Subsection (2) does not apply to the enforcement of a provision of this Act if contravention of or failure to comply with that provision constitutes an offence against this Act.

[Section 82 inserted by No. 44 of 1991 s.6.]

82A. Time for application

An application under section 77, 83 or 84A shall be made within 6 years from the time of the alleged contravention or failure to comply.

[Section 82A inserted by No. 94 of 1984 s.50; amended by No. 79 of 1995 s.23.]

83. Enforcement of awards and orders of Commission

- (1) Subject to this Act, where a person contravenes or fails to comply with any provision of an award, industrial agreement or order, other than an order made under section 32, 44(6) or 66 —
 - (a) the Registrar or a Deputy Registrar;
 - (b) an Industrial Inspector;
 - (c) any organization or association named as a party to the award or employer bound by the award, industrial agreement or order; or

- (d) any person on his own behalf to whom the award, industrial agreement or order applies,

may apply in the prescribed manner to an industrial magistrate's court for the enforcement of the award, industrial agreement or order.

- (1a) An application for the enforcement of an award, industrial agreement or order (other than an order made under section 32, 44(6) or 66) shall not be made otherwise than to an industrial magistrate's court.
- (2) On the hearing of an application under subsection (1) the industrial magistrate's court may, by order —
- (a) if the contravention or failure to comply is proved, issue a caution or impose such penalty as the industrial magistrate's court considers just but not exceeding \$1 000 in the case of an employer, organization or association and \$250 in any other case;
- (b) dismiss the application,
- and, subject to subsection (3), in any case with or without costs, but in no case shall any costs be given against the Registrar, a Deputy Registrar, or an Industrial Inspector.
- (3) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the industrial magistrate's court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.
- (4) Where in any proceedings brought under subsection (1) against an employer it appears to the industrial magistrate's court that an employee of that employer has not been paid by that employer the amount which he was entitled to be paid under an award or order the industrial magistrate's court shall, subject to subsection (5), order that employer to pay to that employee the amount by which he has been underpaid.

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- (5) An order may only be made under subsection (4) —
- (a) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings; or
 - (b) if the employer concerned has been proved before the Full Bench to have contravened or failed to comply with section 102(1)(a) or (b) by reason of having failed to produce or exhibit a record relevant to the proceedings or to allow such a record to be examined or to answer a question relevant to the proceedings truthfully to the best of his knowledge, information and belief, as the case requires, in respect of any amount relating to a period not being more than 6 years prior to that failure,

and, when the order is so made, that amount shall be deemed to be a penalty imposed under this Act and may be recovered accordingly, but on recovery shall be paid as stated in the order under subsection (6).

- (6) Where the industrial magistrate's court, by an order made under this section, imposes a penalty or costs the industrial magistrate's court shall state in the order the name of the person liable to pay the penalty or costs and the name of the person to whom the penalty or costs are payable.

[Section 83 amended by No. 121 of 1982 s.26; No. 94 of 1984 ss.51 and 66; No. 44 of 1991 ss.7 and 8; No. 79 of 1995 s.24.]

83A. Proceedings for offences

- (1) An industrial magistrate's court has jurisdiction to hear and determine, under the *Justices Act 1902*, complaints for any contravention or failure to comply with this Act that constitutes an offence.
- (2) In subsection (1) the reference to the *Justices Act 1902* does not include Part VIII of that Act.

- (3) Without limiting section 84, the jurisdiction referred to in subsection (1) shall not be exercised by any other court.

[Section 83A inserted by No. 79 of 1995 s.25.]

84. Appeal to Full Bench from industrial magistrate's court

- (1) In this section “**decision**” includes a penalty, order, order of dismissal, and any other determination of an industrial magistrate's court, but does not include a decision made by such a court in the exercise of the jurisdiction conferred on it by —
- (a) section 96J;
 - (b) Division 1 of Part 5 of the *Workplace Agreements Act 1993*; or
 - (c) section 100 of that Act.
- (2) Subject to this section, an appeal lies to the Full Bench in the manner prescribed from any decision of an industrial magistrate's court.
- (3) An appeal under this section shall be instituted within 21 days from the date of the decision against which the appeal is brought and may be instituted by any party to the proceedings wherein the decision was made.
- (4) On the hearing of the appeal the Full Bench —
- (a) may confirm, reverse, vary, amend, rescind, set aside, or quash the decision the subject of the appeal;
 - (b) may remit the matter to the industrial magistrate's court or to another industrial magistrate's court for further hearing and determination according to law; and
 - (c) subject to subsection (5), may make such order as to costs as the Full Bench considers appropriate.
- (5) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner, or agent of that party unless, in the opinion of the Full Bench, the proceedings have been frivolously or

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vexatiously instituted or defended, as the case requires, by the other party.

[Section 84 amended by No. 94 of 1984 s.66; No. 44 of 1991 s.8; No. 15 of 1993 s.26.]

84A. Proceedings before Full Bench for enforcement of this Act

- (1) Subject to this section, if a person contravenes or fails to comply with —
- (a) any provision of this Act (other than section 44(3) or 74) or an order or direction made or given under section 66 —
 - (i) the Minister;
 - (ii) the Registrar or a Deputy Registrar;
 - (iii) an Industrial Inspector; or
 - (iv) any organization, association or employer with a sufficient interest in the matter;
 - or
 - (b) section 44(3) or a direction, order or declaration given or made under section 32 or 44, the Registrar or a Deputy Registrar at the direction of the Commission,

may make application in the prescribed manner to the Full Bench for the enforcement of that provision, order, direction, declaration or section.

[(2) repealed]

- (3) Subsection (1) does not apply to a contravention or failure to comply that constitutes an offence against this Act.
- (4) In dealing with an application under subsection (1) the Full Bench —
- (a) shall have regard to the seriousness of the contravention or failure to comply, any undertakings that may be given as to future conduct, and any mitigating circumstances; and

- (b) before proceeding to a hearing of the application, shall invite the parties to the application to confer with it, unless in the opinion of the Full Bench such a conference would be unavailing, with a view to an amicable resolution of the matter to which the application relates.
- (5) On the hearing of an application under subsection (1) the Full Bench may —
 - (a) if the contravention or failure to comply is proved —
 - (i) accept any undertaking given; or
 - (ii) by order, issue a caution or impose such penalty as it considers just but not exceeding \$2 000 in the case of an employer, organization, or association and \$500 in any other case; or
 - (iii) direct the Registrar or a Deputy Registrar to issue a summons under section 73(1);
 - or
 - (b) by order, dismiss the application,and subject to subsection (6), in any case with or without costs, but in no case shall any costs be given against the Minister, the Registrar, a Deputy Registrar, or an Industrial Inspector.
- (6) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the Full Bench, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.
- (7) Where the Full Bench, by an order made under this section, imposes a penalty or costs it shall state in the order the name of the person liable to pay the penalty or costs and the name of the person to whom the penalty or costs are payable.

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- (8) The standard of proof to be applied by the Full Bench in proceedings under this section shall be the standard observed in civil proceedings.

[Section 84A inserted by No. 94 of 1984 s.52; amended by No. 119 of 1987 s.21; No. 79 of 1995 s.8(2).]

Part IIIA — Federal award coverage

[Heading inserted by No. 3 of 1997 s.20.]

84B. Interpretation

In this Part, unless the contrary intention appears —

“application” means an application referred to in section 84E(1);

“Branch” has the same meaning as in section 71(1);

“commencement day” means the day of the coming into operation of section 20 of the *Labour Relations Legislation Amendment Act 1997*¹;

“Federal organization” means an organization of employees registered under the Commonwealth Act, a Branch of which is a related Federal body of a State organization;

“related State organization” means an organization required to give notice under section 84D;

“relevant dispute” means an alleged industrial dispute, notice of which is received by a State organization under section 84C;

“State employer” means an employer who —

- (a) is bound by an award or industrial agreement under this Act; or
- (b) is a party to a workplace agreement and would, but for that workplace agreement, be bound by an award or industrial agreement under this Act;

“State organization” has the same meaning as in section 71(1).

[Section 84B inserted by No. 3 of 1997 s.20.]

84C. Constructive notice to State organization

- (1) If notification of an alleged industrial dispute that —
 - (a) arises out of service of a log of claims; and

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(b) affects a State employer,

is given by a Federal organization under section 99 of the Commonwealth Act on or after commencement day, then for the purposes of this Part each State organization which has a Branch of the Federal organization as its related Federal body receives notice of the alleged industrial dispute on the same day as that notification is given by the Federal organization.

(2) If notification of an alleged industrial dispute that —

- (a) arises out of service of a log of claims;
- (b) affects a State employer;
- (c) has not been fully settled or finally dealt with under the Commonwealth Act;
- (d) has not ceased to exist; and
- (e) is not the subject of a determination by the Australian Industrial Relations Commission under the Commonwealth Act that it will refrain from hearing or determining the alleged industrial dispute or part of the alleged industrial dispute insofar as it involves the State,

was given by a Federal organization under section 99 of the Commonwealth Act before the commencement day, then for the purposes of this Part each State organization which has a Branch of the Federal organization as its related Federal body receives notice of the alleged industrial dispute on commencement day.

[Section 84C inserted by No. 3 of 1997 s.20.]

84D. State organization to notify Registrar of dispute

- (1) An organization shall, not later than 7 days after receiving notice under section 84C, notify the Registrar in writing of —
 - (a) the nature of the relevant dispute;
 - (b) the name and address of each State employer who is named as a party to the alleged industrial dispute in the

notification given under section 99 of the Commonwealth Act;

- (c) the title by which each award or industrial agreement which binds the State employer and to which the State organization is a party is known and the date on which the award was made or the industrial agreement was registered; and
- (d) such other details as may be prescribed by regulation by the Governor.

Penalty: \$5 000.

- (2) If an organization is guilty of an offence against subsection (1), any officer of the organization who is in any way, directly or indirectly, knowingly concerned in or party to the contravention of that subsection, is guilty of an offence and liable to a penalty of \$1 000.
- (3) It is a defence in any proceeding under subsection (1) for the organization to prove that, apart from the notice of the alleged industrial dispute received under section 84C, it did not know, and could not reasonably be expected to have known, that notification of the alleged industrial dispute had been given under section 99 of the Commonwealth Act.

[Section 84D inserted by No. 3 of 1997 s.20.]

84E. Advertisement of right to seek to have party struck out

- (1) Not later than 7 days after receiving notification under section 84D(1), or, if notification is not so received, not later than 7 days after otherwise becoming aware of the existence of a relevant dispute, the Registrar shall —
 - (a) inform the Chief Commissioner accordingly; and
 - (b) cause to be published in a newspaper circulating throughout the State a notice advising that, within 14 days of publication of the notice a State employer or

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organization may make written application to the Chief Commissioner —

- (i) to have the related State organization struck out as a party to an award or industrial agreement with respect to all of the employees, or with respect to any employee or group or class of employee, bound by the relevant award or industrial agreement; and
 - (ii) to have another organization substituted as a party to the award or industrial agreement in place of that related State organization.
- (2) An application may include the nomination of another organization to be substituted as a party to the award or industrial agreement in place of the related State organization.
 - (3) A State employer shall not make an application unless that employer is bound by the relevant award or industrial agreement or would, but for the terms of a workplace agreement, be bound by the relevant award or industrial agreement.

[Section 84E inserted by No. 3 of 1997 s.20.]

84F. Referral of application to have party struck out

- (1) At the close of the period within which applications may be made the Chief Commissioner shall refer each application to the Full Bench for hearing and determination.
- (2) If no organization is nominated by application the Chief Commissioner may, not later than 3 months after the period for making application has lapsed, by notice to the Full Bench nominate an organization to be substituted for the related State organization as a party to the award or industrial agreement.

[Section 84F inserted by No. 3 of 1997 s.20.]

84G. Determination of application

- (1) At the hearing of an application referred under section 84F(1), if the Full Bench is satisfied that the organization in question is a related State organization, and irrespective of whether or not an organization has been nominated by application or under section 84F(2), the Full Bench shall cancel, in whole or in part as it considers appropriate, the rights of the related State organization with respect to the employees to whom the application applies.
- (2) Upon making an order under subsection (1) or receiving notice under section 84F(2), the Full Bench may add an organization nominated by application or under section 84F(2) as a party to the relevant award or industrial agreement with all of the rights of the related State organization immediately before the making of the order under subsection (1) with respect to those employees.
- (3) An organization nominated by application or under section 84F(2) has the right to be heard in any proceedings under this section but may not refuse to be added as a party to an award or industrial agreement.

[Section 84G inserted by No. 3 of 1997 s.20.]

84H. Cancelled organization may not be added to award

An organization whose rights are cancelled under section 84G(1) shall not be added as a party to an award or industrial agreement under section 84G(2).

[Section 84H inserted by No. 3 of 1997 s.20.]

84I. Full Bench may take steps to give effect to orders

- (1) Upon making an order under section 84G(1) or (2) the Full Bench is empowered by this section to do all things that are necessary to give effect to the order including —
 - (a) cancelling or varying the rules of the affected organizations;

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- (b) varying any relevant award, industrial agreement or order; and
- (c) dismissing any pending proceedings which, in the opinion of the Full Bench, are proceedings that, as a consequence of the order, should be taken by an organization substituted as a party to an award or industrial agreement.

(2) In subsection (1) —

“pending proceedings” means any application or claim commenced under this Act by the organization before an order was made under subsection (1) in respect of that organization.

[Section 84I inserted by No. 3 of 1997 s.20.]

84J. Commission to give notice of cancellation

If an order is made under section 84G(1) cancelling the rights of a State organization the Commission shall give notice of the order to employers in accordance with the regulations.

[Section 84J inserted by No. 3 of 1997 s.20.]

84K. Subscriptions to cancelled organization

- (1) An employer shall not deduct subscriptions to an organization from the wages of an employee if —
 - (a) any of the rights of the organization are cancelled in respect of the employee under this Part; and
 - (b) notice of the order cancelling the rights has been given to the employer under section 84J.
- (2) If the rights of an organization are cancelled under this Part in respect of an employee, that employee may upon resignation from the organization request in writing the refund of the proportion of that employee’s membership dues attributable to the period of cancellation.

- (3) The organization shall refund the membership dues upon request under subsection (2).
- (4) Membership dues in respect of which a request has been made under subsection (2) are a debt due by the organization to the member.
- (5) The member, the Registrar, a Deputy Registrar, or an Industrial Inspector, may apply in the prescribed manner to an industrial magistrate's court for the recovery of the amount of the dues.

[Section 84K inserted by No. 3 of 1997 s.20.]

84L. Details of members

- (1) Where by order made under section 84G(2) an organization is added as a party to an award or industrial agreement with all of the rights of a related State organization with respect to certain employees, that organization may request from the related State organization the names and addresses of those employees.
- (2) A related State organization shall comply with a request under subsection (1) not later than 14 days after receiving the request.

[Section 84L inserted by No. 3 of 1997 s.20.]

84M. Pending proceedings

- (1) In this section —
“pending proceedings” means any application or claim commenced by a related State organization under this Act before an order was made under section 84G(2) in respect of the organization.
- (2) Subject to —
 - (a) any action taken by the Full Bench under section 84I; and
 - (b) subsection (3),

upon the making of an order under section 84G(2) any pending proceedings which relate to employees to whom the order

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applies may be continued and dealt with as if they were instituted by the organization added as a party to the award or industrial agreement in respect of those employees.

- (3) Notwithstanding subsection (2), an organization added as a party to an award or industrial agreement with all of the rights of a related State organization is not bound or estopped by any undertaking given by, or agreement reached with, the related State organization.
- (4) The Full Bench may give such directions in relation to pending proceedings, either generally or in a particular case, as are necessary or desirable for the purposes of this Act.

[Section 84M inserted by No. 3 of 1997 s.20.]

84N. Appeal

An appeal against a decision of the Full Bench under section 84G does not operate to suspend the operation or effect of that decision and the Court shall not order the suspension of the operation or effect of that decision.

[Section 84N inserted by No. 3 of 1997 s.20.]

84O. Minister may apply for writ of mandamus

- (1) The Minister has standing to apply to the Supreme Court for a grant of mandamus enforcing the performance of any function of the Commission or the Registrar under this Part.
- (2) Notwithstanding any other provision of this Act, the Supreme Court may, on application under subsection (1), grant a mandamus enforcing the performance of any function of the Commission or the Registrar under this Part.

[Section 84O inserted by No. 3 of 1997 s.20.]

Part IV — Western Australian Industrial Appeal Court

85. Constitution of Western Australian Industrial Appeal Court

- (1) The Court by the name “Western Australian Industrial Appeal Court” established under the repealed Act is, under that name, hereby continued in existence under and subject to this Act.
- (2) The Court shall consist of 4 members namely —
 - (a) a Judge who shall be the Presiding Judge;
 - (b) a Judge who shall be the Deputy Presiding Judge; and
 - (c) 2 Judges who shall be ordinary members.
- (3) The members of the Court shall be such Judges as the Chief Justice of Western Australia shall from time to time nominate, either generally or for a specified time, to be members of the Court and the Presiding Judge and the Deputy Presiding Judge shall be such of those members as the Chief Justice of Western Australia shall nominate to be the Presiding Judge and the Deputy Presiding Judge, respectively.
- (3a) For the purpose of exercising its jurisdiction the Court shall be constituted by —
 - (a) the Presiding Judge, the Deputy Presiding Judge and one of the ordinary members; or
 - (b) the Presiding Judge and the 2 ordinary members; or
 - (c) the Deputy Presiding Judge and the 2 ordinary members.
- (3b) When the Court is constituted under subsection (3a)(c) a reference in section 87 or 88 to the Presiding Judge shall be read as a reference to the Deputy Presiding Judge.
- (4) The Court is a Court of Record and shall have an official seal.

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- (5) All courts and persons acting judicially shall take judicial notice of the seal of the Court affixed to a document and shall presume that it has been duly so affixed.
- (6) Where a member of the Court is, or is expected to be, unable to attend to his duties under this Part, whether on account of illness or otherwise, the Chief Justice of Western Australia may appoint a Judge to be acting Presiding Judge, acting Deputy Presiding Judge or an acting ordinary member of the Court, as the case may require, for such period as the Chief Justice determines, and the appointment of the acting member of the Court authorizes him to participate in the completion of the hearing and determination of any proceedings that he may be participating in at the expiration of that period so that he holds an appointment as an acting member of the Court during any further period while such hearing and determination are being completed.
- (7) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a Clerk of the Court and such other officers as are necessary for the purposes of the proper functioning of the Court, and each of them may hold the office to which they are so appointed in conjunction with any other office under that Act.

[Section 85 amended by No. 94 of 1984 s.53; No. 32 of 1994 s.14.]

86. Jurisdiction of Court

- (1) Subject to this Act, the Court has jurisdiction to hear and determine appeals under sections 90 and 96K.
- (2) In the exercise of its jurisdiction under this Act the Court may make such orders as it thinks just as to the costs and expenses (including the expenses of witnesses) of proceedings before the Court, including proceedings dismissed for want of jurisdiction, but costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party

unless, in the opinion of the Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

[Section 86 amended by No. 15 of 1993 s.27.]

87. Decision of Court

- (1) When the members of the Court are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.
- (2) A decision, order, declaration, judgment, or penalty, given, made, or imposed by the Court in the exercise of its jurisdiction under this Act, shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in the Supreme Court or any other court.
- (3) A member of the Court authorized by the Presiding Judge, on the application of any party to any proceedings or matters before the Court, may on summons returnable before that member sitting in chambers, make in relation to that proceeding or matter any order that he thinks just as to any interlocutory proceeding to be taken before the hearing, including, without affecting the generality of the foregoing, the costs of the interlocutory proceeding, the issues to be submitted to the Court and the persons, if any, to be served with notice of those proceedings.
- (4) An order made by a member of the Court under subsection (3), does not prejudice the exercise by the Court of any power conferred on the Court by this Act.

[Section 87 amended by No. 94 of 1984 s.66.]

88. Property liable to execution

- (1) Subject to this section, all property belonging to any person or body bound by any judgment, order, or direction of the Court, including, in the case of an organization or association, property

held by trustees for such organization or association, shall be available in or towards the satisfaction of the judgment, order, or direction.

- (2) Where the property of an organization or association is insufficient to satisfy fully the amount due under a judgment, order, or direction of the Court, the members of the organization or the members of any organization represented on the association, as the case may be, shall be jointly and severally liable for the deficiency, but no member shall be liable for more than \$20 under this subsection.
- (3) All goods protected from seizure on an execution under a judgment of a Local Court are protected against seizure under this Act to the extent to which such goods are from time to time protected from such seizure under the *Local Courts Act 1904*.
- (4) The Court or the Presiding Judge may, on the application of the person or body entitled to claim the enforcement of a judgment, order, or direction, make such order or give such directions, or both, as are considered necessary, and any such order or direction, or both, shall have effect accordingly.

[Section 88 amended by No. 94 of 1984 s.66.]

89. Sheriff, Bailiffs, and members of Police Force to be officers of Court

- (1) The Sheriff of Western Australia, the Bailiff of the District Court, the Bailiffs of Local Courts, and all members of the Police Force shall be deemed to be officers of the Court, and shall exercise the powers and perform the duties prescribed by any regulations made under this Act, and for the purpose of carrying out the provisions of this Act and in relation to any proceedings before the Court or the Commission and in relation to the making, carrying out and enforcing of any award, order, or direction of the Court or the Commission shall, except where otherwise provided in the regulations, exercise the same powers and perform the same duties as they may exercise and perform

in relation to any judgment, order, conviction, or direction of the Supreme Court or any Local Court or court of summary jurisdiction.

- (2) All prison officials shall obey and carry out the writs, warrants, and orders of the Court so far as they are addressed to them.
- (3) Any writ or warrant of execution may, subject to this Act, be declared, by regulations, to have effect against any property (including land under the *Transfer of Land Act 1893*) as a writ of *fieri facias*, and it shall have such effect in respect of such property accordingly.

[Section 89 amended by No. 121 of 1982 s.27; No. 94 of 1984 s.66.]

90. Appeal to Court from Commission

- (1) Subject to this section, an appeal lies to the Court in the manner prescribed from any decision of the President, the Full Bench, or the Commission in Court Session on the ground that the decision is erroneous in law or is in excess of jurisdiction but upon no other ground.
- (2) An appeal under this section shall be instituted within 21 days from the date of the decision against which the appeal is brought and may be instituted —
 - (a) by any party to the proceedings wherein the decision was made; or
 - (b) by any other person who was an intervener in those proceedings.
- (3) On the hearing of the appeal the Court may confirm, reverse, vary, amend, rescind, set aside, or quash the decision the subject of appeal and may remit the matter to the President, the Full Bench, or the Commission in Court Session, as the case requires, for further hearing and determination according to law.

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- (4) The Court may at any time, if it considers that to do so will not prejudice any party to an appeal under this section —
- (a) correct clerical mistakes in its judgments or orders, or errors arising in its judgments or orders from accidental slips or omissions; and
 - (b) generally correct any minor irregularities in its proceedings.

[Section 90 amended by No. 94 of 1984 s.54; No. 119 of 1987 s.22.]

91. Representation

- (1) Subject to this section, in proceedings before the Court under this Act, a party —
- (a) may appear personally or by his agent; or
 - (b) may be represented by a legal practitioner.
- (2) In this section, “**party**” includes an intervener.
- (3) A person who is not a legal practitioner within the meaning of this Act but engages in the practice of the law outside the State shall not appear as agent in proceedings before the Court.

92. Powers of Court in respect of contempt

- (1) The Court has the same power to punish contempts of its power and authority as has the Supreme Court in respect of contempts of Court, and without prejudicing the generality of the power, where the Court considers that a contempt may be appropriately punished by a fine, it may inflict a fine.
- (2) A person who counsels, procures, aids, abets, instigates, or incites a contempt of the Court is deemed to have committed a contempt and shall be punishable accordingly.
- (3) A person who by act or omission contravenes an order made by the Court in exercise of authority conferred by this Act commits a contempt of the Court.

- (4) The President, in the exercise of the jurisdiction conferred on him by this Act and when presiding on the Full Bench or sitting or acting alone, has and may exercise like powers as are conferred on the Court by this section.

[Section 92 amended by No. 121 of 1982 s.28.]

Part V — The Registrar and other officers of the Commission

[Heading amended by No. 94 of 1984 s.55.]

93. Appointment and duties of officers

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* —
 - (a) a Registrar; and
 - (b) such number of Deputy Registrars and other officers as may from time to time be necessary for the purposes of this Act.
- (1a) Notwithstanding subsection (1) the Minister on the recommendation of the Chief Commissioner shall appoint as officers of the Commission such Associates as he considers necessary, and such officers shall not be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (2) The duties of officers of the Commission shall be as prescribed and as directed by the Commission.
- (3) The Registrar shall publish in the *Industrial Gazette* all awards and orders filed in his office and all notices and matters set out in Schedule 1.
- (4) The *Industrial Gazette* shall be printed by the Government Printer in such form and at such intervals as the Registrar, after consultation with the Chief Commissioner, directs.
- (5) Subject to provisions of or under any other Act relating to the maintenance, retention, or destruction of public or court records, the Registrar shall maintain or cause to be maintained in an accurate and convenient form the records of the Commission.
- (6) Subject to subsection (6a), the Registrar shall keep all awards under review and, where he considers it necessary or desirable

or is directed by the Commission so to do, shall publish in the *Industrial Gazette* a consolidation of any such award.

- (6a) The Registrar shall, during the period beginning on the commencement of section 23 of the *Industrial Relations Amendment Act (No. 4) 1987*¹ and ending on such day as is prescribed by regulations for the purposes of this subsection —
- (a) maintain at the premises of the Commission up to date consolidations of all awards and industrial agreements;
 - (b) provide the Government Printer with copies of up to date consolidations of those 50 awards and industrial agreements determined by him to be most in demand for printing and sale at a price per copy sufficient to defray the costs incurred by —
 - (i) the Registrar in complying with the requirements of this subsection; and
 - (ii) the Government Printer in printing and selling those consolidations;
- and
- (c) from time to time review and adjust the price referred to in paragraph (b).
- (7) Whenever the Registrar becomes aware of the occurrence or continuance of industrial action in any industry or is of the opinion that such industrial action is likely he shall forthwith acquaint the Chief Industrial Commissioner accordingly.
- (8) The Commission may at any time of its own motion direct the Registrar or any other officer of the Commission to make such investigations and reports in relation to any matter within the jurisdiction of the Commission as it deems necessary.
- (9) Subject to this Act, the Commission may direct the Registrar or a Deputy Registrar to make an application under section 77 or 83 or 84A or to institute proceedings for an offence against this Act.

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- (10) In the carrying out and discharge of his duties under this Act the Registrar is entitled to the assistance of all officers of the Court and of the Commission.

[Section 93 amended by No. 94 of 1984 s.56; No. 119 of 1987 s.23; No. 32 of 1994 s.14; No. 1 of 1995 s.53; No. 79 of 1995 s.8(2).]

94. Authority to do acts as directed

Wherever this Act authorizes the Commission to direct the Registrar or any other officer of the Court or of the Commission to do any act or thing, this Act is to be construed as imposing on that officer the duty to do that act or thing and as empowering him to do so.

[Section 94 amended by No. 1 of 1995 s.53.]

95. Duties of Deputy Registrar

- (1) A Deputy Registrar shall have and may exercise such powers and authorities and discharge such duties of the Registrar as —
- (a) the Registrar or the Chief Commissioner, after consultation with the Registrar, may in writing assign to him generally; or
 - (b) the Registrar or the Commission may assign to him in any particular case.
- (2) During the illness, temporary incapacity, or temporary absence from office of the Registrar, the designated Deputy Registrar shall have and may exercise the powers and authorities and shall discharge the duties of the Registrar under this Act.
- (3) In subsection (2) “**designated Deputy Registrar**” means —
- (a) if there is only one Deputy Registrar, that Deputy Registrar;

- (b) if there are 2 or more Deputy Registrars, the Deputy Registrar designated by the Chief Commissioner.

[Section 95 inserted by No. 94 of 1984 s.57.]

[Part VI repealed by No. 94 of 1984 s.58.]

Part VIA — Freedom of association

[Heading inserted by No. 15 of 1993 s.28.]

96A. Definitions for this Part

In this Part, unless the contrary intention appears —

“organization” means an organization of employers or an organization of employees;

“organization of employees” means —

- (a) an organization of employees, whether constituted, incorporated or registered under this Act or any other Act or under any Commonwealth Act and by whatever name called;
- (b) an industrial association of employees registered under section 67; or
- (c) an association, society or other body that has applied to be constituted, incorporated or registered as an organization of employees referred to in paragraph (a).

[Section 96A inserted by No. 15 of 1993 s.28.]

96B. Certain requirements relating to membership of organizations to have no effect

- (1) An award, industrial agreement or order under this Act, or any arrangement between persons relating to employment 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) The prohibition in subsection (1) extends to awards, industrial agreements, orders and arrangements that are in force at the commencement of section 28 of the *Industrial Relations Amendment Act 1993*¹.
- (3) A requirement that is contrary to this section is of no effect.
- [Section 96B inserted by No. 15 of 1993 s.28.]*

96C. Discrimination because of membership of organization

- (1) A person must not, in relation to any contract of employment or contract for services, treat another person less favourably or more favourably according to whether or not the person is, or will become or cease to be, a member or officer of an organization.
 - (2) A person must not conspire with another person to commit an offence against subsection (1).
 - (3) It is not an offence against subsection (1) for a person to treat another person more favourably as part of a scheme whereby the cost of services provided to members of an organization is less than the cost ordinarily charged by the person for those services.
- Penalty applicable to subsections (1) and (2):
- (a) in the case of an individual, not less than \$400 nor more than \$5 000;

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- (b) in any other case, not less than \$1 000 nor more than \$10 000; and a daily penalty of \$500.

[Section 96C inserted by No. 15 of 1993 s.28.]

96D. Refusal to employ and discriminatory and injurious acts against persons performing work for employers because of membership or non-membership of employee organization

- (1) A person must not refuse to employ another person on any ground that is forbidden for the purposes of this section.
- (2) A person, including an organization of employees, must not on any ground that is forbidden for the purposes of this section —
 - (a) intimidate, prejudice, or threaten to prejudice, or attempt to induce another person to intimidate or prejudice, a person who performs work for an employer;
 - (b) intimidate or induce, whether by threats or promises or otherwise, an employer to prejudice a person who performs or wishes to perform work for the employer; or
 - (c) directly or indirectly hinder or prevent the employment of a person or the promotion of an employee.
- (3) A person must not conspire with another person to commit an offence against subsection (1) or (2).

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual, not less than \$400 nor more than \$5 000;
 - (b) in any other case, not less than \$1 000 nor more than \$10 000; and a daily penalty of \$500.
- (4) The grounds that are forbidden for the purposes of this section are —
 - (a) that the person is or is intending to become a member or officer of an organization of employees; or
 - (b) that the person is not, or is intending to not remain, a member or officer of an organization of employees.

- (5) For the purposes of subsection (2) a person is prejudiced if —
- (a) the person is dismissed from employment; or
 - (b) the person is demoted or fails to get a promotion that the person could have reasonably expected; or
 - (c) the person's employment position is detrimentally altered; or
 - (d) the person's pay or other terms and conditions of employment are detrimentally altered.

[Section 96D inserted by No. 15 of 1993 s.28.]

96E. Discriminatory and injurious acts against persons because of non-membership of employee organization

- (1) A person, including an organization of employees, must not threaten that —
- (a) discriminatory action will or may be taken against a second person; or
 - (b) the free and lawful exercise of a second person's trade, profession or occupation will or may be interfered with,
- by reason of the circumstance that the second person or a third person is not a member of an organization of employees.
- (2) A person, including an organization of employees, must not advise, encourage or incite a second person to take discriminatory action against a third person by reason of the circumstance that the third person or a fourth person is not a member of an organization of employees.
- (3) A person, including an organization of employees, must not take, or threaten to take, industrial action against an employer —
- (a) with intent to coerce the employer to take discriminatory action against a second person by reason of the circumstance that the second person or a third person is not a member of an organization of employees; or

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- (b) with intent to coerce the employer to join an organization of employees.

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual not less than \$400 nor more than \$5 000;
- (b) in any other case, not less than \$1 000 nor more than \$10 000; and a daily penalty of \$500.

- (4) In this section —

“discriminatory action”, in relation to a person, means —

- (a) refusing to make use of, or refusing to agree to make use of, any service offered by the person;
- (b) refusing to receive, or refusing to agree to receive, any goods offered by the person; or
- (c) refusing to supply, or refusing to agree to supply, goods or services to the person.

[Section 96E inserted by No. 15 of 1993 s.28.]

96F. Further provision as to penalties under sections 96C, 96D and 96E

- (1) The minimum penalties referred to in sections 96C, 96D and 96E are irreducible in mitigation notwithstanding anything in the *Sentencing Act 1995* or any other Act.
- (2) Subject to subsection (3), if a penalty is imposed on an organization of employees for an offence against section 96C, 96D or 96E and the organization does not forthwith pay the penalty, the rights of the organization and its members referred to in subsection (4) are suspended until the penalty is paid.
- (3) An industrial magistrate’s court may permit an organization of employees on which a penalty referred to in subsection (2) is imposed to pay that penalty within such period not exceeding 7 days from that imposition as the court thinks fit, in which case the rights referred to in subsection (2) are, if that penalty is not

paid within that period, suspended from the end of that period until the penalty is paid.

- (4) In and with respect to any period during which rights are suspended under subsection (2) or (3) —
- (a) a proceeding of any kind may not be instituted under this Act by or on behalf of the organization concerned or any of its members;
 - (b) the organization concerned shall not be joined as an applicant in any proceeding referred to in paragraph (a);
 - (c) an award or order shall not be made or be deemed to have been made for the benefit of the organization concerned or any of its members; and
 - (d) rights or entitlements shall be deemed not to become due to the organization or its members under this Act or any award or order in force thereunder.

[Section 96F inserted by No. 15 of 1993 s.28; amended by No. 78 of 1995 s.53.]

96G. Responsibility of employee organizations and officers and members

- (1) If an organization of employees is guilty of an offence against section 96C, 96D or 96E, any officer or member of the organization who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.
- (2) If an officer or member of an organization of employees is guilty of an offence against section 96C, 96D or 96E, the organization is also guilty of that offence unless it is proved that all reasonable steps were taken by the organization to prevent the commission by the organization or its officers or members of offences against section 96C, 96D or 96E.

[Section 96G inserted by No. 15 of 1993 s.28.]

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96H. Responsibility of corporations and their officers

- (1) If a corporation is guilty of an offence against section 96C, 96D or 96E any officer of the corporation who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.
- (2) If an officer of a corporation is guilty of an offence against section 96C, 96D or 96E, the corporation is also guilty of that offence unless it is proved that all reasonable steps were taken by the corporation to prevent the commission by the corporation or its officers of offences under section 96C, 96D or 96E.
- (3) In this section “**corporation**” has the same meaning as it has in the Corporations Law.

[Section 96H inserted by No. 15 of 1993 s.28.]

96I. Onus of proof in certain cases

- (1) Where in any proceedings for an offence against section 96C(1) it is proved that a person was treated less favourably or more favourably in relation to any contract of employment or contract for services —
 - (a) while the person was or was not a member or officer of an organization; or
 - (b) after the person disclosed an intention to become or cease to be a member or officer of an organization,it shall be taken to be proved, unless the contrary is shown, that the person was treated less favourably or more favourably in contravention of section 96C(1).
- (2) Where in any proceedings for an offence against section 96D(1) or (2) it is proved that a person was refused employment, or prejudiced (within the meaning of that section) or that the

employment or promotion of a person was hindered or prevented —

- (a) while the person was or was not a member or officer of an organization of employees; or
- (b) after the person disclosed an intention to become or cease to be a member or officer of an organization of employees,

it shall be taken to be proved, unless the contrary is shown, that the person was refused employment, or prejudiced, or that the employment or promotion of the person was hindered or prevented in contravention of section 96D(1) or (2) as the case may require.

- (3) Where in any proceedings for an offence against section 96E all the relevant facts and circumstances, other than the reason or intent of the action alleged in the complaint, are proved, it lies on the defendant to prove that that action was not actuated by that reason or taken with that intent.

[Section 96I inserted by No. 15 of 1993 s.28.]

96J. Industrial magistrate's court may order compliance

- (1) Where a person claims to have been affected by another person's failure to comply with section 96C, 96D or 96E the person may bring an action in an industrial magistrate's court against that other person for an order requiring the other person —
 - (a) to do any specified thing; or
 - (b) to cease any specified activity,

for the purpose of preventing any further breach of that section.

- (2) On an application under subsection (1), the industrial magistrate's court may make one or more of the orders applied for and —
 - (a) shall specify a time within which the order is to be obeyed (which time may be extended by the court); and

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- (b) may make the order subject to any terms and conditions it thinks appropriate.

[(3) repealed]

- (4) A person who fails to comply with an order under this section is to be taken to commit a contempt of the Industrial Appeal Court and is punishable by that Court under section 92.

[Section 96J inserted by No. 15 of 1993 s.28; amended by No. 79 of 1995 s.26.]

96K. Appeal against decision under section 96J

- (1) A party to proceedings under section 96J may appeal to the Industrial Appeal Court against a decision of the industrial magistrate's court in those proceedings in the manner and in the time prescribed by regulations made by the Industrial Appeal Court under section 113.
- (2) On the hearing of the appeal the Industrial Appeal Court may —
 - (a) confirm the decision;
 - (b) vary the decision; or
 - (c) set aside the decision and if it thinks fit —
 - (i) make a decision in substitution for that decision; or
 - (ii) remit the matter for rehearing by the industrial magistrate's court with any direction that the Court thinks fit.

[Section 96K inserted by No. 15 of 1993 s.28.]

96L. Power of industrial magistrate's court to make certain orders after conviction

- (1) When a person has been convicted of an offence against section 96C, 96D or 96E the industrial magistrate's court by which the person was convicted may —
- (a) if the person so convicted is an employer, order the employer —
 - (i) to reinstate the complainant if he or she was dismissed from employment;
 - (ii) to pay to the complainant such sum of money as the court considers adequate as compensation for loss of employment or loss of earnings; or
 - (iii) both to reinstate the complainant and to pay him or her the sum of money referred to in subparagraph (ii),
as the court thinks fit; or
 - (b) if the person so convicted is a person other than an employer, order that person to pay the complainant such sum of money as the court thinks fit,

but the complainant is not entitled to compensation both under this section and otherwise for the same loss of employment or loss of earnings.

- (2) In subsection (1) “**complainant**” means the person against whom the offence referred to in subsection (1) was committed.

[Section 96L inserted by No. 15 of 1993 s.28.]

[96M. Repealed by No. 79 of 1995 s.37.]

Part VIB — Pre-strike ballots

[Heading inserted by No. 3 of 1997 s.10.]

97. Interpretation

- (1) In this Part, unless the contrary intention appears —
“related Federal body”, in relation to an organization, means —
 - (a) a Counterpart Federal Body of the organization within the meaning of section 71; or
 - (b) a Branch, within the meaning of section 71, that is declared under subsection (2) to operate in conjunction with the organization as if they were the same body;**“strike”** has the meaning given by section 97A;
“this Part” includes, in addition to regulations made for the purposes of this Part, the code of practice set out in Schedule 2.
- (2) The Full Bench may on application in the manner, and by the person, prescribed declare that a Branch, within the meaning of section 71, operates in conjunction with an organization as if they were the same body.
- (3) In determining an application under subsection (2) the Full Bench shall have regard to whether the Branch —
 - (a) has rules as to the qualification of people for membership that enable the members of the organization, or a substantial proportion of them, to be members of the Branch;
 - (b) has the same officers and employees, or some of the same officers and employees, as the organization;
 - (c) shares premises in the State with the organization;

- (d) has funds or accounts that are jointly owned, managed or controlled by the organization.

[Section 97 inserted by No. 3 of 1997 s.10.]

97A. Meaning of “strike”

- (1) In this section —
 - “award”** includes an order and an industrial agreement;
 - “dispute resolution procedures”** means procedures provided for in an award that are to be followed in connection with questions, disputes or difficulties arising under that award;
 - “relevant stop-work activity”**, in relation to a stop-work meeting referred to in subsection (5), means participation by 5 or more employees of the employer who are members of the organization in one or more stop-work meetings of employees of the employer that have not been approved by the employer by written notice given to the organization before each meeting.
- (2) For the purposes of this Part —
 - “strike”** means any stoppage of, or ban or limitation on, the performance of work by 5 or more employees but —
 - (a) does not include action referred to in subsection (3); and
 - (b) only includes a stop-work meeting if the meeting is unreasonable within the meaning of subsection (5).
- (3) The following actions are not included within the definition of “strike” in subsection (2) —
 - (a) a ban or limitation on the performance of work by employees —
 - (i) that preserves the status quo;
 - (ii) that is permitted under, and carried out in accordance with, relevant dispute resolution procedures;

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- (iii) that is undertaken for the purpose of compelling or inducing an employer or employee to comply with any existing terms or conditions of employment; and
 - (iv) in respect of which the Commission has not made an order requiring the employer or employee to comply with the terms or conditions of employment that are in dispute;
 - (b) a ban or limitation on the performance of work by employees —
 - (i) that is permitted under, and carried out in accordance with, relevant dispute resolution procedures;
 - (ii) that is undertaken for a period that does not exceed 48 hours; and
 - (iii) in respect of which neither conciliation proceedings nor a hearing have commenced before the Commission;

or

 - (c) an employee's refusal to work if that employee has reasonable grounds, as determined under section 26 of the *Occupational Safety and Health Act 1984* or section 72 of the *Mines Safety and Inspection Act 1994*, to believe that to continue to work would expose that employee or any other person to a risk of imminent and serious injury or imminent and serious harm to the health of that employee.
- (4) For the purposes of subsection (3)(b)(ii), if at any time during the 27 days preceding the day on which the ban or limitation occurs, the employees have taken previous industrial action in respect of the same matter, the ban or limitation is to be regarded as having begun when that previous industrial action began.

- (5) For the purposes of the definition of “strike” in subsection (2) a stop-work meeting in which 5 or more employees of the same employer who are members of the same organization participate is “**unreasonable**” if —
- (a) the meeting has not been approved by that employer by written notice given to that organization before the meeting; and
 - (b) there have been more than —
 - (i) 12 hours of relevant stop-work activity since the beginning of the calendar year in which the meeting is held; or
 - (ii) 4 hours of relevant stop-work activity since the beginning of the day on which the meeting is held.
- (6) In subsection (5) participation by the employees in stop-work meetings at the same time in different places is taken to be one period of relevant stop-work activity.

[Section 97A inserted by No. 3 of 1997 s.10.]

97B. Application

- (1) Nothing in this Part takes away, restricts or otherwise affects any power, right or liability, civil or criminal, arising under any other Part, or any other enactment or at common law.
- (2) This Part has effect notwithstanding anything contained in the rules of an organization of employees.
- (3) Nothing in this Part applies to or in respect of an employee employed under a workplace agreement.
- (4) This Part does not apply to the continuation of a strike initiated before the coming into operation of section 10 of the *Labour Relations Legislation Amendment Act 1997* as long as that strike does not contravene the rules of the relevant organization of

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employees and is completed within 28 days of the coming into operation of that section.

[Section 97B inserted by No. 3 of 1997 s.10.]

97C. Participation in strike

- (1) A member of an organization of employees shall not participate in any form of strike unless —
 - (a) a pre-strike ballot in respect of that form of strike was ordered to be held under section 97F(2) or (4);
 - (b) a ballot in respect of that form of strike has been conducted in accordance with this Part;
 - (c) the member was entitled to vote in that ballot;
 - (d) participation in that form of strike is endorsed by that ballot;
 - (e) the participation takes place within —
 - (i) 28 days of the declaration of the result of the pre-strike ballot which endorsed that form of strike; or
 - (ii) if that period has been extended by order under section 97J, the period specified in the order;and
 - (f) notice of intention to participate in that strike has been given in accordance with section 97I.
- (2) If an organization of employees or an officer or employee of an organization of employees —
 - (a) incites, encourages or assists a member of the organization to participate in a strike in contravention of subsection (1); or

- (b) is in any way by act or omission and directly or indirectly knowingly concerned in or party to a contravention of subsection (1),

the organization, officer or employee, as the case may be, commits an offence.

Penalty:

- (a) in the case of an individual, \$1 000 and a daily penalty of \$200; and
 - (b) in any other case, \$5 000 and a daily penalty of \$1 000.
- (3) For the purposes of subsection (1)(d), participation in a particular form of strike is endorsed by a pre-strike ballot if —
- (a) the majority of persons who were entitled to vote in the ballot voted “Yes” to the question applicable to participation in that form of strike; or
 - (b) at least 75% of the persons who were entitled to vote in the ballot voted in the ballot and a majority of those voting voted “Yes” to the question applicable to participation in that form of strike.
- (4) For the purposes of subsection (2), ascertaining the views of members as to a contemplated strike, or providing advice or information on a contemplated strike, does not constitute incitement, encouragement or assistance, or concern or participation in a contravention of subsection (1).
- (5) In subsection (2) —
- “employee of an organization of employees”** means an employee who is entitled to participate directly in the management of the organization, including an employee who is entitled to so participate in a representative or advisory capacity.

[Section 97C inserted by No. 3 of 1997 s.10.]

s. 97D

97D. Responsibility of members and organizations

- (1) For the purposes of this Part, where a member of an organization of employees who is also a member of its related Federal body participates in a strike then, unless the contrary is proved, the member is taken to have participated in that strike as a member of the organization of employees.
- (2) An organization of employees is taken to have contravened or failed to comply with section 97C(2) if an officer or employee of the organization —
 - (a) incites, encourages or assists a member of the organization to participate in a strike in contravention of section 97C(1); or
 - (b) is in any way by act or omission and directly or indirectly knowingly concerned in or party to a contravention of section 97C(1),

unless it is proved that —

- (c) the officer or employee acted without the organization's consent or connivance; and
- (d) the organization took all reasonable precautions and exercised due diligence to prevent the officer or employee so acting, having regard to all the circumstances.

[Section 97D inserted by No. 3 of 1997 s.10.]

97E. Application for a pre-strike ballot

- (1) If a strike is contemplated, or believed to be contemplated, by members of an organization of employees, or by any section or class of its members, application may be made to the Commission for a pre-strike ballot to find out whether a majority of those members endorse, or do not endorse, participation in a strike.

- (2) Application for a pre-strike ballot may be made by —
- (a) the organization of employees whose members contemplate participation in the strike;
 - (b) a member of that organization;
 - (c) an employer who has reason to believe that —
 - (i) employees of that employer contemplate participation in a strike; and
 - (ii) the strike is likely to occur;
 - (d) an employer who has reason to believe that —
 - (i) a strike is likely to occur; and
 - (ii) he or she is likely to be directly affected by the strike;
- or
- (e) an organization of employers, a member of which is an employer referred to in paragraph (c) or (d).
- (3) An application made under subsection (2) shall be —
- (a) in writing stating the reasons for the application and the facts relevant to the contemplated strike, including a description of the form of the contemplated strike; and
 - (b) accompanied by —
 - (i) a list of all of the employers of the persons contemplating, or believed to be contemplating, the strike; and
 - (ii) such other particulars as are prescribed.
- (4) The Commission shall deal with an application under this section as quickly as practicable, and, in any event shall endeavour to make a decision on the application, and give directions and reasons, within 3 days of the making of the application.

[Section 97E inserted by No. 3 of 1997 s.10.]

s. 97F

97F. Holding of pre-strike ballot

- (1) The Commission shall not order a pre-strike ballot applied for under section 97E to be held, or make an order under subsection (4), unless it is satisfied that —
 - (a) applicable procedures for resolution of matters to which the contemplated strike relates in any relevant award, order or industrial agreement have been complied with as far as is practicable in the circumstances; or
 - (b) if those procedures have not been so complied with, there are exceptional circumstances that justify ordering the pre-strike ballot to be held.
- (2) Subject to subsection (1), the Commission shall order a pre-strike ballot to be held if —
 - (a) it has been applied for under section 97E(2)(a) by an organization of employees pursuant to a resolution of the committee of management of the organization;
 - (b) it has been applied for under section 97E(2)(a) other than in the circumstances mentioned in paragraph (a), or under section 97E(2)(b), (c), (d) or (e), and the Commission is satisfied, after the parties who have a sufficient interest in the matter have been given an opportunity to be heard, that it is justified by the circumstances; or
 - (c) it is in the public interest that the pre-strike ballot be held.
- (3) If the Minister is of the opinion that a form of strike is contemplated by members of an organization of employees, or by any section or class of its members, and that the safety, health, welfare or economic well-being of the community or a part of it will be at risk if the strike occurs, the Minister may issue a certificate declaring that it is in the public interest that a pre-strike ballot be held, and that certificate shall be conclusive

evidence for the purpose of subsection (2)(c) that it is in the public interest that the ballot be held.

- (4) Notwithstanding that an application has not been made under section 97E, the Commission may order a pre-strike ballot to be held if the Commission has reason to believe that a form of strike is contemplated by members of an organization of employees, or by any section or class of its members, and that a pre-strike ballot in respect of that form of strike is justified by the circumstances.
- (5) In deciding whether or not a pre-strike ballot is justified, the Commission may take into account information other than that given in the application.
- (6) In dealing with an application and giving directions under this Part the paramount considerations of the Commission shall be the circumstances of the application and the provisions of this Part.
- (7) The Commission shall give written notice of any decision under this section and any decision under section 97G(3), the reasons for each decision, and the directions given under sections 97G(1) and 97H(1), to —
 - (a) the applicant for the pre-strike ballot;
 - (b) if the order is not made on the application of the organization of employees whose members are entitled to vote in the pre-strike ballot, that organization; and
 - (c) any other parties, including interveners, to the proceedings.
- (8) An applicant under section 97E(2)(b) or an organization of employees may, within 48 hours of being notified under subsection (7) of a decision, or a direction under section 97G(1), appeal to the Full Bench in the manner prescribed against that decision or direction.

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- (9) A person, not being a person referred to in subsection (8), given notice under subsection (7) of a decision or a direction under section 97G(1) may, within 48 hours of being so notified, appeal to the Full Bench in the manner prescribed against that decision or direction on the grounds that the decision or direction is erroneous in law or is in excess of jurisdiction but on no other grounds.
- (10) Section 49 shall apply to an appeal against a direction as if the direction were a decision of the Commission.

[Section 97F inserted by No. 3 of 1997 s.10.]

97G. Who will be entitled to vote and where

- (1) In any order under section 97F(2) or (4) the Commission, having regard to which members are likely to participate in the strike, shall give directions as to which members, or members of a section or class of members, of the organization of employees or a Branch of that organization will be entitled to vote in the pre-strike ballot.
- (2) Only an employee who is —
 - (a) a member, or member of a section or class of members, of the organization of employees or a Branch of that organization mentioned in a direction under subsection (1); and
 - (b) included in the list prepared under section 97H(10)(a),is entitled to vote in the pre-strike ballot.
- (3) Where the members of an organization who will be entitled to vote in a pre-strike ballot have different places of work the Commission may order —
 - (a) a separate pre-strike ballot be held for each place of work;
 - (b) a single pre-strike ballot be held for all the places of work; or

- (c) separate pre-strike ballots be held for places of work as specified in the order.
- (4) A pre-strike ballot only applies in respect of the place or places of work for which it was held.

[Section 97G inserted by No. 3 of 1997 s.10.]

97H. Conduct of pre-strike ballot

- (1) The Commission may direct that a pre-strike ballot is to be conducted —
 - (a) by the Registrar or a nominee of the Commission;
 - (b) under arrangements made by the Commission with the Electoral Commissioner appointed under the *Electoral Act 1907* for the conduct of the pre-strike ballot by an officer holding office under that Act or by some other person authorized in writing by the Electoral Commission; or
 - (c) by the organization of employees whose members will be entitled to vote in the pre-strike ballot.
- (2) The Commission shall not nominate under subsection (1)(a), and the Electoral Commissioner shall not authorize under subsection (1)(b), an organization of employees, or an officer, employee or member of an organization of employees whose members will be entitled to vote in the pre-strike ballot, to conduct a pre-strike ballot.
- (3) If the Commission directs that the pre-strike ballot is to be conducted by an organization of employees under subsection (1)(c), the Commission shall —
 - (a) appoint a member of the Commission as scrutineer; and
 - (b) certify whether or not the pre-strike ballot has been substantially conducted in accordance with this Part, and shall endeavour to do so within 24 hours of the time at which voting is required to be completed.

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- (4) A certificate of the Commission issued under subsection (3) is —
- (a) for the purposes of section 49, a decision of the Commission; and
 - (b) subject to section 49, final and conclusive evidence of the matters certified.
- (5) If the organization whose members will be entitled to vote in a pre-strike ballot is not conducting that ballot, the person conducting the ballot shall, by written notice, require that organization of employees, or an officer or employee of that organization, to provide the person conducting the ballot with a list setting out as accurately as is practicable the names, addresses and employers of all of those members as at the day the notice is given.
- (6) An organization of employees or an officer or employee shall comply with a notice given to that organization or person under subsection (5).
- Penalty:
- (a) in the case of an individual, \$1 000; and
 - (b) in any other case, \$5 000.
- (7) Any party to an application for a pre-strike ballot, including an intervener, is entitled to appoint a scrutineer for the pre-strike ballot in the prescribed manner.
- (8) The Commission may give directions to the person conducting a pre-strike ballot as to the conduct of the ballot and that person shall comply with those directions.
- (9) The person conducting a pre-strike ballot may seek directions, or further directions, from the Commission as to the conduct of the ballot.

- (10) The person conducting a pre-strike ballot shall take all reasonable steps to ensure that —
- (a) a list of the names and addresses of members entitled to vote in the ballot, and of the names of employers of those members, is compiled as accurately as is practicable before the ballot is held; and
 - (b) the votes of individual members remain secret.
- (11) If the Commission —
- (a) has given a direction under subsection (1)(a) or (b), the person conducting the pre-strike ballot may take such reasonable action and give such reasonable directions as that person considers necessary in order to conduct a ballot in accordance with this Part; or
 - (b) has given a direction under subsection (1)(c), the person conducting the pre-strike ballot may, with the authorization of a member of the Commission, take such reasonable action and give such reasonable directions as that person considers necessary in order to conduct a ballot in accordance with this Part.
- (12) A person shall not —
- (a) refuse or fail to comply with a direction given under subsection (11); or
 - (b) obstruct or hinder —
 - (i) the person conducting a pre-strike ballot in the conduct of the ballot or the taking of any action under subsection (11); or
 - (ii) any other person in the carrying out of a direction given under subsection (11).
- (13) A pre-strike ballot shall be conducted —
- (a) in accordance with the code of practice set out in Schedule 2; and

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- (b) if the Commission has given a direction under subsection (1)(c), subject to subsection (14), in accordance with the rules of the organization of employees.
- (14) To the extent that directions given by the Commission, regulations made under section 97M or the code of practice set out in Schedule 2, are contrary to or inconsistent with the rules of an organization, the directions, regulations or code shall prevail.
- (15) The provisions of section 70 apply, with such modifications as are necessary, to and in relation to a pre-strike ballot and a contravention of that section in relation to a pre-strike ballot is an offence under this subsection.

Penalty:

- (a) in the case of an individual, \$1 000; and
- (b) in any other case, \$5 000.

[Section 97H inserted by No. 3 of 1997 s.10.]

97I. Notices to employers and employees

- (1) A person conducting a pre-strike ballot shall ensure that all employers and employees included in the list compiled under section 97H(10)(a) in relation to the ballot are given notice of the results of the ballot in the prescribed manner.
- (2) A member of an organization of employees who intends to participate in a strike endorsed by a pre-strike ballot shall give notice of that intention to the employer of that member.
- (3) Subsection (2) does not apply if notice of that intention is given to the employer by the organization of employees on behalf of the member in accordance with subsection (4).
- (4) Notice under subsection (2) or (3) shall be given —
 - (a) as directed by the Commission, or, if no direction is given, within the period prescribed; and
 - (b) in the manner, if any, prescribed.

[Section 97I inserted by No. 3 of 1997 s.10.]

97J. Extension of participation period

- (1) If no participation in a form of strike that is endorsed by a pre-strike ballot takes place —
- (a) within 28 days of the declaration of the result of the pre-strike ballot; or
 - (b) if the Commission has made an order under subsection (2) in respect of that participation, within the period specified in the order,

the organization of employees whose members voted in the ballot may apply to the Commission for an order extending the period within which the participation may take place.

- (2) The Commission may, on application under subsection (1), order that the participation may take place within a period specified by the Commission, being a period that is not longer than —
- (a) 56 days after the declaration of the result of the pre-strike ballot which endorsed that form of strike; or
 - (b) 28 days after the final day of the period specified in the previous order made under this subsection in respect of the participation,

as the case requires.

- (3) The Commission shall not make more than 2 orders under subsection (2) in respect of participation endorsed by the same pre-strike ballot.

[Section 97J inserted by No. 3 of 1997 s.10.]

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97K. Injunctions

- (1) The Supreme Court may, on an application under this section, grant an injunction in such terms as the Supreme Court thinks fit where the Supreme 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 97C(1) or (2); or
 - (b) is involved in a breach of section 97C(1) or (2).
- (2) An interim or interlocutory injunction may be granted before final determination of an application.
- (3) An application under this section may be made by —
 - (a) a person authorized by the Minister to apply for the injunction; or
 - (b) a person the Supreme Court is satisfied is or will be affected by the conduct in respect of which the injunction is sought.
- (4) In dealing with an application for an injunction made otherwise than under this section on a matter related to a strike, the Supreme Court shall not have regard to —
 - (a) whether or not a pre-strike ballot has been held; or
 - (b) the results of a pre-strike ballot.

[Section 97K inserted by No. 3 of 1997 s.10.]

97L. Statistics

- (1) The Registrar shall collect and provide to the Chief Commissioner statistics in respect of —
 - (a) times taken for the determination of applications for pre-strike ballots and the conduct of pre-strike ballots; and
 - (b) such other matters in relation to pre-strike ballots as the Chief Commissioner directs.

- (2) The Chief Commissioner shall include the statistics provided under subsection (1) in the annual report to the Minister under section 16(2)(b).

[Section 97L inserted by No. 3 of 1997 s.10.]

97M. Regulations

- (1) The Governor may make regulations —
- (a) providing for the conduct of pre-strike ballots;
 - (b) providing for the appointment of, and prescribing the functions of, scrutineers;
 - (c) prescribing questions and other matters that must be presented to a voter in a pre-strike ballot;
 - (d) prescribing the functions of a person conducting a pre-strike ballot;
 - (e) providing for the manner in which expenses incurred in conducting a pre-strike ballot are to be met, including the extent to which those expenses may be met by the State;
 - (f) authorizing the payment by the State of expenses incurred in a pre-strike ballot;
 - (g) providing that contravention of or failure to comply with a regulation constitutes an offence, and providing for penalties not exceeding \$1 000 in the case of an individual, or \$5 000 in any other case, for offences against regulations made under this section;
 - (h) providing for any matter or thing which is required or permitted to be prescribed for the purposes of this Part.
- (2) The Commission may make regulations with respect to any matter referred to in subsection (1)(a), (b), (c), (d), (g) or (h).
- (3) If a regulation made under subsection (2) is inconsistent with a regulation made under subsection (1) the former prevails to the extent of the inconsistency.

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- (4) Regulations under subsection (1) or (2) are in addition to, and do not derogate from, the code of practice set out in Schedule 2.

[Section 97M inserted by No. 3 of 1997 s.10.]

Part VIC — Political expenditure by organizations

[Heading inserted by No. 79 of 1995 s.4; amended by No. 3 of 1997 s.13.]

97N. Interpretation

(1) In this Part —

“**election candidate**” means a candidate in a parliamentary election;

“**parliamentary election**” means the election of a member or members of the parliament of the State, the Commonwealth, another State or a Territory;

“**political expenditure**” has the meaning given by subsection (2);

“**political fund**”, in relation to an organization, means a fund maintained by the organization under section 97P(1);

“**political party**” means a body corporate or other body or organization having as one of its objects or activities the promotion of the election of election candidates endorsed by it.

(2) Political expenditure is —

- (a) making a payment to a political party (whether by way of a membership subscription or affiliation fee or in any other manner);
- (b) making a payment to an election candidate or a group of election candidates;
- (c) paying expenses directly or indirectly incurred by a political party;
- (d) paying expenses directly or indirectly incurred in connection with a parliamentary election by an election candidate or a group of election candidates; or
- (e) making a payment to a person on the understanding that that person or another person will directly or indirectly

s. 97O

apply the whole or a part of the payment in a way mentioned in paragraph (a), (b), (c) or (d).

[Section 97N inserted by No. 79 of 1995 s.4; amended by No. 3 of 1997 s.14.]

97O. Payments

For the purposes of this Part any payment made from a fund or account jointly owned, managed or controlled by an organization and another body shall be regarded as having been made by the organization.

[Section 97O inserted by No. 79 of 1995 s.4.]

97P. Political donations by organizations

- (1) An organization shall, if necessary for the purposes of this section, maintain a separate fund as a political fund.
- (2) If an organization receives an amount from any of its members to be applied by way of political expenditure, the organization shall credit the amount to a political fund.
- (3) If an organization receives any interest or other amount earned or derived from the investment of moneys standing to the credit of a political fund, the organization shall credit the interest or other amount to that political fund.
- (4) An organization shall not credit any moneys to a political fund other than moneys referred to in subsection (2) or (3) and, in particular, shall not credit any moneys from a member's subscriptions to a political fund.
- (5) An organization shall not make any payment by way of political expenditure except from moneys already standing to the credit of a political fund.
- (6) If —
 - (a) an organization receives an amount from any of its members to be applied for political expenditure; and

- (b) that amount is received subject to a direction from the member as to the political party or parties, or election candidate or election candidates, to or in respect of which or whom the organization may pay or apply the amount,

the organization shall not make any payment from moneys in a political fund derived from that amount if the payment would be contrary to that direction.

[Section 97P inserted by No. 79 of 1995 s.4; amended by No. 3 of 1997 s.15.]

97Q. Rules are not to conflict with section 97P

Within 12 months of the coming into operation of section 15 of the *Labour Relations Legislation Amendment Act 1997*¹ the Registrar shall review the rules of each organization and shall, by application pursuant to this section, bring before the President the rules of any organization if, in the opinion of the Registrar, any of those rules is contrary to or inconsistent with section 97P.

[Section 97Q inserted by No. 79 of 1995 s.4; amended by No. 3 of 1997 s.16.]

97R. Auditor to report on compliance with political expenditure requirements

- (1) In reporting on the accounting records of an organization under section 65 the auditor, if able to do so, is to express an opinion on whether or not the organization has contravened or failed to comply with section 97P.
- (2) If the auditor finds that the accounting records are not in a form that is conducive to identifying a contravention of or failure to comply with section 97P, the auditor is to report that finding.

[Section 97R inserted by No. 3 of 1997 s.17.]

s. 97S

97S. Offences by organizations and officials relating to political expenditure

- (1) An organization that —
- (a) fails to credit an amount to a political fund as required by section 97P;
 - (b) credits an amount to a political fund contrary to section 97P; or
 - (c) makes a payment contrary to section 97P,

is guilty of an offence and liable to a penalty of \$5 000.

- (2) If an organization is guilty of an offence against subsection (1), any finance official of the organization who is in any way, by act or omission and directly or indirectly, concerned in or party to the transaction in question, knowing the transaction to have been made in contravention of section 97P is guilty of an offence and liable to a penalty of \$1 000.

- (3) In subsection (2) —

“finance official” has the same meaning as it has in section 74.

[Section 97S inserted by No. 3 of 1997 s.17.]

97T. Disqualification for unauthorized political expenditure

- (1) If an officer of an organization is convicted of an offence against section 97S(2), the industrial magistrate’s court may, on the application of the Registrar, order —
- (a) that the officer’s office becomes vacant when the order is made; and
 - (b) that, from the time when the order is made, the officer is disqualified from holding or acting in any office in the organization during such period of not more than 3 years as is specified in the order.

- (2) The industrial magistrate's court may include in an order under subsection (1) any provision that it considers necessary to ensure the operation of the order and to provide for the election or appointment of a person to replace the officer whose office becomes vacant under the order.
- (3) A person who performs or attempts to perform the functions of an office in the organization while disqualified by an order under subsection (1) from holding or acting in the office commits an offence punishable by the Supreme Court as for a contempt.

[Section 97T inserted by No. 3 of 1997 s.17.]

97U. Recovery of unauthorized payments

- (1) In this section —
“unauthorized payment” means —
 - (a) a payment made contrary to section 97P; or
 - (b) a payment made from moneys that have been credited contrary to section 97P.
- (2) If an organization is convicted of an offence against section 97S(1) and an unauthorized payment is proved to have been made, the industrial magistrate's court may order the unauthorized payment to be forfeited to the Crown by the political party, candidate or candidates which or who received the payment or incurred the expenses in respect of which the payment was made, or in a case mentioned in section 97N(2)(e), by the person to whom the payment was made or a person by whom the payment was applied.
- (3) An amount ordered to be forfeited under subsection (2) is a debt due to the Crown by the political party, candidate, candidates or person, as the case may be, to which or to whom the order is directed.

s. 97U

- (4) The Registrar, a Deputy Registrar, or an Industrial Inspector, may apply in the prescribed manner to an industrial magistrate's court for the recovery of the amount.

[Section 97U inserted by No. 3 of 1997 s.17.]

Part VII — Miscellaneous

98. Industrial Inspectors

- (1) Industrial Inspectors for the purposes of securing the observance of the provisions of this Act and of awards, industrial agreements and orders in force thereunder may be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (2) Subject to this Act, an Industrial Inspector shall perform such duties and shall make such investigations and reports in relation to the observance of the provisions of this Act, the regulations and of any award, industrial agreement or order, as the Minister directs.
- (3) An Industrial Inspector may, for the purposes of carrying out his functions under this Act —
 - (a) enter any building, structure, conveyance or place of any kind whatsoever wherein or in respect of which there are reasonable grounds to suspect that any industry is being or has been carried on or any work is being done or has been done or commenced or any matter or thing is taking or has taken place (in this subsection called an industrial location) for the purpose of ascertaining whether or not the provisions of this Act or of any awards or orders in force thereunder are being or have been observed;
 - (b) inspect and view any work, material, machinery, appliance, article, record, matter or thing whatsoever which is in an industrial location;
 - (c) take with him into an industrial location any person he may require to provide assistance which he considers to be necessary;
 - (d) question, either alone or in the presence of some other person, with respect to anything to which this Act relates

- any person he finds in an industrial location and, if he thinks fit, require written answers to be given;
- (e) by notice in writing or orally require a person having the control of, or access to, a record, whether kept in an industrial location entered by him under this subsection or elsewhere, to produce, exhibit, send or deliver that record for his examination in accordance with that requirement;
 - (f) examine, and seize or retain or take extracts from or copies of, any record produced, exhibited, sent or delivered for his inspection in compliance with a requirement made under this subsection;
 - (g) if he has reasonable cause to apprehend any obstruction in the carrying out of those functions, call to his assistance any member of the Police Force; and
 - (h) exercise any power, other than a power referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), conferred on him by this Act or by any direction given thereunder.
- (4) When an Industrial Inspector uses the assistance of an interpreter, any question, inquiry or requirement put or made to a person by the interpreter on behalf of the Industrial Inspector shall for all purposes be deemed to be put or made to the person by the Industrial Inspector, and any answer or other statement given or made by the person to the interpreter shall for all purposes be deemed to be given or made to the Industrial Inspector.
- (5) A person who acts as an interpreter for an Industrial Inspector shall not, otherwise than for the purposes of this Act and to assist an Industrial Inspector in the performance of his duties under this Act, disclose to any person any information that he acquires in the performance of his duty as such an interpreter.
- Penalty: \$1 000.

(6) In subsection (3)(a) —

“conveyance” means vehicle, vessel, hovercraft, aircraft or other means of transportation made, adapted or used or intended to be used for the carriage of persons or goods.

(7) In subsection (3) —

“record” means any thing or process on or by which information is recorded or preserved or 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 that information or meaning.

[Section 98 amended by No. 121 of 1982 s.32; No. 32 of 1994 s.14; No. 79 of 1995 s.38.]

99. Wage rates in awards not affected by repeal of basic wage provisions

The repeal effected by this Act shall not affect the operation under this Act of any award or industrial agreement in force under the repealed Act immediately prior to the commencement of this Act in so far as the wage rates prescribed in any such award or industrial agreement included as a constituent a basic wage determined and declared under the repealed Act.

[100. Repealed by No. 121 of 1982 s.33.]

[101. Repealed by No. 94 of 1984 s.59.]

102. Obstruction

(1) A person shall not —

(a) being lawfully required to do so fail to produce or exhibit, or allow to be examined, a record as defined by section 98(7);

s. 102A

- (b) being lawfully asked a question by a person under this Act, fail to answer truthfully to the best of his knowledge, information and belief;
 - (c) being an officer of an organization, refuse to assist in the taking of any ballot by providing for the use of the Returning Officer or his assistants such register and lists of the members of the organization as the Returning Officer requires; or
 - (d) falsely represent in an application made under this Act that he is a member of an organization.
- (2) A person shall not —
- (a) resist or obstruct a person in the performance of a duty imposed or the exercise of a power conferred by or under this Act; or
 - (b) wilfully mislead a person in any particular likely to affect the exercise of a power so conferred or the discharge of a duty so imposed.

[Section 102 amended by No. 121 of 1982 s.34; No. 94 of 1984 s.65; No. 1 of 1995 s.53.]

102A. Institution of proceedings by officers

- (1) Subject to this Act, the Registrar or a Deputy Registrar may, of his own motion, and shall, if he is directed in accordance with this Act to do so, make an application under section 77 or 83 or 84A.
- (2) Subject to this Act, an Industrial Inspector may, of his own motion, make an application under section 77 or 83 or 84A.

[Section 102A inserted by No. 94 of 1984 s.60; amended by No. 79 of 1995 ss.8(2) and 39.]

103. Application may relate to more than one matter in certain circumstances

- (1) Where it is alleged that one and the same breach has been committed by 2 or more persons or that related breaches have

been committed respectively by 2 or more persons, the matters may be joined in the one application, notwithstanding that the breach or breaches are alleged to have been committed otherwise than at the same time, and notwithstanding that in cases where there is a principal respondent an application is not made in respect of the principal respondent or that the principal respondent is not amenable to proceedings.

- (2) The Full Bench or the industrial magistrate's court, as the case may be, may proceed to deal with the matters joined in the application together, but if of opinion that the respondent is likely to be prejudiced by the joinder, may require the applicant to elect upon which matter he will proceed, and may direct that the matter so elected shall be dealt with separately.

- (3) In this section —

“application” means an application made under section 77 or 83 or 84A;

“breach” means a contravention or failure to comply with a provision of this Act or an award, industrial agreement, direction, order or declaration, but does not include a contravention or failure to comply that constitutes an offence against this Act.

[Section 103 inserted by No. 94 of 1984 s.60; amended by No. 44 of 1991 s.8; No. 79 of 1995 s.8(2).]

104. Prosecutions

- (1) A person authorized by the Minister to prosecute offences under this Act of a particular kind may make and prosecute a complaint of an offence of that kind.
- (2) If a complaint shows that the person making the complaint is authorized as referred to in subsection (1), that fact is to be taken to be proved in the absence of evidence to the contrary.
- (3) An Industrial Inspector may, of his own motion, make and prosecute a complaint of an offence under this Act.

s. 105

- (4) The Registrar or a Deputy Registrar may, of his own motion, and shall, if he is directed under this Act to do so, make and prosecute a complaint of an offence under this Act.
- (5) A person not referred to in subsection (1), (3) or (4) may make a complaint of an offence under this Act but the complaint cannot be prosecuted unless the court is satisfied that the complainant has been affected by the conduct complained of.

[Section 104 inserted by No. 79 of 1995 s.40.]

105. Publication of awards, etc.

The production of the *Government Gazette* or the *Industrial Gazette* in which is published any award, industrial agreement, order, or notification made under the authority of this Act, or any of the notices or matters set out in Schedule 1 shall, before all courts and persons acting judicially, be evidence of the award, industrial agreement, order, notification, notice, or matter and of any of the matters stated therein.

[Section 105 amended by No. 94 of 1984 s.66.]

106. Judicial notice of signatures and appointments

All courts and all persons acting judicially shall take judicial notice of —

- (a) the official signature of any person holding —
 - (i) an office under any provision of the *Industrial Arbitration Act 1912* in force from time to time before the repeal of that Act;
 - (ii) the office of Presiding Judge, President, Chief Commissioner, Senior Commissioner, Commissioner, industrial magistrate, Clerk of the Court, Registrar, Deputy Registrar, or Industrial Inspector;

and

- (b) the appointment and official character of any such person.

[Section 106 amended by No. 121 of 1982 s.36; No. 94 of 1984 s.66; No. 44 of 1991 s.8.]

107. No costs to be awarded against Registrar, Deputy Registrar or Industrial Inspector

No order for costs shall be made against the Registrar, a Deputy Registrar, or an Industrial Inspector in proceedings instituted by him pursuant to a direction given under this Act.

[Section 107 amended by No. 94 of 1984 s.66.]

108. Organizations and associations not affected by certain Imperial Acts

An organization or association shall not, on and from the date of its registration, and while so registered, be affected by the provisions of any Act of the Imperial Parliament against corresponding societies or unlawful combinations in respect of any matters done in compliance with the registered rules of such organization or association.

[Section 108 amended by No. 94 of 1984 s.66.]

109. Dues payable to organization or association may be sued for summarily

All fines, subscriptions and levies payable under its rules to an organization or association by any member thereof or to any association by any organization represented therein may, in so far as they are owing to the organization or association for any period subsequent to the registration thereof, be sued for and recovered in a court of competent jurisdiction as a debt due to the organization or association, but every action for the recovery of such fines, subscriptions and levies shall be commenced within 12 months from the time when the cause of action arose.

[Section 109 amended by No. 94 of 1984 s.66; No. 79 of 1995 s.41.]

s. 110

110. Disputes between organization or association and its members

- (1) Every dispute between an organization and any of its members, or between an association and any organization represented therein, shall, subject to section 66, be decided in the manner directed by the rules of the organization, or, as the case may be, by the rules of the association.
- (2) On the application of an organization or association, an industrial magistrate's court may order the payment by any member or, in the case of an association, by any organization represented therein of any fine, penalty, or subscription payable in pursuance of the rules of the organization or the association, as the case may be, or any contribution, not exceeding \$20 in the case of any member, to a penalty incurred or money payable under an award or order.

[Section 110 amended by No. 94 of 1984 s.66; No. 44 of 1991 s.8.]

111. No premiums to be taken for employment

- (1) An employer or employee or a person acting on behalf of an employer or employee shall not ask, demand, or receive, or pay or provide or offer to pay or provide, any premium, payment, or reward for or in respect of the employment or engagement of any employee in any industry which is the subject of an award or order, but this subsection does not apply to an employment or engagement through the agency of an employment agent acting in the ordinary course of his business under the *Employment Agents Act 1976*.
- (2) A person shall not accept for publication or publish in a newspaper, periodical, or otherwise any advertisement of an offer to accept or receive any premium, payment, or reward of a kind referred to in subsection (1).

Penalty: \$100.

(3) Where any money is received in contravention of subsection (1) then, notwithstanding any proceedings under this Act in respect of the contravention, the money may be recovered in an industrial magistrate's court —

- (a) by the person by whom or on whose behalf the money was paid; or
- (b) by an Industrial Inspector on behalf of that person,

as a debt due to that person.

[Section 111 amended by No. 94 of 1984 ss.65 and 66; No. 1 of 1995 s.53; No. 79 of 1995 s.27.]

112. Invalidity of certain provisions in organization rules

(1) Where the rules of an organization contain a provision that authorizes or purports to authorize the imposition of a penalty by way of a fine or levy or otherwise on an employee who complies with his contract of service the provision is invalid.

(2) An organization or any person shall not enforce or attempt to enforce a provision that is invalid by virtue of subsection (1).

(3) Where any money is received in contravention of subsection (2) then, notwithstanding any proceedings under this Act in respect of the contravention, the money may be recovered in an industrial magistrate's court —

- (a) by the person by whom or on whose behalf the money was paid; or
- (b) by an Industrial Inspector on behalf of that person,

as a debt due to that person.

[Section 112 amended by No. 94 of 1984 ss.65 and 66; No. 1 of 1995 s.53; No. 79 of 1995 s.28.]

s. 112A

112A. 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 either or both of the following —
- (a) appears as an agent under section 31, 81E or 91;
 - (b) provides advice or other services in relation to industrial matters,

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;
 - (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 authorized to —

- (d) appear for a party, person or body under section 31, 81E or 91; and
- (e) provide advice and other services in relation to industrial matters.

- (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 from disqualification or cancellation of registration; and
 - (e) prescribe any matter or thing which is authorized or required to be prescribed for the purposes of this section.

[Section 112A inserted by No. 79 of 1997 s.16.]

113. Regulations

- (1) The Court with respect to any of the following purposes that relate to the Court, and the members of the Commission, or a majority of them, with respect to any of those purposes that relate to the Commission may make regulations —
 - (a) prescribing the forms of certificates, notices, returns, or other instruments or documents to be used for the purposes of this Act;
 - (b) prescribing the duties of the Registrar and of all other officers and persons acting in the administration of this Act;

- (c) regulating the practice and procedure of the Court and the Commission and providing for the effective exercise of their jurisdiction and, without limiting the generality thereof, regulating —
 - (i) the times and places for the sitting of the Court and the Commission;
 - (ii) the summoning of parties and of witnesses;
 - (iii) the allowances to witnesses; and
 - (iv) the enforcement of the awards, orders, judgments, directions, and sentences of the Court and the Commission and of industrial agreements;
- (d) prescribing what fees shall be paid in respect of any proceeding before the Court and the Commission, and the party by whom such fees shall be paid;
- (da) providing for the payment of remuneration, travelling and other allowances to members of constituent authorities and their deputies (other than Commissioners);
- (e) prescribing any act or thing necessary to supplement or render more effectual the provisions of this Act as to proceedings or the conduct of proceedings before the Court and the Commission; and
- (f) providing for any matters which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to regulate (either generally or in any particular case) for giving effect to this Act,

but regulations so made do not prevent the issuing by the Court or the Commission, and publication in the *Industrial Gazette*, of practice notes for the guidance of persons having business in the Court or the Commission.

- (2) Regulations made by the Commission shall, as far as practicable, prescribe one form for the reference of all matters to

the Commission and may provide for the attachment thereto of such statements, statutory or other declarations, or other documents as the case may require.

- (3) The Governor may make regulations for the purpose of regulating the practice and procedure before an industrial magistrate's court, for and incidental to the exercise of its powers and jurisdiction under this Act, and prescribing the costs to be allowed in proceedings before an industrial magistrate's court, and the fees to be paid, and the allowances to witnesses in respect thereof and the enforcement of a judgment, order, direction, or other decision of an industrial magistrate's court.
- (3a) The Governor may make regulations in any case where this Act contemplates the making of regulations by the Governor.
- (4) Any regulations made under this Act may provide that contravention of a regulation constitutes an offence and may provide for penalties not exceeding a fine of \$40 for offences against the regulations.

[Section 113 amended by No. 121 of 1982 s.37; No. 92 of 1984 s.5; No. 94 of 1984 ss.61, 65 and 66; No. 44 of 1991 s.8; No. 92 of 1994 s.14; No. 1 of 1995 ss.13, 32 and 53; No. 3 of 1997 s.38.]

114. Prohibition of contracting out

- (1) Subject to this Act, a person shall not be freed or discharged from any liability or penalty or from the obligation of any award, industrial agreement or order of the Commission by reason of any contract made or entered into by him or on his behalf, and every contract, in so far as it purports to annul or vary such award, industrial agreement or order of the Commission, shall, to that extent, be null and void without prejudice to the other provisions of the contract which shall be deemed to be severable from any provisions hereby annulled.

s. 114

- (2) Each employee shall be entitled to be paid by his employer in accordance with any award, industrial agreement or order of the Commission binding on his employer and applicable to him and to the work performed, notwithstanding any contract or pretended contract to the contrary, and the employee may recover as wages the amount to which he is hereby declared entitled in any court of competent jurisdiction, but every action for the recovery of any such amount shall be commenced within 6 years from the time when the cause of action arose, and the employee is not entitled to recovery of wages under this subsection and otherwise, in respect of the same period.
- (3) This section has effect subject to section 7E.

[Section 114 amended by No. 94 of 1984 s.62; No. 119 of 1987 s.24; No. 15 of 1993 s.29.]

[Part VIII omitted under the Reprints Act 1984 s,7(4)(g).]

Schedule 1

Matters to be published in the “*Western Australian Industrial Gazette*”

1. The complete text of industrial agreements, and retirements from industrial agreements.
2. All decisions and published reasons for decision of —
 - (a) the Court;
 - (b) the Full Bench;
 - (c) the President;
 - (d) the Commission;
 - (e) Industrial Magistrates; and
 - (f) Boards of Reference,

but this item does not apply to any decision or reasons for decision of an industrial magistrate’s court exercising jurisdiction to hear and determine complaints for offences or under section 70(2) or Division 1 of Part 5 of the *Workplace Agreements Act 1993* or of the Commission exercising jurisdiction under section 7F of this Act.

3. All directions and orders which alter the qualifications for membership of any organization the area in respect of which the organization is registered, or the name of the organization.
4. A list of organizations registered under the Act and the registered offices of those organizations.
5. Notification of the appointment of any person as Chairman or member of a Board of Reference.
6. Any matter which is prescribed or which is directed by the Court, the President, or the Chief Commissioner to be published or which the Registrar may consider should be published.

[Schedule 1 amended by No. 94 of 1984 s.66; No. 15 of 1993 s.30;
No. 79 of 1995 s.42.]

Schedule 2 — Pre-strike ballots — Code of practice

[Section 97H(13)]

1. Conduct of pre-strike ballot

A pre-strike ballot shall be conducted —

- (a) as quickly as reasonably practicable; and
- (b) so far as is reasonably practicable in a manner that ensures that individuals voting —
 - (i) do so in secret; and
 - (ii) do so without incurring expense by reason of voting.

2. Pre-strike ballots involving more than one organization

If the members of more than one organization of employees are entitled to vote in pre-strike ballots in connection with the same dispute or potential dispute, the arrangements for the different ballots shall be coordinated by the persons conducting those ballots so that, as far as practicable, they are held at the same time and the results are notified at the same time.

3. Questions

- (1) A question presented to a voter in relation to a strike shall specify —
 - (a) the form of the strike; and
 - (b) the purpose of the strike,and shall require the person answering it to say, by answering “Yes” or “No”, whether that person is prepared to participate in that form of strike for that purpose.
- (2) Separate questions shall be presented to the voter in respect of each form of strike which the voter may endorse.
- (3) The question or questions presented to a voter shall be simply expressed and each question shall be presented separately from any other question that might also appear.

Pre-strike ballots — Code of practice Schedule 2

- (4) Neither the required question or questions, nor any commentary or other matter which is presented to the voter, shall —
- (a) be presented in a way which might encourage a voter to answer one way rather than another as a result of that presentation; or
 - (b) include any commentary which endeavours to influence the outcome of a voter's response to any question on the voting paper.

[Schedule 2 inserted by No. 3 of 1997 s.11.]

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Notes

¹ This reprint is a compilation as at 4 February 2000 of the *Industrial Relations Act 1979* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Industrial Arbitration Act 1979</i>	114 of 1979	21 December 1979	1 March 1980 (see section 2 and <i>Gazette</i> 8 February 1980 p.383)	Short title subsequently amended (see footnote to section 1)
<i>Industrial Arbitration Amendment Act 1980</i>	82 of 1980	5 December 1980	5 December 1980	
<i>Industrial Arbitration Amendment Act 1981</i>	11 of 1981	22 May 1981	22 May 1981	
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2(1) and <i>Gazette</i> 25 June 1982 p.2079)	
<i>Industrial Arbitration Amendment Act (No. 2) 1982</i>	121 of 1982	9 December 1982	9 December 1982	
<i>Industrial Arbitration Amendment Act (No. 2) 1984</i>	92 of 1984	29 November 1984	Sections 4 and 5: 1 March 1985 (see section 2(2) and (3) and <i>Gazette</i> 1 March 1985 p.778); balance: 29 November 1984 (see section 2(1))	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984, Part II</i>	94 of 1984	11 December 1984	1 March 1985 (see section 2(2) and <i>Gazette</i> 1 March 1985 p.778)	
<i>Industrial Relations Amendment Act 1985</i>	42 of 1985	13 May 1985	13 May 1985	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2)	
<i>Judges' Salaries and Pensions Amendment Act 1987, section 8</i>	82 of 1987	1 December 1987	1 December 1987 (see section 2)	
<i>The Rural and Industries Bank of Western Australia Act 1987, section 38</i>	83 of 1987	1 December 1987	1 April 1988 (see section 2)	
<i>Industrial Relations Amendment Act (No. 4) 1987</i>	119 of 1987	31 December 1987	Section 7(1): 3 November 1992 (see section 2 and <i>Gazette</i> 3 November 1992 p.5389); balance: 4 March 1988 (see section 2 and <i>Gazette</i> 4 March 1988 p.665)	
<i>Acts Amendment (Education) Act 1988, Part 6</i>	7 of 1988	30 June 1988	8 July 1988 (see section 2 and <i>Gazette</i> 8 July 1988 p.2371)	

Industrial Relations Act 1979

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>R & I Bank Act 1990</i> , section 45(1)	73 of 1990	28 December 1990	1 January 1991 (see section 2 and <i>Gazette</i> 28 December 1990 p.6369)	
<i>Industrial Relations Amendment Act 1990</i>	99 of 1990	22 December 1990	Section 10: 21 June 1991 (see section 2(2) and <i>Gazette</i> 21 June 1991 p.3005); Section 14: not proclaimed (see section 2(3)): balance: 19 January 1991 (see section 2(1))	Section 14 repealed by section 35 of No. 1 of 1995
<i>Acts Amendment (Industrial Magistrate's Courts) Act 1991</i> , Part 3	44 of 1991	17 December 1991	3 January 1992 (see section 2 and <i>Gazette</i> 3 January 1992 p.41)	Section 6(2), (3) and (4): transitional ¹²
<i>Western Australian Land Authority Act 1992</i> , section 49	35 of 1992	23 June 1992	1 July 1992 (see section 2(2) and <i>Gazette</i> 30 June 1992 p.2869)	
<i>Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992</i> , Part 4	40 of 1992	2 October 1992	3 November 1992 (see section 2 and <i>Gazette</i> 3 November 1992 p.5389)	Section 9(2): transitional ¹¹
<i>Financial Administration Legislation Amendment Act 1993</i> , section 11	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Industrial Relations Amendment Act 1993</i>	15 of 1993	29 November 1993	1 December 1993 (see section 2 and <i>Gazette</i> 30 November 1993 p.6439)	Sections 15(2) ⁸ and 18(2) and (3) ¹⁰ : repeals and savings

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Sector Management) Act 1994</i> , section 14	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Taxi Act 1994</i> , section 50	83 of 1994	20 December 1994	10 January 1995 (see section 2 and <i>Gazette</i> 10 January 1995 p.73)	
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> , Part 7	92 of 1994	23 December 1994	1 January 1995 (see section 2(1) and <i>Gazette</i> 30 December 1994 p.7211)	
<i>Hospitals Amendment Act 1994</i> , section 18, item 11 of Table	103 of 1994	11 January 1995	3 February 1995 (see section 2 and <i>Gazette</i> 3 February 1995 p.333)	Paragraph 4 of item 11 of the table to section 18 repealed by No. 79 of 1995 s.36(4)
<i>Industrial Legislation Amendment Act 1995</i>	1 of 1995	9 May 1995	Part 3: 1 January 1996 (see section 2(2) and <i>Gazette</i> 24 November 1995 p.5389); balance: 9 May 1995 (see section 2(1))	Sections 34, 42(2) and (3) and Division 3 of Part 2: transitional ^{7, 13, 14}
<i>Marketing of Potatoes Amendment Act 1995</i> , section 58(5)	11 of 1995	30 June 1995	4 September 1995 (see section 2 and <i>Gazette</i> 1 September 1995 p.4063)	
<i>Occupational Safety and Health Legislation Amendment Act 1995</i> , Part 4	30 of 1995	11 September 1995	20 January 1996 (see section 2 and <i>Gazette</i> 19 January 1996 p.201)	

Industrial Relations Act 1979

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Sentencing (Consequential Provisions) Act 1995, Part 40</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i>	79 of 1995	16 January 1996	Section 12(1): 16 July 1996 (see section 3(2) and <i>Gazette</i> 15 July 1996 p.3393); Sections 66 and 68: 18 May 1996 (see section 3(2) and <i>Gazette</i> 14 May 1996 p.2019); Part 2 and sections 35 and 36: 1 November 1996 (see section 3(2) and <i>Gazette</i> 1 November 1996 p.5765); Sections 15 and 16: 5 December 1997 (see section 3(2) and <i>Gazette</i> 4 December 1997 p.7071); Section 13: 1 January 1998 (see section 3(2) and <i>Gazette</i> 31 December 1997 p.7609); balance: 16 January 1996 (see section 3(1))	Section 12(1): transitional ⁹ , section 12(2) and (3): transitional ¹⁵ Section 13(2), (3), (4), (5) and (6): transitional ¹⁶
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Vocational Education and Training Act 1996</i> , section 71(1)	42 of 1996	16 October 1996	1 January 1997 (see section 2 and <i>Gazette</i> 12 November 1996 p.6301); Schedule 2 to be proclaimed ^{1a}	
<i>Labour Relations Legislation Amendment Act 1997</i>	3 of 1997	23 May 1997	Sections 22, 23, 24, 29, 30, 31, 32, 33, 35(a) and 38: 23 May 1997 (see section 2(1)); Parts 2 and 4: 20 June 1997 (see section 2(2)); Section 34 operative 17 October 1997 (see section 2(3) and <i>Gazette</i> 30 September 1997 p.5415); Part 3 and sections 35(b), 36 and 37: 1 January 1998 (see section 2 and <i>Gazette</i> 31 December 1997 p.7603); Part 5 operative 5 June 1998 (see section 2(3) and <i>Gazette</i> 24 April 1998 p.2171)	Sections 22(2), 29(2) and (3), 32 and 34(3), (4) and (5): transitional ^{4, 6, 17, 18}

N.B. The *Industrial Relations Act 1979* was affected by the *Workplace Agreements Act 1993* (No. 13 of 1993).

^{1a} As at the date of this reprint Schedule 2 of the *Vocational Education and Training Act 1996* (No. 42 of 1996) was not in operation. It reads as follows —
“

Schedule 2

[Section 62]

Amendments and transitional provisions relating to Part 7

1. Industrial Relations Act 1979 amended

The *Industrial Relations Act 1979** is amended in section 7 —

- (a) in the definition of “apprentice” by deleting “an apprentice under the *Industrial Training Act 1975*” and substituting the following —

“

a person who has entered an apprenticeship within the meaning of that term in section 58 of the *Vocational Education and Training Act 1996*

”;

- (b) in paragraph (a) of the definition of “employee” by deleting “industrial”;
- (c) by deleting the definition of “industrial trainee”;
- (d) in paragraph (f) of the definition of “industrial matter” —
- (i) by deleting “industrial”;
- (ii) by deleting “*Industrial Training Act 1975*” and substituting the following —

“

relevant training scheme under the *Vocational Education and Training Act 1996*

”;

and

- (iii) by deleting “any agreement of apprenticeship or industrial training agreement” and substituting the following —

“

an apprenticeship contract or other agreement forming part of a training scheme under that Act

”.

and

- (e) by inserting after the definition of “teacher” the following definition —

“

“**trainee**” means a trainee under a training scheme established under the *Vocational Education and Training Act 1996*;

”.

2. Transitional

- (1) In this clause —
“**repealed Act**” means the *Industrial Training Act 1975* repealed by section 61.
- (2) On the commencement of section 61 any apprenticeship agreement or industrial training agreement entered into and registered under the repealed Act and in force immediately before that commencement is to be taken to be an agreement entered into under a training scheme established or recognized under section 58 but with the same terms, conditions and provisions as were applicable before that commencement.
- (3) Any regulations made under the repealed Act and in operation immediately before the commencement of section 61 which were applicable to, or in respect of, an apprenticeship or industrial training agreement referred to in subclause (2) are to continue to apply to such an agreement, until regulations are made under this Act in respect of the matters covered by those regulations.
- (4) Regulations may be made, with effect from a time which is not earlier than the commencement of section 61, amending or supplementing the transitional provisions set out in subclauses (2) and (3) for the purpose of providing an effective and efficient transition from the provisions of the repealed Act to the provisions of this Act.

”.

Also at the date of this reprint an item of Schedule 2 of the *School Education Act 1999* (No. 36 of 1999) was not in operative. It reads as follows —

“

Industrial Relations Act 1979

1. Section 7(1) is amended by deleting the definitions of “Minister for Education” and “teacher”.
2. Section 23B is repealed.
3. Section 29(1a) is repealed.
4. Section 31(1)(c)(ii) is amended by deleting “an appeal under section 23B.”.
5. Section 49(2b) is repealed.
6. Section 80C(1) is amended —
 - (a) in paragraph (f) of the definition of “Government officer” by deleting “institution.” and substituting the following —

“

“**teacher**” includes —

- (a) any person employed as a member of the teaching staff under section 235(1)(b) of the *School Education Act 1999*;
- (b) any person who is a member of the teaching staff or another person appointed under section 236(2) and who is employed at a community kindergarten registered under Part 5 of the *School Education Act 1999*,

but does not include any public service officer, whether or not that public service officer holds or acts in a position in respect of which a teaching academic qualification is required.

”

”

² In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).

³ See section 4(1) of the Commonwealth *Fisheries Management Act 1991*.

⁴ Section 29(2) and (3) of the *Labour Relations Legislation Amendment Act 1997* (No. 3 of 1997) reads as follows —

“

- (2) On and from the coming into operation of this section a provision of an award, order or industrial agreement dealing with the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been ceased by an employer or implementing an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization is of no effect, and any agreement so implemented is of no effect.
- (3) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall —
 - (a) review each award, order and industrial agreement in force on the coming into operation of this section;
 - (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;and
 - (c) after affording employers and organizations who give notice under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement by omitting any provision that is of no effect under subsection (2).

”

⁵ Now see the *Public Sector Management Act 1994* (No. 31 of 1994).

⁶ Section 22(2) of the *Labour Relations Legislation Amendment Act 1997* (No. 3 of 1997) reads as follows —

“

- (2) Notwithstanding subsection (1), section 23AA of the principal Act as in force immediately before the coming into operation of this section continues to operate in respect of any proceeding arising from a claim made before the coming into operation of this section.

”

⁷ Section 42(2) and (3) of the *Industrial Legislation Amendment Act 1995* (No. 1 of 1995) reads as follows —

“

- (2) Section 23A of the principal Act as amended by this section applies to and in relation to —
 - (a) any claim made under the principal Act after the coming into operation of this section; and
 - (b) any claim that was made under the principal Act before the coming into operation of this section and has not been heard and determined under the principal Act.
- (3) Notwithstanding section 29(2) of the principal Act, a referral by any employee in respect of a dismissal —
 - (a) that occurred before the coming into operation of this section; and
 - (b) that is, on the coming into operation of this section, the subject of an application under section 170EA of the *Industrial Relations Act 1988* of the Commonwealth that has not been determined under that Act,
may be made under section 29(1)(b)(i) of the principal Act not later than 28 days after the coming into operation of this section.

”

⁸ Section 15(2) of the *Industrial Relations Amendment Act 1993* (No. 15 of 1993) reads as follows —

“

- (2) Any proceedings under the section repealed by subsection (1) that are in progress immediately before the repeal are by force of this subsection discontinued.

”

⁹ Section 12(1) of the *Industrial Relations Legislation Amendment and Repeal Act 1995* (No. 79 of 1995) reads as follows —

“

12. Certain provisions of no effect or to be reviewed

- (1) On and from the coming into operation of this subsection a provision of an award, order or industrial agreement made before the coming into operation of section 11 that is contrary to, or inconsistent with, section 49B as inserted into the principal Act by this Act is, to the extent of the conflict or inconsistency, of no effect.

”

¹⁰ Section 18(2) and (3) of the *Industrial Relations Amendment Act 1993* (No. 15 of 1993) read as follows —

“

- (2) Despite the repeal effected by subsection (1)(c) the Long Service Leave General Order continues in force in the form in which it existed immediately before the repeal as if the repeal had not occurred, but may be cancelled by order made by the Minister and published in the *Industrial Gazette*.
- (3) In subsection (2) “**Long Service Leave General Order**” means the order relating to long service leave made by the Commission on 27 January 1978 and published in *the Industrial Gazette* on 22 February 1978 at page 120 and the Schedule attached to that order published in that *Gazette* on 25 January 1978 at pages 1 to 6.

”

¹¹ Section 9(2) of the *Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992* (No. 40 of 1992) reads as follows —

“

- (2) A person who ceased, before the day referred to in section 2 (in this subsection referred to as “**the commencing day**”), to be —
- (a) employed, otherwise than under the *Public Service Act 1978*, as a member of the staff at Government House, Perth, including the grounds appurtenant thereto;
- (b) a member of the staff of Parliament in the Department of the Legislative Council, the Department of the Legislative Assembly, the Department of the Parliamentary Reporting Staff, the Department of the Parliamentary Library or the Joint House Department; or

- (c) an electorate officer appointed to assist —
 - (i) a member of the Legislative Council or the Legislative Assembly in dealing with constituency matters; or
 - (ii) the secretary of a parliamentary political party, has the same right to appeal to a Public Service Appeal Board under Division 2 of Part IIA of the principal Act in respect of that cessation as he or she would have had if that cessation had occurred after the commencing day, and that person shall, if he or she wishes to exercise the right of appeal conferred by this subsection and notwithstanding any regulations made under the principal Act, commence his or her appeal within the period of 90 days beginning on the commencing day.

”

¹² Section 6(2), (3) and (4) of the *Acts Amendment (Industrial Magistrate's Courts) Act 1991* (No. 44 of 1991) reads as follows —

“

- (2) A person who, immediately before the commencement of this section, held office as an Industrial Magistrate under the principal Act as read with the *Stipendiary Magistrates Act 1957* shall be deemed on that commencement to have been appointed to be an industrial magistrate under section 81B of the principal Act as amended by this Act.
- (3) Any proceedings begun before an Industrial Magistrate and not abandoned or finally determined before the commencement of this section may be dealt with after that commencement as if the principal Act had not been amended by this Act.
- (4) An appeal in respect of the decision of an Industrial Magistrate made before the commencement of this section may be —
 - (a) determined;
 - (b) heard and determined; or
 - (c) instituted, heard and determined,

as the case requires, under section 84 of the principal Act after that commencement as if the principal Act had not been amended by this Act.

”

¹³ Division 3 of Part 2 of the *Industrial Legislation Amendment Act 1995* (No. 1 of 1995) reads as follows —

“

Division 3 — Transitional and miscellaneous

18. Interpretation

In this Division, unless the contrary intention appears —

“**amended provisions**” means the *Industrial Relations Act 1979* as amended by this Part;

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

“**repealed provisions**” means provisions repealed by section 10;

“**former Tribunal**” means the Government School Teachers Tribunal established under the repealed provisions.

19. Members to vacate office

- (1) The members of the former Tribunal immediately before the coming into operation of section 10 are to vacate office on the coming into operation of section 10.
- (2) Nothing in subsection (1) affects the operation of section 21.

20. Awards, orders or other decisions

After the coming into operation of section 10 —

- (a) an award, order or other decision of the former Tribunal in force under the repealed provisions immediately before the coming into operation of section 10 is, for all the purposes of the amended provisions and of any other written law, to be taken to be an award, order or decision made by the Commission under the amended provisions; and
- (b) any industrial agreement registered by the former Tribunal under the repealed provisions and in force under those provisions immediately before the coming into operation of section 10 is, for all the purposes of the amended provisions and of any other written law, to be taken to be an industrial agreement registered by the Commission.

21. Pending proceedings continued

- (1) In this section “**pending proceedings**” means any application, appeal or other claim made to the former Tribunal under the

Industrial Relations Act 1979 that was commenced before the former Tribunal before the coming into operation of section 10.

- (2) For the purposes of this section, an application, appeal or other claim is commenced if proceedings pursuant to the referral of the industrial matter or the institution of the appeal have commenced.
- (3) Pending proceedings may be continued and dealt with under the repealed provisions as in force immediately before the coming into operation of section 10.
- (4) Notwithstanding section 10, for the purposes of continuing and dealing with pending proceedings the former Tribunal is to continue as constituted under the repealed provisions.
- (5) Notwithstanding section 10 repealed provisions are to be taken to remain in force to the extent necessary for the purposes of subsections (3) and (4).
- (6) An award, order or other decision made in pending proceedings is, for all the purposes of the amended provisions and of any other written law, to be taken to be an award, order or decision made by the Commission.

22. Jurisdiction in relation to existing matters

Subject to section 21 and the amended provisions, the Commission may exercise jurisdiction in relation to a matter whether that matter arose before or after the coming into operation of section 10.

¹⁴ Section 34 of the *Industrial Legislation Amendment Act 1995* (No. 1 of 1995) reads as follows —

“

34. Pending appeals and claims continued

- (1) In this section —
 - “**amended provisions**” means the *Industrial Relations Act 1979* as amended by this Part;
 - “**former Board**” means a Promotions Appeal Board established under the repealed provisions;
 - “**pending appeal**” means any appeal made to a former Board under the *Industrial Relations Act 1979* that was commenced before the former Board before the coming into operation of section 31;
 - “**repealed provisions**” means provisions repealed by section 31.

- (2) Pending appeals may be continued and dealt with under the repealed provisions as in force immediately before the coming into operation of section 31.
- (3) Notwithstanding section 31, for the purposes of continuing and dealing with pending proceedings a former Board is to continue as constituted under the repealed provisions.
- (4) Notwithstanding section 31, the repealed provisions are to be taken to remain in force to the extent necessary for the purposes of subsections (2) and (3).
- (5) Notwithstanding the amendments effected by section 28, section 80E of the principal Act continues to apply to and in respect of any claim that was commenced under that section before the coming into operation of section 28.

15 Section 12(2) and (3) of the *Industrial Relations Legislation Amendment and Repeal Act 1995* (No. 79 of 1995) reads as follows —

“

- (2) As soon as practicable and not later than 6 months after the coming into operation of this subsection the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall, for the purposes of subsection (3) —
 - (a) review each award, order and industrial agreement in force on the coming into operation of this section;
 - (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;and
 - (c) after affording employers and organizations who make application under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement as provided under subsection (3).

- (3) The Commission or Railways Classification Board, as the case requires, shall vary each award, order and industrial agreement by —
- (a) varying its provisions, or inserting further provisions, to make adequate provision for the procedures required under section 49A of the principal Act as inserted into the principal Act by this Act; and
 - (b) varying or omitting any provision that is contrary to, or in conflict with, section 49B of the principal Act as inserted into the principal Act by this Act, or inserting further provisions, to ensure that the award, order or industrial agreement is consistent with that provision,
- as the case requires.

¹⁶ Section 13(2), (3), (4), (5) and (6) of the *Industrial Relations Legislation Amendment and Repeal Act 1995* (No. 79 of 1995) reads as follows —

“

- (2) On the coming into operation of this section any employer bound by an award, order or industrial agreement which requires contributions in respect of an employee to be made to a superannuation fund or scheme specified in the award, order or industrial agreement may, in lieu of those contributions and notwithstanding any provision of the award, order or industrial agreement, make contributions to a complying superannuation fund or scheme, as defined in section 49C(1) of the principal Act, nominated by the employee.
- (3) Regulations made under section 49C(3) of the principal Act as amended by this Act apply to and in respect of notifications and nominations under subsection (2) of this section.
- (4) An employee and an employer are bound by the nomination of an employee under subsection (2) of this section unless the employee and employer agree to change the complying superannuation fund or scheme to which the contributions are to be made.
- (5) An employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee entitled to nominate such a fund or scheme under this section.
- (6) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the

case of an award or order made by the Railways Classification Board, that Board shall —

- (a) review each award, order and industrial agreement in force on the coming into operation of this section;
- (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;

and

- (c) after affording employers and organizations who make application under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement by varying or omitting any provision that is contrary to, or in conflict with, section 49C of the principal Act as inserted into the principal Act by subsection (1) of this section to ensure that the award, order or industrial agreement is consistent with that provision.

”

¹⁷ Section 32 of the *Labour Relations Legislation Amendment Act 1997* (No. 3 of 1997) reads as follows —

“

32. Certain provisions of no effect or to be reviewed

- (1) On and from the coming into operation of this section a provision of an award, order or industrial agreement made before the coming into operation of this section that is contrary to, or inconsistent with, section 23(3)(c)(iii) or 49A of the principal Act as amended by this Act is, to the extent of the conflict or inconsistency, of no effect.
- (2) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall, for the purposes of subsection (3) —
 - (a) review each award, order and industrial agreement in force on the coming into operation of this section;

- (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State —
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;and
 - (c) after affording employers and organizations who give notice under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement as provided under subsection (3).
- (3) The Commission or Railways Classification Board, as the case requires, shall vary each award, order and industrial agreement by —
- (a) omitting any provision that is of no effect under subsection (1);
 - (b) varying its provisions, or inserting further provisions, to make adequate provision for the procedures required under sections 49A of the principal Act as amended by this Act; and
 - (c) varying or omitting any provision that is contrary to, or in conflict with, section 23(3)(c)(iii) or 49A of the principal Act as amended by this Act, or inserting further provisions, to ensure that the award, order or industrial agreement is consistent with that provision,
- as the case requires.

”

¹⁸ Section 34(3), (4) and (5) of the *Labour Relations Legislation Amendment Act 1997* (No. 3 of 1997) reads as follows —

“

- (3) On and from the coming into operation of this section a provision of an award, order or industrial agreement made before the coming into operation of this section that is contrary to, or inconsistent with, section 49B of the principal Act as amended by this Act is, to the extent of the conflict or inconsistency, of no effect.

- (4) As soon as practicable and not later than 6 months after the coming into operation of this section the Commission or, in the case of an award or order made by the Railways Classification Board, that Board shall, for the purposes of subsection (5)—
- (a) review each award, order and industrial agreement in force on the coming into operation of this section;
 - (b) publish in the *Industrial Gazette* and in a newspaper circulating throughout the State—
 - (i) notice of any proposal to vary an award, order or industrial agreement under this section; and
 - (ii) notice that any employer or organization who is a party to, or is bound by, the award, order or industrial agreement, after giving notice within the time and in the manner specified in the notice, may appear and be heard on the proposal;
- and
- (c) after affording employers and organizations who give notice under paragraph (b) an opportunity to be heard, vary the award, order or industrial agreement as provided under subsection (5).
- (5) The Commission or Railways Classification Board, as the case requires, shall vary each award, order and industrial agreement by—
- (a) omitting any provision that is of no effect under subsection (3);
 - (b) varying its provisions, or inserting further provisions, to make adequate provision for the procedures required under section 49B of the principal Act as amended by this Act; and
 - (c) varying or omitting any provision that is contrary to, or in conflict with, section 49B of the principal Act as amended by this Act, or inserting further provisions, to ensure that the award, order or industrial agreement is consistent with that provision,
- as the case requires.

”

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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