Western Australia

Industrial Relations Act 1979

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Defined terms

Western Australia

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 organisations 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: 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 proclamation [1].

3. Application of Act 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; or

(ii) the employer concerned is connected with the State; or

(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; or

(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; or

(v) that industry is authorised 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; or

(b) is resident in the State, normally or temporarily; or

(c) being a body corporate, is —

(i) registered, incorporated, or established under a law of the State; or

(ii) taken to be registered in the State; or

(iii) a related body corporate of such a body for the purposes of the *Corporations Act 2001* of the Commonwealth;

or

(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* [2]; or

(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* [3];

(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: No. 10 of 1982 s. 28; No. 10 of 2001 s. 111.]

4. Repeal

The *Industrial Arbitration Act 1912* is hereby repealed.

*[**5.** Deleted: No. 79 of 1995 s. 66(2).]*

6. Objects of Act

The principal objects of this Act are —

(a) to promote goodwill in industry and in enterprises within industry; and

(aa) to provide for rights and obligations in relation to good faith bargaining; and

(ab) to promote the principles of freedom of association and the right to organise; and

(ac) to promote equal remuneration for men and women for work of equal value; and

(ad) to promote collective bargaining and to establish the primacy of collective agreements over individual agreements; and

(ae) to ensure all agreements registered under this Act provide for fair terms and conditions of employment; and

(af) to facilitate the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises; and

(ag) to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises within industry and the employees in those enterprises; and

(b) to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes; and

(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; and

(ca) to provide a system of fair wages and conditions of employment; and

(d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes; and

(e) to encourage the formation of representative organisations of employers and employees and their registration under this Act and to discourage, so far as practicable, overlapping of eligibility for membership of such organisations; and

(f) to encourage the democratic control of organisations so registered and the full participation by members of such an organisation in the affairs of the organisation; and

(g) to encourage persons, organisations 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, organisations 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: No. 94 of 1984 s. 5; amended: No. 20 of 2002 s. 114 and 127.]

7. Terms used

(1) In this Act, unless the contrary intention appears —

alteration, in relation to rules of an organisation, includes amendment, addition to, variation, rescission or substitution;

apprentice means a person who is an apprentice under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2;

association means an association that is registered under Division 4 of Part II;

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;

CEO means the chief executive officer of the Department;

Chamber means the body known as the Chamber of Commerce and Industry of Western Australia (Inc);

Chief Commissioner includes an acting Chief Commissioner;

civil penalty provision means a provision of this Act, or any other written law, that is specified to be a civil penalty provision for the purposes of section 83E;

Commission means the body continued and constituted under this Act under the name of The Western Australian Industrial Relations Commission;

Commission in Court Session means the Commission constituted as provided by section 15(2);

commissioner means a commissioner appointed under this Act and includes the Chief Commissioner, the Senior Commissioner and an acting commissioner;

Commonwealth Act means the *Workplace Relations Act 1996* [4] 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;

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;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

departmental officer means a person employed in the Department as referred to in section 99C(2);

deputy registrar means a person designated as a deputy registrar under this Act;

employee means —

(a) any person employed by an employer to do work for hire or reward including an apprentice; or

(b) any person whose usual status is that of an employee; or

(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 —

(a) persons, firms, companies and corporations; and

(b) the Crown and any Minister of the Crown, or any public authority,

employing one or more employees and also includes a labour hire agency or group training organisation that arranges for an employee (being a person who is a party to a contract of service with the agency or organisation) to do work for another person, even though the employee is working for the other person under an arrangement between the agency or organisation and the other person;

employer-employee agreement or ***EEA*** means an employer-employee agreement provided for by section 97UA;

employment record means a record kept under section 49D;

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

Fair Work Commission means the body established by the *Fair Work Act 2009* (Commonwealth) section 575;

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

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

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

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

industrial action means any act, omission, or circumstance done, effected, or brought about by an organisation 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 organisation 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 Gazette means the *Western Australian Industrial Gazette* published pursuant to this Act;

industrial inspector means a person designated as an industrial inspector under this Act;

industrial magistrate's court means industrial magistrate's court established under section 81(1);

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

(a) the wages, salaries, allowances, or other remuneration of employees or the prices to be paid in respect of their employment;

(b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;

(c) the employment of children or young persons, or of any person or class of persons, in any industry, or the dismissal of or refusal to employ any person or class of persons therein;

(ca) the relationship between employers and employees;

(d) any established custom or usage of any industry, either generally or in the particular locality affected;

(e) the privileges, rights, or duties of any organisation or association or any officer or member thereof in or in respect of any industry;

(f) in respect of apprentices, these additional matters —

(i) their wage rates and, subject to the *Vocational Education and Training Act 1996* Part 7 Division 2, other conditions of employment; and

(ii) the wages, allowances and other remuneration to be paid to them, including for time spent in performing their obligations under training contracts registered under the *Vocational Education and Training Act 1996* Part 7 Division 2, whether at their employers' workplaces or not; and

(iii) without limiting subparagraphs (i) and (ii), those other rights, duties and liabilities of them and their employers under such contracts that do not relate to the training and assessment they are to undergo, whether at their employers' workplaces or not;

(g) any matter relating to the collection of subscriptions to an organisation of employees with the agreement of the employee from whom the subscriptions are collected including —

(i) the restoration of a practice of collecting subscriptions to an organisation of employees where that practice has been stopped by an employer; or

(ii) the implementation of an agreement between an organisation of employees and an employer under which the employer agrees to collect subscriptions to the organisation;

[(h) deleted]

(i) any matter, whether falling within the preceding part of this interpretation or not, where —

(i) an organisation of employees and an employer agree that it is desirable for the matter to be dealt with as if it were an industrial matter; and

(ii) the Commission is of the opinion that the objects of this Act would be furthered if the matter were dealt with as an industrial matter;

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

(j) compulsion to join an organisation of employees to obtain or hold employment; or

(k) preference of employment at the time of, or during, employment by reason of being or not being a member of an organisation of employees; or

(l) non-employment by reason of being or not being a member of an organisation of employees; or

(m) any matter relating to the matters described in paragraph (j), (k) or (l);

industry includes each of the following —

(a) any business, trade, manufacture, undertaking, or calling of employers;

(b) the exercise and performance of the functions, powers, and duties of the Crown and any Minister of the Crown, or any public authority;

(c) any calling, service, employment, handicraft, or occupation or vocation of employees,

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

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

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

judge means a judge of the Supreme Court;

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

legal practitioner means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

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

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

office in relation to an organisation means —

(a) the office of a member of the committee of management of the organisation; and

(b) the office of president, vice president, secretary, assistant secretary, or other executive office by whatever name called of the organisation; and

(c) the office of a person holding, whether as trustee or otherwise, property of the organisation, or property in which the organisation has any beneficial interest; and

(d) an office within the organisation for the filling of which an election is conducted within the organisation; and

(e) any other office, all or any of the functions of which are declared by the Commission under section 68 to be those of an office in the organisation,

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

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 organisation;

officer of the Commission means —

(a) the Registrar, a deputy registrar or any other Registrar's Department officer assisting the Commission in the performance of its functions; or

(b) an officer appointed under section 93(1a);

officer of the Court means the clerk of the Court or any other Registrar's Department officer assisting the Court in the performance of its functions;

organisation means an organisation 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 Act 1966*, the *Murdoch University Act 1973*, the *Edith Cowan University Act 1984* or the *Vocational Education and Training Act 1996*;

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

presiding commissioner, of the Full Bench, means the presiding commissioner under section 15(1A);

presiding judge means the presiding judge of the Court;

principal executive officer in relation to an organisation or association means the president or chairman of that organisation 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, regional local government or regional subsidiary;

public hospital means a public hospital as defined in the *Health Services Act 2016* section 6;

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

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

(a) in a newspaper circulating throughout the State; or

(b) on an internet website maintained by the Commission;

record means any thing or process —

(a) upon or by which information is recorded or stored; or

(b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

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

Registrar means the chief executive officer of the Registrar's Department or, if another person is designated as the Registrar under this Act, that person;

Registrar's Department means the department of the Public Service known as the Department of the Registrar Western Australian Industrial Relations Commission;

Registrar's Department officer means a person employed in the Registrar's Department as referred to in section 99C(3);

registration, in relation to an organisation, means registration under Division 4 of Part II by authority of the Commission in Court Session;

repealed Act means the Act repealed by section 4;

representative has the meaning given by section 97X or 97XO;

represented person has the meaning given by section 97X or 97XO;

secondary office, in relation to a person who holds the office of commissioner and is subsequently appointed to an office of the Fair Work Commission under section 14A, means the office of member of the Fair Work Commission;

Senior Commissioner includes an acting Senior Commissioner;

subscription means any subscription, fee or dues payable by a member for or in respect of membership of an organisation;

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.

(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) deleted]

(3) A matter or claim that has been referred, or appeal that has been brought, to the Tribunal provided for by section 51G of the *Occupational Safety and Health Act 1984* under a provision mentioned in —

(a) subsection (1) of that section; or

(b) section 102(1) of the *Mines Safety and Inspection Act 1994*; or

(c) clause 69(1) of Schedule 1 to the *Petroleum and Geothermal Energy Resources Act 1967*, clause 69(1) of Schedule 1 to the *Petroleum Pipelines Act 1969*, or

clause 70(1) of Schedule 5 to the *Petroleum (Submerged Lands) Act 1982*,

is not an industrial matter.

(4) Subsections (3) and (4) of section 34 do not apply to a determination that is made contrary to subsection (3) or to any proceeding based on that determination, and in the determination of any application for a prerogative writ or declaratory judgment no regard shall be had to the existence of any right of appeal under this Act.

(5) In this Act —

(a) a reference to an industrial matter includes a reference to a matter relating to bargaining in good faith for an industrial agreement or collective agreement (as that term is defined in the Commonwealth Act); and

(b) a reference to jurisdiction to inquire into and deal with an industrial matter includes a reference to jurisdiction to assist parties to bargain for an industrial agreement or collective agreement (as that term is defined in the Commonwealth Act).

(6) Subject to subsection (7), for the purposes of the definitions of ***employee*** and ***employer*** in subsection (1), if a person (the ***principal***) engages a person, or a group of persons, under a contract to personally give a performance as, or as part of, musical, theatrical, dance or comic entertainment, the principal is to be regarded as employing the person, or each person in the group, to do work.

(7) Subsection (6) has effect only to the extent necessary to enable a claim of the kind referred to in section 29(1)(b)(ii) to be referred to and dealt with by the Commission in respect of a person who would not be an employee but for the operation of subsection (6).

(8) Notes in this Act are provided to assist understanding and do not form part of the Act.

[Section 7 inserted: No. 94 of 1984 s. 6; amended: 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 s. 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 s. 29 [5] *and 35; No. 36 of 1999 s. 247; No. 20 of 2002 s. 6, 128, 142, 149, 178, 185, 190(1), 191(1) and (2) and 194(2); No. 65 of 2003 s. 41(2); No. 51 of 2004 s. 70(2); No. 59 of 2004 s. 112; No. 68 of 2004 s. 87(2); No. 13 of 2005 s. 49(2)(b); No. 36 of 2006 s. 24 and 67; No. 35 of 2007 s. 97(2); No. 21 of 2008 s. 668(2); No. 44 of 2008 s. 53(2)-(6); No. 53 of 2011 s. 32, 39 and 40; No. 11 of 2016 s. 295(2); No. 26 of 2016 s. 62; No. 32 of 2016 s. 183; No. 39 or 2018 s. 4; amended: Gazette 15 Aug 2003 p. 3686.]*

[Part 1A (s. 7A-7G) deleted: No. 20 of 2002 s. 111(4) and 113(1).]

Part II — The Western Australian Industrial Relations Commission

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

Division 1 — Constitution of the Commission

8. Commission constituted

(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 is to consist of —

[(a) deleted]

(b) a Chief Commissioner; and

(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 are respectively appointed to their offices by the Governor by commission under the Public Seal of the State.

(3A) At least one commissioner who holds office under subsection (2)(d) must, in addition to the other attributes required for appointment, have —

(a) knowledge of or experience in the field of occupational safety and health; and

(b) knowledge of the *Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*,

sufficient for exercising the jurisdiction that the commissioner designated under section 16(2A) is required to exercise.

(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: No. 94 of 1984 s. 8 and 66; No. 51 of 2004 s. 70(3); No. 68 of 2004 s. 87(3); No. 13 of 2005 s. 49(3); No. 35 of 2007 s. 97(3); No. 36 of 2009 s. 18; No. 39 of 2018 s. 5.]

9. Qualifications for appointment of Chief Commissioner

[(1)-(1a) deleted]

(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: No. 94 of 1984 s. 9; amended: No. 99 of 1990 s. 5; No. 21 of 2008 s. 668(3); No. 39 of 2018 s. 6.]

10. Age limit for commissioners

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

[Section 10 inserted: No. 94 of 1984 s. 9; amended: No. 39 of 2018 s. 7.]

11. Oath of office and secrecy

(1) Subject to subsection (2), before entering upon office each commissioner must make oath before a judge that the commissioner will faithfully and impartially perform the duties of office of commissioner and 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: No. 94 of 1984 s. 66; No. 39 of 2018 s. 8.]

12. Commission is court of record etc.

(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 commissioners and others

Each of the following persons has the same protection and immunity as a judge has when performing functions of a judge —

(a) a commissioner when performing the functions of a commissioner;

(b) an industrial magistrate appointed under section 81B when performing the functions of an industrial magistrate;

(c) a member of a Board of Reference referred to in section 48 when performing the functions of a member of a Board of Reference;

(d) a constituent authority or a member of a constituent authority, as the case requires, when performing the functions of a constituent authority or a member of a constituent authority.

[Section 13 inserted: No. 39 of 2018 s. 9.]

14. Exercise of powers and jurisdiction of Commission

[(1) deleted]

(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 commissioner is sitting or acting at the same time in the exercise of the jurisdiction of the Commission, each such commissioner constitutes the Commission.

[Section 14 amended: No. 39 of 2018 s. 10.]

14A. Dual Federal and State appointments

A commissioner may be appointed as a member of the Fair Work Commission, and a person so appointed may, subject to section 22(2)(c), at the same time hold the office of commissioner and member of the Fair Work Commission but not otherwise.

[Section 14A inserted: No. 99 of 1990 s. 6; amended: No. 53 of 2011 s. 39; No. 39 of 2018 s. 11.]

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 Fair Work Commission, a person who holds the office of commissioner and an office of member of the Fair Work 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 commissioner; and

(ii) any powers that the person has as a member of the Fair Work 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: No. 99 of 1990 s. 6; amended: No. 53 of 2011 s. 39; No. 39 of 2018 s. 12.]

15. Constitution of Full Bench and Commission in Court Session

(1) The Full Bench is to be constituted by 3 commissioners, at least 1 of whom must be the Chief Commissioner or the Senior Commissioner, sitting or acting together.

(1A) The presiding commissioner of the Full Bench is the most senior of the commissioners who constitute the Full Bench.

(2) The Commission in Court Session shall be constituted by not less than 3 commissioners sitting or acting together.

[Section 15 amended: No. 39 of 2018 s. 13.]

16. Chief Commissioner's functions

(1) In subsections (1aa) to (1ac) —

Commission includes the Full Bench, the Commission in Court Session and a constituent authority.

(1aa) The Chief Commissioner is responsible for matters of an administrative nature relating to the Commission and commissioners.

(1ab) Subject to this Act, the Chief Commissioner may allocate and reallocate the work of the Commission and may assign or appoint commissioners for the purposes of constituting the Commission, or altering the constitution of the Commission, in relation to a matter.

(1ac) When it is continuing to deal with and deciding a matter that has been reallocated, or in relation to which its constitution has been altered, the Commission can have regard to —

(a) any record of the proceedings of the Commission in relation to the matter before the reallocation or alteration; or

(b) any evidence taken in the proceedings before the reallocation or alteration.

(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.

(2A) The Chief Commissioner must, in writing, designate one commissioner, who holds office under section 8(2)(d) and who satisfies the additional requirements referred to in section 8(3A), to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G.

(2B) Without affecting the Chief Commissioner's duty under subsection (2A) to ensure that, at any one time, one commissioner is designated, the Chief Commissioner —

(a) may at or after the time when a commissioner is designated under subsection (2A), in writing, specify a date when the designation ceases to have effect; and

(b) may, in writing, vary any date so specified.

(2C) The designation of a commissioner under subsection (2A) to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G does not preclude the commissioner from also performing other functions as a commissioner under this Act.

(2D) The commissioner who, immediately before commencement, was the commissioner whose appointment satisfied the requirements of section 8(2a) (as it was before the commencement) is, on and from commencement, to be taken to be designated under subsection (2A) to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G.

(2E) In subsection (2D) —

commencement means the commencement of the *Occupational Safety and Health Legislation Amendment Act 2009* section 19.

(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; and

[(c) deleted]

(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: No. 121 of 1982 s. 4; No. 94 of 1984 s. 10 and 66; No. 1 of 1995 s. 53; No. 14 of 2005 s. 4; No. 36 of 2009 s. 19; No. 39 of 2018 s. 14.]

16A. Delegation by Chief Commissioner

(1) The Chief Commissioner may delegate to another commissioner any power or duty of the Chief Commissioner under another provision of this Act.

(2) The delegation must be in writing signed by the Chief Commissioner.

(3) A person to whom a power or duty is delegated in accordance with this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person in accordance with this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Chief Commissioner to perform a function through an officer or agent.

[Section 16A inserted: No. 14 of 2005 s. 5; amended: No. 39 of 2018 s. 15.]

17. Appointment of acting commissioners

(1) Where a commissioner is, or is expected to be, unable to attend to their duties under this Act, whether on account of illness or otherwise, the Governor may appoint a person to be acting

Chief Commissioner, acting Senior Commissioner or an acting commissioner, as the case may require, for such period as the Governor determines.

[(1a), (1b) deleted]

(2) A person must not be appointed acting Chief Commissioner unless the person holds the relevant qualifications prescribed in section 9.

[(3) deleted]

(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: No. 121 of 1982 s. 5; No. 94 of 1984 s. 11; No. 1 of 1995 s. 53; No. 14 of 2005 s. 6; No. 39 of 2018 s. 16.]

18. Extending appointments

(1) Notwithstanding the retirement of a commissioner or the expiry of the period for which an acting commissioner has been appointed under this Act, the Governor may extend the commissioner's period of office for such further period as the Governor determines, in order to enable the commissioner to complete all matters, proceedings, or inquiries that the commissioner 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.

(3) The continuation in office of a retired commissioner under subsection (1) does not prevent the appointment of a person to fill the office from which the commissioner retired.

(4) The continuation in office of an acting commissioner under subsection (1) does not prevent the appointment of another person to act in the office in which the acting commissioner acted.

[Section 18 amended: No. 94 of 1984 s. 12; No. 14 of 2005 s. 7; No. 39 of 2018 s. 17.]

19. Duty of commissioners

Each commissioner must keep acquainted with industrial affairs and conditions.

[Section 19 inserted: No. 39 of 2018 s. 18.]

20. Conditions of service of commissioners

[(1) deleted]

(2) The offices of commissioners are to be regarded, for the purposes of the *Salaries and Allowances Act 1975* and any other written law, as having been prescribed for the purposes of section 6(1)(e) of that Act.

[(3)-(7) deleted]

(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* [6, 7].

(8a) For the purposes of any calculation or determination under the *Superannuation and Family Benefits Act 1938* [6] the duration of —

(a) any service by a person as a commissioner that occurs after the commencement day; and

(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% [7].

(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* [7].

[(8c), (8d) deleted]

(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 Sector Management Act 1994*.

[(11)-(13) deleted]

[Section 20 amended: No. 121 of 1982 s. 6; No. 92 of 1984 s. 3 and 4; No. 82 of 1987 s. 8; No. 99 of 1990 s. 7; No. 20 of 2002 s. 186(1); No. 28 of 2003 s. 89; No. 39 of 2018 s. 19.]

21. Resignation from office

A commissioner may resign office by writing 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.

[Section 21 amended: No. 39 of 2018 s. 20.]

22. Tenure subject to good behaviour

(1) Subject to subsection (2)(c), commissioners 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 commissioner becomes vacant if the commissioner —

(a) is removed from office under subsection (1); or

(b) retires under section 10 or resigns under section 21; or

(c) except with the approval of the Governor, accepts the office of member of the Fair Work Commission.

[Section 22 amended: No. 94 of 1984 s. 13; No. 99 of 1990 s. 8; No. 1 of 1995 s. 53; No. 53 of 2011 s. 39; No. 39 of 2018 s. 21.]

Division 2 — General jurisdiction and powers of the Commission

22A. Terms used

In this Division and Divisions 2A to 2G —

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: No. 94 of 1984 s. 14; amended: No. 20 of 2002 s. 121(1).]

22B. Commission to act with due speed

In the performance of its functions the Commission is to act with as much speed as the requirements of this Act and a proper consideration of the matter before it permit.

[Section 22B inserted: No. 20 of 2002 s. 150.]

23. Jurisdiction of Commission

(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.

(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 organisation 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; or

(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;

(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 organisation to obtain or hold employment; or

(ii) non-employment by reason of being or not being a member of an organisation;

(f) provide for preference of employment at the time of, or during, employment by reason of being or not being a member of an organisation;

(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 —

(i) in the case of an application under section 44, make any order except an order that is authorised by section 23A or 44; and

(ii) in any other case, make any order except an order that is authorised by section 23A.

[Section 23 amended: No. 82 of 1980 s. 2; No. 121 of 1982 s. 7; No. 94 of 1984 s. 15 and 66; No. 119 of 1987 s. 7; No. 15 of 1993 s. 6; No. 1 of 1995 s. 27 and 40; No. 3 of 1997 s. 30[5]*; No. 20 of 2002 s. 137 and 143.]*

*[**23AA.** Deleted: No. 3 of 1997 s. 22*[5]*.]*

23A. Unfair dismissal claims, Commission's powers on

(1) The Commission may make an order under this section if the Commission determines that the dismissal of an employee was harsh, oppressive or unfair.

(2) In determining whether the dismissal of an employee was harsh, oppressive or unfair the Commission shall have regard to whether the employee —

(a) at the time of the dismissal, was employed for a period of probation agreed between the employer and employee in writing or otherwise; and

(b) had been so employed for a period of less than 3 months.

(3) The Commission may order the employer to reinstate the employee to the employee's former position on conditions at least as favourable as the conditions on which the employee was employed immediately before dismissal.

(4) If the Commission considers that reinstatement would be impracticable, the Commission may order the employer to re-employ the employee in another position that the Commission considers —

(a) the employer has available; and

(b) is suitable.

(5) The Commission may, in addition to making an order under subsection (3) or (4), make either or both of the following orders —

(a) an order it considers necessary to maintain the continuity of the employee's employment;

(b) an order to the employer to pay to the employee the remuneration lost, or likely to have been lost, by the employee because of the dismissal.

(6) If, and only if, the Commission considers reinstatement or re-employment would be impracticable, the Commission may, subject to subsections (7) and (8), order the employer to pay to the employee an amount of compensation for loss or injury caused by the dismissal.

(7) In deciding an amount of compensation for the purposes of making an order under subsection (6), the Commission is to have regard to —

(a) the efforts (if any) of the employer and employee to mitigate the loss suffered by the employee as a result of the dismissal; and

(b) any redress the employee has obtained under another enactment where the evidence necessary to establish the claim for that redress is also the evidence necessary to establish the claim before the Commission; and

(c) any other matter that the Commission considers relevant.

(8) The amount ordered to be paid under subsection (6) is not to exceed 6 months' remuneration of the employee.

(9) For the purposes of subsection (8) the Commission may calculate the amount on the basis of an average rate received by the employee during any relevant period of employment.

(10) For the avoidance of doubt, an order under subsection (6) may permit the employer concerned to pay the compensation required in instalments specified in the order.

(11) An order under this section may require that it be complied with within a specified time.

(12) The Commission may make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this section.

[Section 23A inserted: No. 20 of 2002 s. 138(1).]

23B. Third party involvement in employment claim, Commission's powers to prevent etc.

(1) In this section —

employment claim means a claim made to the Commission in which any of the following is an issue —

(a) the refusal or failure of an employer to employ a person (the ***affected person***);

(b) an employer's employment or transfer of an employee to work at a particular place or site, or refusal or failure to employ or transfer an employee to work at a particular place or site;

(c) the reinstatement or re-employment of an employee who has been dismissed by an employer;

third party, in relation to an employment claim, means any person, other than the employer on whom a copy of the claim has been served.

(2) The Commission may, if it considers it necessary to do so in the interests of equity, good conscience and the substantial merits of an employment claim, order a third party to refrain from preventing, hindering or interfering with, or doing anything that would have the effect of preventing, hindering or interfering with —

(a) the employment of the affected person; or

(b) the employment or transfer of the employee to work at a particular place or site; or

(c) the reinstatement or re-employment of the employee.

(3) Subsection (2) is not to be taken as limiting the persons in respect of whom the Commission can make other orders under this Act.

[Section 23B inserted: No. 20 of 2002 s. 138(1).]

24. Industrial matters, Commission may decide what are

(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.

[Section 24 amended: No. 15 of 1993 s. 8; amended: Gazette 15 Aug 2003 p. 3686.]

25. Allocation of industrial matters by Chief Commissioner

(1) For the purposes of section 16(1ab), in allocating the work of the Commission under this Division and Divisions 2A to 2G the Chief Commissioner may —

(a) allocate matters to a commissioner; and

(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) Subsection (1) —

(a) has effect subject to any provision of this Division or Division 2A to 2G under which the Commission is to be constituted in a particular way; and

(b) does not affect the operation of Part IIC.

[Section 25 inserted: No. 94 of 1984 s. 16; amended: No. 20 of 2002 s. 121(2) and (3); No. 14 of 2005 s. 8.]

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; and

(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; and

(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;

(vi) the need to facilitate the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises;

(vii) the need to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises and the employees in those enterprises.

(2A) In making a public sector decision the Commission must take into consideration the following —

(a) any Public Sector Wages Policy Statement that is applicable in relation to negotiations with the public sector entity;

(b) the financial position and fiscal strategy of the State as set out in the following —

(i) the most recent Government Financial Strategy Statement released under the *Government Financial Responsibility Act 2000* section 11(1) and made publicly available under section 9 of that Act;

(ii) the Government Financial Projections Statement;

(iii) any submissions made to the Commission on behalf of the public sector entity or the State government;

(c) the financial position of the public sector entity as set out in the following —

(i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title "Agency Information in Support of the Estimates" or, if the regulations prescribe another part of those budget papers, that other part;

(ii) any submissions made to the Commission on behalf of the public sector entity or the State government.

(2B) In subsection (2A) —

Government Financial Projections Statement means whichever is the most recent of the following —

(a) the most recent Government Financial Projections Statement that is —

(i) released under the *Government Financial Responsibility Act 2000* section 12(1); and

(ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title "Economic and Fiscal Outlook" or, if the regulations prescribe another part of the budget papers, that other part;

(b) the most recent Government Mid-year Financial Projections Statement that is —

(i) released under the Government *Financial Responsibility Act 2000* section 13(1); and

(ii) made publicly available under section 9 of that Act;

public sector decision means any of the following —

(a) an order made under section 42G that will be included in an agreement that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);

(b) an enterprise order that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);

(c) if the matters set out in subsection (2A)(a), (b) and (c) are relevant to the decision, any other decision that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);

public sector entity means either of the following —

(a) a public sector body as defined in the *Public Sector Management Act 1994* section 3(1);

(b) an entity that is —

(i) mentioned in the *Public Sector Management Act 1994* Schedule 1; and

(ii) prescribed by regulations made by the Governor;

Public Sector Wages Policy Statement means —

(a) the Public Sector Wages Policy Statement 2014 issued by the State government that applies to industrial agreements expiring after 1 November 2013; or

(b) if any Public Sector Wages Policy Statement is issued in substitution for that statement, the later statement.

(2C) The matters the Commission is required to take into consideration under subsection (2A) are in addition to any matter it is required to take into consideration under subsection (1)(d).

(2D) Subsection (2A) —

(a) does not apply in relation to —

(i) an order made under section 42G in respect of an agreement proposed to be made in substitution for an industrial agreement that specifies a nominal expiry date that is earlier than 1 November 2013; or

(ii) an enterprise order made in substitution for an enterprise order that provides for an expiry day that is earlier than 1 November 2013;

but

(b) except as provided in paragraph (a), applies in relation to any public sector decision in respect of a matter arising before, on or after the commencement of the *Workforce Reform Act 2014* section 4.

(2E) Subsections (1)(d) and (2A) do not apply when the Commission is exercising its jurisdiction under section 50A.

(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.

(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: No. 121 of 1982 s. 9; No. 94 of 1984 s. 17; No. 79 of 1995 s. 9; No. 20 of 2002 s. 129; No. 36 of 2006 s. 10; No. 8 of 2014 s. 4.]

*[**26A.** Deleted: No. 20 of 2002 s. 111(6).]*

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; or

(ii) that further proceedings are not necessary or desirable in the public interest; or

(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;

and

(b) take evidence on oath or affirmation; and

(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; and

(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; and

(e) sit at any time and place; and

(f) adjourn to any time and place; and

[(g) deleted]

(h) direct any person, whether a witness or intending witness or not, to leave the place wherein the proceedings are being conducted; and

(ha) determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceedings and require that the cases be presented within the respective periods; and

(hb) require evidence or argument to be presented in writing, and decide the matters on which it will hear oral evidence or argument; and

(i) refer any matter to an expert and accept his report as evidence; and

(j) direct parties to be struck out or persons to be joined; and

(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; and

(l) allow the amendment of any proceedings on such terms as it thinks fit; and

(m) correct, amend, or waive any error, defect, or irregularity whether in substance or in form; and

(n) extend any prescribed time or any time fixed by an order of the Commission; and

(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; and

(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; and

(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); and

(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; and

(s) consolidate or divide proceedings relating to the same industry and all or any matters before the Commission; and

(t) with the consent of the Chief Commissioner refer the matter or any part of the matter, including any question of interpretation of the rules of an organisation arising in

the matter, to the Commission in Court Session for hearing and determination by the Commission in Court Session; and

(u) with the consent of the Chief Commissioner refer to the Full Bench for hearing and determination by the Full Bench any question of law arising in the matter, other than a question of interpretation of the rules of an organisation; 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: No. 121 of 1982 s. 10; No. 94 of 1984 s. 18 and 66; No. 20 of 2002 s. 122; No. 39 of 2018 s. 22.]

28. Powers in s. 27 may be exercised at any time after matter lodged

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. Who may refer industrial matters to Commission

(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; or

(ii) an organisation in which persons to whom the industrial matter relates are eligible to be enrolled as members or an association that represents such an organisation; 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 employment,

by the employee.

(1a) A party to an employer-employee agreement has the right to refer to the Commission constituted by a commissioner where the Commission so constituted is the relevant industrial authority under Part VID —

(a) any question, dispute or difficulty that the Commission as so constituted has jurisdiction to determine under section 97WI; or

(b) an allegation referred to in section 97WK(2).

(2) Subject to subsection (3), a referral under subsection (1)(b)(i) is to be made not later than 28 days after the day on which the employee's employment is terminated.

(3) The Commission may accept a referral by an employee under subsection (1)(b)(i) that is out of time if the Commission considers that it would be unfair not to do so.

[Section 29 inserted: No. 94 of 1984 s. 19; amended: No. 15 of 1993 s. 10; No. 1 of 1995 s. 7 and 43; No. 3 of 1997 s. 24; No. 36 of 1999 s. 247; No. 20 of 2002 s. 7 and 139.]

29AA. Certain claims not to be determined

(1) Subject to subsection (2), the Commission must not determine a claim of harsh, oppressive or unfair dismissal from employment if the dismissed employee has lodged an application with the Fair Work Commission for relief in respect of the termination of that employment.

(2) Despite subsection (1) the Commission may determine the claim if the application to the Fair Work Commission is —

(a) withdrawn; or

(b) rejected or dismissed on the ground that it is not within the jurisdiction of the Fair Work Commission to determine the application.

(3) The Commission must not determine a claim of harsh, oppressive or unfair dismissal from employment if —

(a) an industrial instrument does not apply to the employment of the employee; and

(b) the employee's contract of employment provides for a salary exceeding the prescribed amount.

(4) The Commission must not determine a claim that an employee has not been allowed by his or her employer a benefit to which the employee is entitled under a contract of employment if —

(a) an industrial instrument does not apply to the employment of the employee; and

(b) the employee's contract of employment provides for a salary exceeding the prescribed amount.

(5) In this section —

industrial instrument means —

(a) an award; or

(b) an order of the Commission under this Act that is not an order prescribed by regulations made by the Governor for the purposes of this section; or

(c) an industrial agreement; or

(d) an employer-employee agreement;

prescribed amount means —

(a) $90 000 per annum; or

(b) the salary specified, or worked out in a manner specified, in regulations made by the Governor for the purposes of this section.

[Section 29AA inserted: No. 20 of 2002 s. 140(1); amended: No. 53 of 2011 s. 39; No. 39 of 2018 s. 23; amended: Gazette 15 Aug 2003 p. 3686.]

29A. Proposed award etc., service of etc.

(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.

(1a) In this section —

area and scope provisions means the parts of an award or industrial agreement that relate to the area of operation and scope of the award or industrial agreement.

(1b) Subject to subsection (2A) —

(a) area and scope provisions of a proposed award or industrial agreement; and

(b) proposed variations to the area and scope provisions of an existing award or industrial agreement,

shall be published in the required manner.

(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 registration of an industrial agreement, or the variation of the area and scope provisions of

an existing award or agreement, the Commission shall not hear the claim or application until the area and scope provisions of the proposed award or industrial agreement have, or the proposed variation has, been published in the required manner 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) UnionsWA, the Chamber, the Mines and Metals Association and the Minister; and

(ii) such organisations, 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 UnionsWA, the Chamber, the Mines and Metals Association and the Minister.

(2A) The Chief Commissioner may, if of the opinion that it is appropriate to do so in the circumstances, direct that the area and scope provisions of the proposed award or industrial agreement —

(a) need not be published in the *Industrial Gazette*; or

(b) need not be published at all.

(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).

(2c) The area and scope provisions of an award may be amended under section 40A without the proposed variation having been published in the required manner.

(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 (2), 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: No. 94 of 1984 s. 19; amended: No. 119 of 1987 s. 8; No. 15 of 1993 s. 31; No. 20 of 2002 s. 115; No. 53 of 2011 s. 41 and 48.]

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, organisations or associations upon whom or which a copy of the claim or application is served.

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

30. Minister may intervene on behalf of State

(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) deleted]

[Section 30 inserted: No. 94 of 1984 s. 19; amended: No. 36 of 2006 s. 11.]

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; or

(b) by an agent; or

(c) where —

(i) that party, person or body, or any of the other parties, persons or bodies permitted to intervene or be heard, is UnionsWA, 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 *Fair Work Act 2009* (Commonwealth); or

(ii) the proceedings are in respect of 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 organisation or association shall be deemed to have appeared in person if it is represented by its secretary or by any officer of the organisation 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 authorisation of any agent is to be given, either generally or for a particular case.

[Section 31 amended: No. 121 of 1982 s. 12; No. 94 of 1984 s. 20 and 66; No. 15 of 1993 s. 31; No. 1 of 1995 s. 8; No. 36 of 1999 s. 247; No. 21 of 2008 s. 668(4); No. 53 of 2011 s. 33 and 48.]

32. Conciliation and arbitration of industrial matters

(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.

(4) The Commission shall —

(a) if it gives or makes a direction, order or declaration orally under subsection (8), reduce the direction, order

or declaration to writing as soon as is practicable thereafter; and

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

(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 (8) and of the preamble thereto available to the parties as soon as is practicable after that giving or making.

[(5) deleted]

(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) For the purposes of this section the Commission may —

(a) 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; or

(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;

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

[Section 32 inserted: No. 94 of 1984 s. 21; amended: No. 119 of 1987 s. 9; No. 3 of 1997 s. 36; No. 20 of 2002 s. 187 and 194(3) and (4); No. 8 of 2009 s. 77(2)-(4).]

32A. Conciliation and arbitration functions of Commission are unlimited

(1) The functions of the Commission under this Act as to the resolution of matters by conciliation (***conciliation functions***) and the determination of matters by arbitration (***arbitration functions***) —

(a) are to and may be performed at any time and from time to time as and when their performance is necessary or expedient; and

(b) are not limited by any other provision of this Act.

(2) Without limiting subsection (1), nothing in this Act prevents the performance of conciliation functions merely because arbitration functions are being or have been performed.

[Section 32A inserted: No. 20 of 2002 s. 123.]

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; and

(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; and

(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; and

(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, 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: No. 121 of 1982 s. 13; No. 94 of 1984 s. 22 and 65.]

34. Decisions of Commission, form of and review of

(1) The decision of the Commission must be made in the form of an award, order or declaration and must be signed and dated at the time it is made —

(a) in the case of a decision made by the Commission constituted by a single commissioner — by the commissioner; or

(b) in the case of a decision of the Commission in Court Session — by the most senior commissioner of the commissioners who constitute the Commission in Court Session; or

(c) in the case of a decision by the Full Bench or its presiding commissioner — by the presiding commissioner of the Full Bench.

(1A) A decision of the Commission must be sealed with the seal of the Commission.

(2) When the commissioners who constitute the Commission in Court Session are divided in opinion on a question, the question must be decided according to the decision of the majority of the commissioners.

(3) Proceedings before 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 —

(a) on any ground relating to jurisdiction; or

(b) on any other ground.

(4) Except as provided by this Act, no award, order, declaration, finding, or proceeding of the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in any court —

(a) on any ground relating to jurisdiction; or

(b) on any other ground.

[Section 34 amended: No. 94 of 1984 s. 23; No. 20 of 2002 s. 124; No. 39 of 2018 s. 24.]

35. Decision to be first drawn up as minutes

(1A) In this section —

final decision means a decision, determination or ruling in proceedings that finally decides, determines or disposes of the matter to which the proceedings relate.

(1) Subject to subsection (4), a final decision must, before it is made, be drawn up in the form of minutes which must be handed down to the parties concerned and, unless in any particular case the Commission otherwise determines, its reasons for decision must be published at the same time.

(1AB) Subsection (1) does not apply to an order made for the purposes of section 27(1)(a) or an order or declaration made under section 32(8).

(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 the final decision is made in the terms of the minutes.

(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: No. 121 of 1982 s. 14; No. 94 of 1984 s. 24 and 66; No. 39 of 2018 s. 25.]

36. Copy of decision must be given to parties and be available for inspection

(1) The Commission must, as soon as practicable after making a decision —

(a) give a copy of the decision to each party to the proceeding; and

(b) deposit a copy of the decision in the office of the Registrar.

(2) A copy of each decision of the Commission lodged in the office of the Registrar must be open to inspection without charge during office hours by any person interested.

[Section 36 inserted: No. 39 of 2018 s. 26.]

Division 2A — Awards

[Heading inserted: No. 20 of 2002 s. 116.]

36A. Non-award employees, interim award for etc.

(1) In any proceedings in which the Commission is considering the making of an award (the ***new award***) that extends to employees to whom no award currently extends (the ***employees***), the onus is on any party opposing the making of the new award to show that it would not be in the public interest.

(2) The Commission may make an interim award that extends to the employees pending the making of the new award.

(3) An interim award may be made if the Commission considers —

(a) that it would provide a fair basis for the application of the no-disadvantage test provided for by Part VID Division 6 Subdivision 1; or

(b) that it would protect the existing wages and conditions of employment of the employees until the new award is made; or

(c) that it would be appropriate for any other reason.

[Section 36A inserted: No. 20 of 2002 s. 116.]

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), (3) deleted]

(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: No. 94 of 1984 s. 66.]

*[**37A.** Deleted: No. 20 of 2002 s. 188.]*

38. Named parties to awards

(1) The parties to proceedings before the Commission in which an award is made, other than UnionsWA, 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* —

(a) any party to proceedings in which an award is made, other than UnionsWA, 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,

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; or

(b) any organisation 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 organisation is represented,

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

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

(4) An employer is not to be added as a named party to an award under subsection (2) if that addition would have the effect of extending the award to employees to whom another award already extends.

[Section 38 inserted: No. 94 of 1984 s. 25; amended: No. 15 of 1993 s. 12 and 31; No. 20 of 2002 s. 117(1); No. 53 of 2011 s. 48.]

39. When award operates

(1) An award comes into operation —

(a) on the day on which it is made; or

(b) on such day or days as the Commission fixes and specifies in the award.

[(2) deleted]

(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 made.

[Section 39 amended: No. 39 of 2018 s. 27.]

40. Varying and cancelling awards

(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 organisation 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; and

(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; or

(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: No. 94 of 1984 s. 66.]

40A. Incorporation of industrial agreement provisions into awards by consent

(1) If —

(a) an award extends to employees to whom an industrial agreement extends; and

(b) a named party to the award who is also a party to the agreement applies to the Commission for the incorporation of some or all of the provisions of the agreement into the award; and

(c) each other party to the agreement consents to the incorporation of those provisions into the award,

the Commission shall by order vary the award by incorporating those provisions of the agreement into the award, but the variation shall be expressly limited to the employees and employers to whom the agreement extends.

(2) This section does not limit the operation of section 40 and that section applies to any application or order made under this section.

[Section 40A inserted: No. 20 of 2002 s. 118.]

40B. Power to vary awards to reflect statutory etc. requirements, to promote efficiency and to facilitate implementation

(1) The Commission, of its own motion, may by order at any time vary an award for any one or more of the following purposes —

(a) to ensure that the award does not contain wages that are less than the minimum award wage as ordered by the Commission under section 50A;

(b) to ensure that the award does not contain conditions of employment that are less favourable than those provided by the MCE Act;

(c) to ensure that the award does not contain provisions that discriminate against an employee on any ground on which discrimination in work is unlawful under the *Equal Opportunity Act 1984*;

(d) to ensure that the award does not contain provisions that are obsolete or need updating;

(e) to ensure that the award is consistent with the facilitation of the efficient organisation and performance of work according to the needs of an industry and enterprises within it, balanced with fairness to the employees in the industry and enterprises.

(2) The Commission shall not make an order under this section until it has given notice to the named parties to the award and UnionsWA, the Chamber, the Mines and Metals Association and the Minister and afforded them an opportunity to be heard in relation to the proposed variations.

(3) The Commission shall cause a copy of an order made under this section to be —

(a) given to the named parties to the award and to UnionsWA, the Chamber, the Mines and Metals Association and the Minister; and

(b) published in the required manner.

(4) Section 39 applies to and in relation to an order made under this section —

(a) as if the reference in section 39(3) to the date on which an application was lodged in the Commission were a reference to the date on which notice was first given under subsection (2); and

(b) with such other modifications as are necessary.

(5) This section does not prevent or affect the making of an application under section 40 to vary an award for a purpose mentioned in subsection (1).

[Section 40B inserted: No. 20 of 2002 s. 118; amended: No. 36 of 2006 s. 12; No. 53 of 2011 s. 48.]

Division 2B — Industrial agreements

[Heading inserted: No. 20 of 2002 s. 130.]

40C. Terms used

In this Division —

initiating party, in relation to a proposed industrial agreement, means the party that initiated the bargaining for the agreement under section 42(1);

negotiating party, in relation to a proposed industrial agreement, means —

(a) the initiating party; and

(b) a person who notifies the initiating party under section 42A(1) that that person will bargain for the industrial agreement;

prescribed period has the meaning given by section 42A(1) and includes any extension of that period ordered by the Commission.

[Section 40C inserted: No. 20 of 2002 s. 130.]

41. Industrial agreements, making, registration and effect of

(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 organisation or association of employees and any employer or organisation or association of employers.

(1a) An agreement may apply to a single enterprise or more than a single enterprise.

(1b) For the purposes of subsection (1a) 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.

(2) Subject to subsection (3) and sections 41A and 49N, 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 organisation 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.

(8) When a new industrial agreement is made and registered, or an award or enterprise order is made, in substitution for an industrial agreement (the ***first agreement***), the first agreement is taken to be cancelled, except to the extent that the new industrial agreement, award or order saves the provisions of the first agreement.

(9) To the extent that an industrial agreement is contrary to or inconsistent with an award, the industrial agreement prevails unless the agreement expressly provides otherwise.

[Section 41 inserted: No. 94 of 1984 s. 26; amended: No. 15 of 1993 s. 13; No. 20 of 2002 s. 131 and 144.]

41A. Which industrial agreements shall not be registered under s. 41

(1) The Commission shall not under section 41 register an agreement as an industrial agreement unless the agreement —

(a) specifies a nominal expiry date that is no later than 3 years after the date on which the agreement will come into operation; and

(b) includes any provision specified in relation to that agreement by an order referred to in section 42G; and

(c) includes an estimate of the number of employees who will be bound by the agreement upon registration.

(2) The Commission shall not under section 41 register an agreement as an industrial agreement to which an organisation or association of employees is a party, unless the employees who will be bound by the agreement upon registration are members of, or eligible to be members of, that organisation or association.

[Section 41A inserted: No. 20 of 2002 s. 132.]

42. Bargaining for industrial agreement, initiating

(1) Bargaining for an industrial agreement may be initiated by an organisation or association of employees, an employer or an organisation or association of employers giving to an intended party to the agreement a written notice that complies with subsection (3).

(2) A notice under subsection (1) is not to be given to an organisation or association of employers unless that organisation or association has given written consent to being given such notice.

(3) A notice complies with this subsection if it is accompanied by particulars of —

(a) the types of employment to be covered by the agreement; and

(b) the area in which the agreement is to operate; and

(c) the intended parties to the agreement; and

(d) any other matter prescribed by regulations made by the Governor under section 42M.

(4) If there is no applicable industrial agreement or enterprise order in force, bargaining may be initiated under subsection (1) at any time.

(5) If there is an applicable industrial agreement or an applicable enterprise order in force, bargaining must not be initiated under subsection (1) earlier than 90 days before the nominal expiry date of the agreement or order.

(6) Where bargaining is initiated under subsection (1) with more than one intended party to the agreement, all the negotiating parties are to bargain together unless the Commission, on the application of a negotiating party, directs that that negotiating party may negotiate separately with the initiating party.

(7) Nothing in this section prevents or limits a person from bargaining for an industrial agreement when bargaining has not been initiated under subsection (1).

(8) In subsection (5) —

nominal expiry date means the date specified in the agreement or enterprise order as the date on which the agreement or enterprise order expires.

[Section 42 inserted: No. 20 of 2002 s. 133.]

42A. Response to initiation of bargaining

(1) A person to whom a notice is given under section 42(1) may notify the initiating party within 21 days of receiving the notice

(the ***prescribed period***) as to whether that person will, or will not, bargain for an industrial agreement.

(2) The Commission may by order, on application by a person to whom a notice is given under section 42(1), extend by no more than 7 days the period within which that person may respond under subsection (1).

(3) The Commission may make an order under subsection (2) although an application for the order was not made until after the expiration of the prescribed period.

(4) An order under subsection (2) may be made subject to such conditions as the Commission thinks fit.

(5) An application under subsection (2) operates —

(a) as a bar to an application for an enterprise order by a negotiating party; and

(b) as a stay of any application for an enterprise order that has been made by a negotiating party,

until the application under subsection (2) is determined or withdrawn.

(6) Bargaining between negotiating parties for an industrial agreement is initiated when the negotiating party to whom the notice is given notifies the initiating party under subsection (1) that that negotiating party will bargain.

[Section 42A inserted: No. 20 of 2002 s. 133.]

42B. Bargaining for industrial agreements, good faith required etc.

(1) When bargaining for an industrial agreement, a negotiating party shall bargain in good faith.

(2) Without limiting the meaning of the expression, ***bargaining in good faith*** by negotiating parties includes doing the following things —

(a) stating their position on matters at issue, and explaining that position;

(b) meeting at reasonable times, intervals and places for the purpose of conducting face-to-face bargaining;

(c) disclosing relevant and necessary information for bargaining;

(d) acting honestly and openly, which includes not capriciously adding or withdrawing items for bargaining;

(e) recognising bargaining agents;

(f) providing reasonable facilities to representatives of organisations and associations of employees necessary for them to carry out their functions;

(g) bargaining genuinely and dedicating sufficient resources to ensure this occurs;

(h) adhering to agreed outcomes and commitments made by the parties.

(3) The Commission may, having regard to the circumstances in which the industrial action occurs, determine that engaging in industrial action is a breach of the duty to bargain in good faith.

(4) For the purposes of this section, a person is a bargaining agent if —

(a) that person has been appointed in writing by a negotiating party to an agreement as a bargaining agent of that party in relation to the agreement; and

(b) a copy of the appointment has been provided to the other negotiating party to the agreement; and

(c) the appointment has not been terminated.

(5) An appointment of a bargaining agent may be terminated at any time by notice of termination given by the negotiating party who appointed the agent in writing to the agent.

(6) A copy of a notice of termination must be given to each other negotiating party.

(7) For the purposes of section 12 of the *Legal Profession Act 2008* a bargaining agent is authorised to provide advice and other services in relation to bargaining for an industrial agreement.

(8) Nothing in this section affects the requirement of section 112A that only a person who is registered under that section may appear as an agent under section 31, 81E or 91.

[Section 42B inserted: No. 20 of 2002 s. 133; amended: No. 65 of 2003 s. 41(3); No. 21 of 2008 s. 668(5).]

42C. Code of good faith

(1) The Commission may make a code of good faith to provide guidance about the application of the duty of good faith under section 42B in relation to bargaining for an industrial agreement —

(a) generally; or

(b) in relation to particular types of situations.

(2) The code shall not be inconsistent with this Division.

(3) Section 43(7), (8) and (9) of the *Interpretation Act 1984* apply to the code as if it were subsidiary legislation.

(4) The Commission may amend or revoke the code or revoke it and substitute another code for it.

(5) The Commission shall cause the code, and any amendment or substituted code or any revocation of a code, to be published in the *Industrial Gazette* for public information.

(6) In this section —

Commission means the Commission in Court Session.

[Section 42C inserted: No. 20 of 2002 s. 133.]

42D. Duty of good faith does not require concluded industrial agreement

The duty of good faith in section 42B does not require a negotiating party —

(a) to agree on any matter for inclusion in, or exclusion from, an industrial agreement; or

(b) to enter into an industrial agreement.

[Section 42D inserted: No. 20 of 2002 s. 133.]

42E. Commission may assist bargaining

(1) To assist parties to bargain for an industrial agreement, the Commission may exercise its powers as if it were endeavouring to resolve an industrial matter.

(2) Without limiting subsection (1) the Commission may make orders and give directions for the purpose of —

(a) ensuring that the negotiating parties bargain in good faith; and

(b) otherwise facilitating bargaining in good faith by negotiating parties.

(3) In particular, the Commission may order for the purposes of subsection (2) that a negotiating party do, or refrain from doing, any particular thing.

[Section 42E inserted: No. 20 of 2002 s. 133.]

42F. Commission's power over negotiating parties restricted

Except as provided in section 42G, the Commission must not give any direction or make any order or declaration requiring, or having the effect of requiring, a negotiating party to enter into an industrial agreement or to include any matter in, or exclude any matter from, an industrial agreement.

[Section 42F inserted: No. 20 of 2002 s. 133.]

42G. Parties may agree to Commission making orders as to terms of agreement

(1) This section applies where —

(a) negotiating parties have reached agreement on some, but not all, of the provisions of a proposed agreement; and

(b) an application is made to the Commission for registration of the agreement as an industrial agreement, the agreement to include any further provisions specified by an order referred to in subsection (2); and

(c) an application is made to the Commission by the negotiating parties for an order as to specified matters on which agreement has not been reached.

(2) When registering the agreement, the Commission may order that the agreement include provisions specified by the Commission.

(3) An order referred to in subsection (2) may only be made in relation to matters specified by the negotiating parties in an application referred to in subsection (1)(c).

(4) In deciding the terms of an order the Commission may have regard to any matter it considers relevant.

(5) When an order referred to in subsection (2) is made, the provisions specified by the Commission are, by force of this section, included in the agreement registered by the Commission.

(6) Despite section 49, no appeal lies from an order referred to in subsection (2).

[Section 42G inserted: No. 20 of 2002 s. 133.]

42H. Commission may declare that bargaining has ended

(1) If, on the application of a negotiating party, the Commission constituted by a single commissioner determines that —

(a) the applicant has bargained in good faith; and

(b) bargaining between the applicant and another negotiating party has failed; and

(c) there is no reasonable prospect of the negotiating parties reaching an agreement,

the Commission may declare that the bargaining has ended between those negotiating parties.

(2) Despite section 49, no appeal lies from a declaration under subsection (1).

[Section 42H inserted: No. 20 of 2002 s. 133.]

42I. Enterprise order, applying for and making

(1) If —

(a) the Commission declares under section 42H that bargaining has ended between negotiating parties; or

(b) the person to whom a notice is given under section 42(1) does not respond to the notice within the prescribed period or responds with a refusal to bargain,

the Commission may, upon an application under subsection (2), make an order (an ***enterprise order***) —

(c) providing for any matter that might otherwise be provided for in an industrial agreement to which the negotiating parties referred to in paragraph (a), or the initiating party and the person referred to in paragraph (b), were parties, irrespective of the

provisions of any award, order or industrial agreement already in force; and

(d) that the Commission considers is fair and reasonable in all of the circumstances.

(2) An application for an enterprise order may be made —

(a) where subsection (1)(a) applies —

(i) if the negotiating party in respect of whom the declaration was made is not an organisation or association of employers, by the negotiating party; and

(ii) if the negotiating party in respect of whom the declaration was made is an organisation or association of employers, by an employer who is a member of the negotiating party;

and

(b) where subsection (1)(b) applies —

(i) if the initiating party is not an organisation or association of employers, by the initiating party;

(ii) if the initiating party is an organisation or association of employers, by an employer who is a member of the initiating party.

(3) An application for an enterprise order may be made —

(a) where subsection (1)(a) applies, within 21 days after the making of the declaration; and

(b) where subsection (1)(b) applies, within 21 days after the end of the prescribed period.

(4) Without limiting section 32A, the Commission may exercise its powers of conciliation in relation to a matter even if an application for an enterprise order has been made in relation to the same matter.

[Section 42I inserted: No. 20 of 2002 s. 133.]

42J. Enterprise order, effect of

(1) An enterprise order extends to and binds —

(a) all employees who are employed —

(i) in any calling mentioned in the enterprise order in the industry or industries to which the enterprise order applies; and

(ii) by the employer specified in the order under subsection (5)(a);

and

(b) the employer specified in the order under subsection (5)(a),

and no other employee or employer, and its scope is to be expressly so limited in the enterprise order.

(2) An enterprise order operates in the area specified in the order.

(3) To the extent that an enterprise order is in conflict with an award or industrial agreement, the enterprise order prevails.

(4) An enterprise order is enforceable under section 83 as if the order were an award and any organisation or association who is specified in the order under subsection (5) were a named party to the award.

(5) The Commission is to specify in the enterprise order —

(a) the employer to whom the enterprise order extends and who is bound by the enterprise order; and

(b) any organisation or association of employees that is a relevant negotiating party or person referred to in section 42I(1)(b), as the case requires.

(6) The employer specified under subsection (5)(a) is to be —

(a) the applicant for the enterprise order; or

(b) if the applicant for the enterprise order was an organisation or association of employees —

(i) the negotiating party; or

(ii) the person referred to in section 42I(1)(b); or

(iii) the member of an organisation or association of employers that is a negotiating party; or

(iv) the member of an organisation or association of employers that is a person referred to in section 42I(1)(b),

specified in the application for the enterprise order.

[Section 42J inserted: No. 20 of 2002 s. 133.]

42K. Enterprise order, term of and varying etc.

(1) Subject to this section, an enterprise order operates for the term specified in the order.

(2) An enterprise order must provide for the day on which it expires which cannot be more than 2 years from and including the day on which it comes into operation.

(3) An enterprise order is not to be varied by the Commission unless all of the persons specified in the order under section 42J(5) consent to the variation.

(4) The Commission is not to make an award or another enterprise order in substitution for an enterprise order unless the term of the enterprise order has expired.

(5) The Commission is not to register an industrial agreement in substitution for an enterprise order unless —

(a) the application to the Commission to register the industrial agreement is made by each of the persons specified in the order under section 42J(5); or

(b) the term of the enterprise order has expired.

(6) The Commission is not to cancel an enterprise order unless an industrial agreement has been registered, or an award or order has been made, in substitution for that enterprise order.

(7) Despite the expiry of an enterprise order, the enterprise order continues in force in respect of all the persons specified in the

order under section 42J(5) until a new industrial agreement, enterprise order or an award, in substitution for the enterprise order, has been made or registered as the case requires.

[Section 42K inserted: No. 20 of 2002 s. 133.]

42L. When bargaining ends

Bargaining initiated under section 42(1) ends —

(a) in relation to negotiating parties who make an agreement, when that agreement is made; and

(b) in relation to negotiating parties specified in a declaration under section 42H, when that declaration is made.

[Section 42L inserted: No. 20 of 2002 s. 133.]

42M. Regulations for this Division

(1) The Governor may make regulations prescribing any matter that is necessary or convenient to be prescribed for giving effect to the purposes of this Division.

(2) Without limiting subsection (1) the Governor may make regulations for any of the purposes set out in section 113(1) to give effect to the purposes of this Division.

(3) If there is any conflict or inconsistency between a regulation made by the Governor and a regulation made under section 113(1), the regulation made by the Governor prevails to the extent of the conflict or inconsistency.

[Section 42M inserted: No. 20 of 2002 s. 133.]

43. Industrial agreement, varying, renewing and cancelling

(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, organisation or association of employers, on the one hand, and to an organisation or association of employees, on the other

hand, it may be varied, renewed or cancelled by a subsequent agreement between that employer, organisation or association of employers and that organisation 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 authorises 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 organisation, association or employer which or who is a party to the agreement.

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

Division 2C — Holding of compulsory conferences

[Heading inserted: No. 20 of 2002 s. 119(1).]

44. Compulsory conference, summoning, holding etc.

(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) deleted]

(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.

(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; and

(b) direct that disclosure of any matter discussed at the conference be limited in such manner as the Commission may specify; and

(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; or

(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;

and

(bb) with respect to industrial matters —

(i) give any direction or make any order or declaration which the Commission is otherwise authorised to give or make under this Act; and

(ii) without limiting paragraph (ba) or subparagraph (i), in the case of a claim of harsh, oppressive or unfair dismissal of an employee, make any interim order the Commission thinks appropriate in the circumstances pending resolution of the claim;

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).

(7) The Commission may exercise the power conferred on it by subsection (1) —

(a) on the application of —

(i) any organisation, association or employer; or

(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), (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) authorises the commissioner to use final offer arbitration without the express consent, in writing, of all of the parties concerned.

(12c) Notwithstanding section 49 no appeal shall lie from an order made under subsection (12a).

(12d) As soon as is practicable after giving or making a direction, order or declaration orally under this section, the Commission shall —

(a) reduce the direction, order or declaration to writing; and

(b) make the text of the direction, order or declaration available to the parties bound by the order or to which the direction or declaration applies.

(12e) Subsection (12d) does not apply to an order or declaration to which section 35 applies.

(13) Section 39 applies, with such modifications as are necessary, to an order made under this section.

[Section 44 amended: No. 121 of 1982 s. 18; No. 94 of 1984 s. 27, 65 and 66; No. 119 of 1987 s. 10; No. 15 of 1993 s. 17; No. 3 of 1997 s. 37; No. 20 of 2002 s. 141(1), 151 and 194(5); amended: Gazette 15 Aug 2003 p. 3686.]

*[**45.** Deleted: No. 94 of 1984 s. 66.]*

Division 2D — Miscellaneous provisions relating to awards, orders and agreements

[Heading inserted: No. 20 of 2002 s. 119(2).]

46. Interpretation of awards and orders by Commission

(1) At any time while an award is in force under this Act the Commission may, on the application of any employer, organisation, 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 organisation, 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: No. 94 of 1984 s. 66.]

47. Defunct awards etc., cancelling; employers not in business etc., deleting from awards etc.

(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

(b) after receiving the report of the Registrar, the Commission has —

(i) caused the Registrar to give general notice by publication in the required manner 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 day on which the notice referred to in subsection (3) is first published, 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 organisation 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 UnionsWA, 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: No. 94 of 1984 s. 28 and 66; No. 15 of 1993 s. 31; No. 1 of 1995 s. 53; No. 20 of 2002 s. 190(2) and (3); No. 53 of 2011 s. 48.]

48. Board of Reference for each award

(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), (4) deleted]

(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, authorise 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 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 organisation, 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), (14) deleted]

(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: No. 94 of 1984 s. 29 and 66; No. 119 of 1987 s. 11.]

48A. Awards etc. to provide for dispute resolution

(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 48A inserted as section 49A: No. 79 of 1995 s. 11; amended: No. 3 of 1997 s. 31 [5]*; renumbered as section 48A: No. 20 of 2002 s. 120.]*

48B. Superannuation, provisions about in awards etc.

(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; and

(b) requires the employer to notify the employee of the entitlement to nominate a complying superannuation fund or scheme; and

(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 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;

and

(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 48B inserted as section 49C: No. 79 of 1995 s. 13(1); renumbered as section 48B: No. 20 of 2002 s. 120.]

Division 2E — Appeals to the Full Bench

[Heading inserted: No. 20 of 2002 s. 119(3).]

49. Appeal from Commission's decision

(1) In subsections (2) to (6a) the ***Commission*** means the Commission constituted by a commissioner, but does not include the Commission exercising jurisdiction under section 80ZE or subsection (11).

(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 determination —

(a) of a relevant industrial authority —

(i) under section 97VP; or

(ii) in an arbitration under any EEA dispute provision of the kind referred to in section 97UP;

or

(b) of the Commission under section 97XC or 97XQ.

(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; or

(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.

(6a) The Full Bench is not to remit a case to the Commission under subsection (5)(c) unless it considers that it is unable to make its own decision on the merits of the case because of lack of evidence or for other good reason.

[(7) deleted]

(8) When the commissioners who constitute the Full Bench are divided on a question, the question must be decided according to the decision of a majority of them but, if their decisions on the question are equally divided, the question must be decided according to the decision of the presiding commissioner of the Full Bench.

(9) When any question of law arises in any proceedings before the Full Bench, the presiding commissioner of the Full Bench may state a case for the decision of the Court and must do so if a majority of the members of the Full Bench so request.

(10) Subsections (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) For the purposes of hearing and determining an application under subsection (11) for an order in respect of a decision, the Commission must be constituted by the presiding commissioner of the Full Bench allocated the appeal against the decision.

[Section 49 amended: No. 121 of 1982 s. 20; No. 94 of 1984 s. 30 and 66; No. 119 of 1987 s. 12; No. 1 of 1995 s. 9; No. 36 of 1999 s. 247; No. 20 of 2002 s. 8 and 125; No. 39 of 2018 s. 28.]

*[**49A.** Renumbered as section 48A: No. 20 of 2002 s. 120.]*

*[**49AB, 49B.** Deleted: No. 20 of 2002 s. 145.]*

*[**49C.** Renumbered as section 48B: No. 20 of 2002 s. 120.]*

Division 2F — Keeping of and access to employment records

[Heading inserted: No. 20 of 2002 s. 146(1).]

49D. Employer's duties as to employment records

(1) Subsection (2) applies to an employee during any period when an industrial instrument applies to his or her employment.

(2) An employer must ensure that details are recorded of —

(a) the employee's name and, if the employee is under 21 years of age, his or her date of birth; and

(b) any industrial instrument that applies; and

(c) the date on which the employee commenced employment with the employer; and

(d) for each day —

(i) the time at which the employee started and finished work; and

(ii) the period or periods for which the employee was paid; and

(iii) details of work breaks including meal breaks;

and

(e) for each pay period —

(i) the employee's designation; and

(ii) the gross and net amounts paid to the employee under the industrial instrument; and

(iii) all deductions and the reasons for them;

and

(f) all leave taken by the employee, whether paid, partly paid or unpaid; and

(g) the information necessary for the calculation of the entitlement to, and payment for long service leave under the *Long Service Leave Act 1958*, the *Construction Industry Portable Paid Long Service Leave Act 1985* or the industrial instrument; and

(h) any other information in respect of the employee required under the industrial instrument to be recorded; and

(i) any information, not otherwise covered by this subsection, that is necessary to show that the remuneration and benefits received by the employee comply with the industrial instrument.

(3) The employer must ensure that —

(a) the employment records are kept in accordance with regulations made by the Governor; and

(b) each entry in relation to long service leave is retained —

(i) during the employment of the employee; and

(ii) for not less than 7 years after the employment terminates;

and

(c) each other entry is retained for not less than 7 years after it is made.

(4) In this section —

industrial instrument means —

(a) an award; or

(b) an order of the Commission under this Act; or

(c) an industrial agreement; or

(d) an employer-employee agreement.

[Section 49D inserted: No. 20 of 2002 s. 146(1).]

49E. Access to employment records

(1) An employer, on written request by a relevant person, must —

(a) produce to the person the employment records relating to an employee; and

(b) let the person inspect the employment records.

(2) The duty placed on an employer by subsection (1) —

(a) continues so long as the records are required to be kept under section 49D(3); and

(b) is not affected by the fact that the employee is no longer employed by the employer or that the industrial instrument no longer applies to him or her; and

(c) includes the further duties —

(i) to let the relevant person enter premises of the employer for the purpose of inspecting the records; and

(ii) to let the relevant person take copies of or extracts from the records;

and

(d) must be complied with not later than —

(i) at the end of the next pay period after the request is received; or

(ii) the seventh day after the day on which the request was made to the employer.

(3) Nothing in this section limits or otherwise affects the powers of an industrial inspector in relation to the inspection of employment records.

(4) In this section —

relevant person means —

(a) the employee concerned; and

(b) if the employee is a represented person, his or her representative; and

(c) a person authorised in writing by the employee; and

(d) a Registrar's Department officer authorised in writing by the Registrar.

[Section 49E inserted: No. 20 of 2002 s. 146(1); amended: No. 39 of 2018 s. 29.]

49F. Enforcement of this Division

A contravention of section 49D(2), 49D(3) or 49E(1) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

[Section 49F inserted: No. 20 of 2002 s. 146(1).]

Division 2G — Right of entry and inspection by authorised representatives

[Heading inserted: No. 20 of 2002 s. 146(1).]

49G. Terms used

In this Division —

authorised representative means a person who holds an authority in force under this Division;

relevant employee, when used in connection with the exercise of a power by an authorised representative of an organisation, means an employee who is a member of the organisation or who is eligible to become a member of the organisation.

[Section 49G inserted: No. 20 of 2002 s. 146(1).]

49H. Entry for discussions with employees

(1) An authorised representative of an organisation may enter, during working hours, any premises where relevant employees work, for the purpose of holding discussions at the premises with any of the relevant employees who wish to participate in those discussions.

(2) If an award, order or industrial agreement that extends to the relevant employees makes provision as to entry onto premises by an authorised representative and —

(a) does not require notice to be given by the representative; or

(b) requires a specified period of notice to be given by the representative,

the authorised representative is not required to give notice under this section.

(3) If subsection (2) does not apply, the authorised representative is not entitled to exercise a power conferred by this section unless the authorised representative has given the employer of the employees concerned at least 24 hours' written notice.

[Section 49H inserted: No. 20 of 2002 s. 146(1).]

49I. Entry to investigate certain breaches

(1) An authorised representative of an organisation may enter, during working hours, any premises where relevant employees work, for the purpose of investigating any suspected breach of this Act, the *Long Service Leave Act 1958*, the MCE Act, the *Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994* or an award, order, industrial agreement or employer-employee agreement that applies to any such employee.

(2) For the purpose of investigating any such suspected breach, the authorised representative may —

(a) subject to subsections (3) and (6), require the employer to produce for the representative's inspection, during working hours at the employer's premises or at any mutually convenient time and place, any employment records of employees or other documents kept by the employer that are related to the suspected breach; and

(b) make copies of the entries in the employment records or documents related to the suspected breach; and

(c) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach.

(3) The authorised representative is not entitled to require an employer to produce an employment record of an employee if the employee —

(a) is a party to an employer-employee agreement; and

(b) has made a written request to the employer that the record not be available for inspection by an authorised representative.

(4) A written request under subsection (3)(b) —

(a) may be withdrawn by written notice given by the employee to the employer; and

(b) has effect until it is so withdrawn.

(5) An authorised representative is not entitled to exercise a power conferred by this section for the purpose of investigating a suspected breach of an employer-employee agreement to which a relevant employee is a party unless the authorised representative is authorised in writing by that relevant employee to carry out the investigation.

(6) An authorised representative is not entitled to require the production of employment records or other documents unless,

before exercising the power, the authorised representative has given the employer concerned —

(a) if the records or other documents are kept on the employer's premises, at least 24 hours' written notice; or

(b) if the records or other documents are kept elsewhere, at least 48 hours' written notice.

(7) The Commission may, on the ex parte application of an authorised representative, waive the requirement to give the employer concerned notice of an intended exercise of a power under subsection (6) if the Commission is satisfied that to give such notice would defeat the purpose for which the power is intended to be exercised.

(8) If the requirement for notice is waived under subsection (7) —

(a) the Commission must give the authorised representative a certificate authorising the exercise of the power without notice; and

(b) the authorised representative must, after entering the premises and before requiring the production of the records or documents, give the person who is apparently in charge of the premises the certificate or a copy of the certificate.

[Section 49I inserted: No. 20 of 2002 s. 146(1); amended: Gazette 15 Aug 2003 p. 3686.]

49J. Authorising authorised representatives

(1) The Registrar, on application by the secretary of an organisation of employees to issue an authority for the purposes of this Division to a person nominated by the secretary in the application, must issue the authority.

(2) The Registrar must not issue an authority for the purposes of this Division to a person who has held an authority under this Division that has been revoked under subsection (5) unless the Commission in Court Session on application by any person has ordered that the authority be so issued.

(3) A person to whom an authority is issued is an authorised representative of the organisation on whose behalf the application for the authority was made.

(4) The authority remains in force unless it is revoked or suspended under this section.

(5) The Commission constituted by a commissioner may, by order, on application by any person, revoke, or suspend for a period determined by the Commission, the authority if satisfied that the person to whom it was issued has —

(a) acted in an improper manner in the exercise of any power conferred on the person by this Division; or

(b) intentionally and unduly hindered an employer or employees during their working time.

(6) The Registrar may, on application by the secretary of the organisation of employees on whose behalf the application for the authority was made, revoke the authority.

(6a) The Registrar must not revoke an authority under subsection (6) if —

(a) proceedings pursuant to an application made under subsection (5) in relation to the authority are pending or in progress; or

(b) appeal proceedings in respect of a decision made under subsection (5) in relation to the authority are pending or in progress, or the time within which such proceedings may be instituted has not elapsed.

(7) An application for the revocation of an authority under subsection (5) is to set out the grounds on which the application is made.

(8) Despite section 49 —

(a) no appeal lies from a decision of the Commission under subsection (2); and

(b) section 49(2a) does not apply to an appeal from a decision under subsection (5).

(9) A person to whom an authority has been issued under this section must, within 14 days after the revocation of the authority, return the authority to the Registrar.

[Section 49J inserted: No. 20 of 2002 s. 146(1); amended: No. 36 of 2006 s. 8.]

49K. No entry to premises used for habitation

An authorised representative does not have authority under this Division to enter any part of the premises of an employer that is principally used for habitation by the employer and his or her household.

[Section 49K inserted: No. 20 of 2002 s. 146(1).]

49L. Authority must be shown on request

(1) If —

(a) a person proposes to enter, or is on, premises in accordance with section 49H or 49I; and

(b) the occupier requests the person to show his or her authority,

the person is not entitled under that section to enter or remain on the premises unless he or she shows the occupier the authority in force under this Division.

(2) In this section —

occupier includes a person in charge of the premises.

[Section 49L inserted: No. 20 of 2002 s. 146(1).]

49M. Obstructing etc. rights etc. under this Division etc.

(1) The occupier of premises must not refuse, or intentionally and unduly delay, entry to the premises by a person entitled to enter the premises under section 49H or 49I.

(2) A person must not intentionally and unduly hinder or obstruct an authorised representative in the exercise of the powers conferred by this Division.

(3) A person must not purport to exercise the powers of an authorised representative under this Division if the person is not the holder of a current authority issued by the Registrar under this Division.

[Section 49M inserted: No. 20 of 2002 s. 146(1).]

49N. Entry and inspection, provisions in awards etc. as to

(1) The Commission does not have jurisdiction to make an award or order or register an agreement conferring, or making provision for the exercise of, powers of entry and inspection that are additional to, or inconsistent with, the powers of entry and inspection under Division 2F and this Division and the provisions as to the exercise of those powers.

(2) Nothing in subsection (1) prevents or limits the Commission from specifying in an award or order, or registering an agreement that specifies, the period of notice required to be given by an authorised representative to an employer before entering premises where relevant employees work.

(3) To the extent that the provisions of an award, order or industrial agreement confer or make provision for the exercise of powers of entry and inspection that are additional to, or inconsistent with, the powers of entry and inspection under Division 2F and this Division or the provisions as to the exercise of those powers, those provisions have no effect.

[Section 49N inserted: No. 20 of 2002 s. 146(1); amended: No. 50 of 2016 s. 16.]

49O. Enforcement of this Division

A contravention of section 49J(9) or 49M(1), (2) or (3) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

[Section 49O inserted: No. 20 of 2002 s. 146(1).]

Division 3 — General Orders

50. General Orders, nature of and making

(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 UnionsWA, 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.

(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), (6) deleted]

(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 organisation.

[Section 50 amended: No. 94 of 1984 s. 32 and 66; No. 15 of 1993 s. 18 and 31; No. 20 of 2002 s. 179 and 190(4); No. 36 of 2006 s. 13; No. 53 of 2011 s. 48.]

50A. Rates of pay etc. for MCE Act and awards, annual State Wage order as to

(1) The Commission shall before 1 July in each year, of its own motion make a General Order (the ***State Wage order***) —

(a) setting —

(i) the minimum weekly rate of pay applicable under section 12 of the MCE Act to employees who have reached 21 years of age and who are not apprentices;

(ii) the minimum weekly rate or rates of pay applicable under section 14 of the MCE Act to apprentices;

and

(b) adjusting rates of wages paid under awards; and

(c) having regard to the statement of principles issued under paragraph (d) —

(i) varying each award affected by the exercise of jurisdiction under paragraph (b) to ensure that the award is consistent with the order; and

(ii) if the Commission considers it appropriate to do so, making other consequential changes to specified awards;

and

(d) setting out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under this Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.

(2) The Commission may, in relation to awards generally or specified awards, do any or all of the following for the purposes of subsection (1)(b) —

(a) adjust all rates of wages;

(b) adjust individual rates of wages;

(c) adjust a series of rates of wages;

(d) adjust specialised rates of wages.

(3) In making an order under this section, the Commission shall take into consideration —

(a) the need to —

(i) ensure that Western Australians have a system of fair wages and conditions of employment; and

(ii) meet the needs of the low paid; and

(iii) provide fair wage standards in the context of living standards generally prevailing in the community; and

(iv) contribute to improved living standards for employees; and

(v) protect employees who may be unable to reach an industrial agreement; and

(vi) encourage ongoing skills development; and

(vii) provide equal remuneration for men and women for work of equal or comparable value;

and

(b) the state of the economy of Western Australia and the likely effect of its decision on that economy and, in

particular, on the level of employment, inflation and productivity in Western Australia; and

(c) to the extent that it is relevant, the state of the national economy; and

(d) to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration; and

(e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment; and

(f) relevant decisions of other industrial courts and tribunals; and

(g) any other matters the Commission considers relevant.

(4) Without limiting the generality of this section and section 26(1), in the exercise of its jurisdiction under subsection (1)(b) and (c) the Commission shall ensure, to the extent possible, that there is consistency and equity in relation to the variation of awards.

(5) A State Wage order takes effect on 1 July in the year it is made and is applicable in respect of an employee or apprentice on and from the commencement of the first pay period of the employee or apprentice on or after that date.

(6) A State Wage order in effect under this section when a subsequent order is made under subsection (1) ceases to apply in respect of an employee or apprentice on the day on which the subsequent order commences to apply in respect of the employee or apprentice.

(7) A State Wage order shall not be added to or varied.

(8) Nothing in subsection (7) affects the Commission's powers under section 27(1)(m).

[Section 50A inserted: No. 36 of 2006 s. 14; amended: No. 44 of 2008 s. 53(7)-(9).]

50B. Apprentices, matters relevant to setting rates for in State Wage order

(1) For the purposes of section 50A(1)(a)(ii) and (iii), the Commission may —

(a) set a minimum weekly rate of pay in relation to apprentices generally; or

(b) subject to subsections (2) and (3), set a minimum weekly rate of pay in relation to apprentices who belong to particular classes of apprentice; or

(c) do a combination of the things authorised by paragraphs (a) and (b).

(2) The Commission may set a minimum weekly rate of pay in relation to apprentices who have reached 21 years of age that is different from a rate or rates for apprentices who are under 21 years of age.

(3) The Commission shall ensure that at any particular time there is applicable in relation to each class of apprentice —

(a) a minimum weekly rate of pay set in respect of that class; or

(b) the minimum weekly rate of pay in relation to apprentices generally.

(4) In setting a minimum weekly rate of pay in relation to apprentices generally or in relation to apprentices who belong to a particular class of apprentice, the Commission may use such means as in its opinion are appropriate including, but not limited to —

(a) setting the rate in figures; or

(b) setting the rate as a proportion of —

(i) the minimum weekly rate of pay referred to in section 50A(1)(a)(i); or

(ii) any award or other wages instrument;

or

(c) adopting some or all of the provisions of any award or other wages instrument; or

(d) setting out any other method for the calculation or assessment of the rate.

[Section 50B inserted: No. 36 of 2006 s. 14; amended: No. 44 of 2008 s. 53(10)-(13).]

*[**51.** Deleted: No. 36 of 2006 s. 15.]*

51A. Public sector discipline, General Orders as to

(1) Subject to this Act, the Commission may in respect of a public authority and its employees, on application by the Minister, UnionsWA or an organisation 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; and

(ii) discipline in employment; and

(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.

(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; or

(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 organisation that is a party to that award does not consent to the General Order being so made.

[Section 51A inserted: No. 94 of 1984 s. 33; amended: No. 53 of 2011 s. 48.]

51B. General Order not to set minimum condition set by MCE Act

(1) Except as provided in section 50A, the Commission does not have power under this Division to make a General Order setting a minimum condition in relation to a matter if the matter is the subject of a minimum condition of employment as defined in the MCE Act.

(2) Nothing in subsection (1) prevents the Commission from making a General Order under this Division in relation to a matter that is the subject of a minimum condition of

employment as defined in the MCE Act if the General Order is more favourable to employees than the minimum condition of employment.

[Section 51B inserted: No. 20 of 2002 s. 180; amended: No. 36 of 2006 s. 16.]

51BA. Notice of hearing to make General Order

(1) The Commission shall ensure that notice of each initial hearing to be conducted for the purposes of making a General Order under this Division is —

(a) given by written notice to UnionsWA, the Chamber, the Mines and Metals Association, the Minister, and any other person the Commission is of the opinion may be of assistance; and

(b) published in the required manner and in any other manner the Commission thinks fit.

(2) Subsection (1) does not apply when the Commission is exercising its jurisdiction under section 51A.

[Section 51BA inserted: No. 36 of 2006 s. 17; amended: No. 53 of 2011 s. 48.]

51BB. Right to be heard before General Order made

The Commission shall not make a General Order under this Division until it has afforded —

(a) each person given notice under section 51BA(1)(a); and

(b) any other employer, employee, or other person permitted by the Commission to be heard,

an opportunity to be heard in relation to the matter.

[Section 51BB inserted: No. 36 of 2006 s. 17.]

51BC. Commissioner may deal with certain proceedings

The Chief Commissioner may direct a commissioner to deal with any conciliation or interlocutory or procedural matter arising during the determination of a General Order under this Division.

[Section 51BC inserted: No. 36 of 2006 s. 17.]

51BD. Awards etc. affected by General Order, publication of

When the Commission makes a General Order under this Division which affects awards and industrial agreements, or awards or industrial agreements, in force under this Act, the Commission may, in respect of each award or industrial agreement so affected, direct the Registrar to prepare and publish in the required manner the provisions of that award or industrial agreement resulting from the operation of that General Order.

[Section 51BD inserted: No. 36 of 2006 s. 17.]

51BE. Publication of order

The Registrar shall publish in the required manner any General Order made under this Division.

[Section 51BE inserted: No. 36 of 2006 s. 17.]

Division 3A — MCE Act functions

[Heading inserted: No. 20 of 2002 s. 181.]

Subdivision 1 — Preliminary

[Heading inserted: No. 20 of 2002 s. 181.]

51C. Term used: Commission

(1) In this Division —

Commission means the Commission in Court Session.

(2) Subject to subsection (1), words and expressions in this Division that are defined in the MCE Act have the meanings that they have in that Act.

[Section 51C inserted: No. 20 of 2002 s. 181; amended: No. 36 of 2006 s. 18.]

[Subdivision 2 (s. 51D-51H) deleted: No. 36 of 2006 s. 19.]

Subdivision 3 — Casual employees' loading

[Heading inserted: No. 20 of 2002 s. 181.]

51I. Casual employees' loading, setting for MCE Act s. 11

(1) Subject to subsection (2), the Commission may, by way of order, set a percentage that is higher than 20% to be the prescribed percentage for the purposes of section 11 of the MCE Act.

(2) An order under subsection (1) can only be made on an application made —

(a) by UnionsWA, the Chamber, the Mines and Metals Association or the Minister; and

(b) at least 12 months after the determination of the most recent application for an order under subsection (1).

[Section 51I inserted: No. 20 of 2002 s. 181; amended: No. 53 of 2011 s. 48.]

Subdivision 4 — Orders under this Division generally

[Heading inserted: No. 20 of 2002 s. 181.]

51J. Notice of hearings under this Division

The Commission shall ensure that notice of each initial hearing to be conducted for the purposes of making or reviewing an order under this Division is given —

(a) by giving written notice to UnionsWA, the Chamber, the Mines and Metals Association, the Minister and each organisation; and

(b) by publication in the required manner.

[Section 51J inserted: No. 20 of 2002 s. 181; amended: No. 53 of 2011 s. 48.]

51K. Right to be heard before order made under this Division

The Commission shall not make an order under this Division until it has afforded UnionsWA, the Chamber, the Mines and Metals Association, the Minister and any other person permitted by the Commission to be heard, an opportunity to be heard in relation to the matter.

[Section 51K inserted: No. 20 of 2002 s. 181; amended: No. 53 of 2011 s. 48.]

51L. Orders under this Division, restrictions on

An order made under this Division shall not —

(a) provide for a penalty rate or allowance of any kind; or

(b) provide for a loading of any kind other than that referred to in section 51I; or

(c) 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 organisation.

[Section 51L inserted: No. 20 of 2002 s. 181.]

51M. Publication of orders

The Commission shall direct the Registrar to prepare and publish in the *Industrial Gazette* the provisions of all orders made under this Division.

[Section 51M inserted: No. 20 of 2002 s. 181.]

51N. Variation and rescission of s. 51I orders

[(1) deleted]

(2) An order made under section 51I shall not be added to, varied or rescinded except in accordance with section 51I(2).

(3) Nothing in subsection (2) affects the Commission's powers under section 27(1)(m).

[Section 51N inserted: No. 20 of 2002 s. 181; amended: No. 36 of 2006 s. 20.]

Division 3B — Collective agreements and good faith bargaining

[Heading inserted: No. 36 of 2006 s. 25.]

51O. Terms used

(1) In this Division —

bargaining agent has the meaning given by section 51Q;

initiating party, in relation to a proposed collective agreement, means the person who initiates bargaining for the agreement under section 51R;

negotiating party, in relation to a proposed collective agreement, means —

(a) the initiating party;

(b) if the initiating party is an employer — any organisation that is —

(i) proposed to be bound by the proposed collective agreement; or

(ii) acting under section 51P on behalf of the employees whose employment is proposed to be subject to the proposed collective agreement;

(c) if the initiating party is an organisation of employees — the employer who is proposed to be bound by the proposed collective agreement;

organisation means —

(a) an organisation as defined in the Commonwealth Act; or

(b) a transitionally registered association as defined in Schedule 10 clause 1 of the Commonwealth Act.

(2) In this Division each of the following terms has the meaning given to it by the Commonwealth Act —

(a) ***collective agreement***;

(b) ***employee***;

(c) ***employer***;

(d) ***employment***;

(e) ***nominal expiry date***.

[Section 51O inserted: No. 36 of 2006 s. 25.]

51P. When organisation may represent employees

An organisation may act under this Division on behalf of employees whose employment is proposed to be subject to a proposed collective agreement if —

(a) at least one of those employees has requested the organisation in writing to act on behalf of the employees; and

(b) the employee making the request is a member of the organisation or is eligible to become a member of the organisation.

[Section 51P inserted: No. 36 of 2006 s. 25.]

51Q. Bargaining agents, appointment of etc.

(1) For the purposes of this Division, a person is a bargaining agent if —

(a) that person has been appointed in writing by a negotiating party to be that party's bargaining agent in relation to a proposed collective agreement; and

(b) a copy of the appointment has been provided to the other negotiating party; and

(c) the appointment has not been terminated.

(2) An appointment of a bargaining agent may be terminated at any time by notice of termination given by the negotiating party who appointed the agent in writing to the agent.

(3) A copy of a notice of termination must be given to each other negotiating party.

(4) For the purposes of section 12 of the *Legal Profession Act 2008* a bargaining agent is authorised to provide advice and other services in relation to bargaining for a collective agreement.

[Section 51Q inserted: No. 36 of 2006 s. 25; amended: No. 21 of 2008 s. 668(5).]

51R. Bargaining for collective agreement, initiating

(1) Bargaining for a proposed collective agreement may be initiated by an organisation of employees or an employer (the ***initiating party***) giving to each other negotiating party and filing in the office of the Registrar a written notice that complies with subsection (3).

(2) Subject to section 51P, an organisation of employees may initiate bargaining under subsection (1) on behalf of employees whose employment will be subject to the proposed collective agreement.

(3) A notice complies with this subsection if it is accompanied by particulars of —

(a) the business to be covered by the proposed collective agreement; and

(b) the types of employees whose employment will be subject to the proposed collective agreement and the other persons who will be bound by the proposed collective agreement; and

(c) the proposed nominal expiry date of the proposed collective agreement; and

(d) any other matter prescribed by regulations made by the Governor for the purposes of this section.

(4) If bargaining is initiated under subsection (1) with more than one negotiating party to the proposed collective agreement, all the parties are to bargain together unless the Commission, on

the application of a negotiating party, directs that that party may bargain separately with another negotiating party.

[Section 51R inserted: No. 36 of 2006 s. 25.]

51S. Bargaining for collective agreement, good faith required etc.

(1) If bargaining for a collective agreement has been initiated under section 51R the negotiating parties must bargain in good faith for the agreement.

(2) Without limiting the meaning of the expression, ***bargaining in good faith*** includes —

(a) doing the things set out in section 42B(2)(a) to (d) and (f) to (h); and

(b) recognising a bargaining agent duly appointed for the purpose of bargaining for the collective agreement.

(3) A code of good faith in force under section 42C applies, with necessary changes and to the extent that is practicable, in relation to bargaining for a collective agreement.

[Section 51S inserted: No. 36 of 2006 s. 25.]

51T. Application of s. 42D and 42E

(1) Section 42D and, subject to subsection (2), section 42E apply, with necessary changes, in relation to bargaining for a collective agreement and, for that purpose, any reference in those sections to a term used in this Division has the meaning given to that term in this Division.

(2) The Commission must not give any direction or make any order or declaration requiring, or having the effect of requiring, a negotiating party to enter into a collective agreement or to include any matter in, or exclude any matter from, a collective agreement.

[Section 51T inserted: No. 36 of 2006 s. 25.]

Division 4 — Industrial organisations and associations

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

52. Terms used

In this Division, unless a contrary intention appears —

collegiate electoral system, in relation to an election for an office in an organisation, 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 organisation, 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: No. 119 of 1987 s. 15.]

53. Organisations of employees, which can be registered

(1) Subject to this Act, any unregistered organisation 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 Commission in Court Session.

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

[Section 53 inserted: No. 94 of 1984 s. 34; amended: No. 39 of 2018 s. 30.]

54. Organisations of employers, which can be registered

(1) Subject to this Act, an unregistered organisation 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 Commission in Court Session.

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

[Section 54 inserted: No. 94 of 1984 s. 34; amended: No. 39 of 2018 s. 31.]

55. Applications for registration under s. 53 or 54

(1) An organisation seeking registration under section 53 or 54 shall lodge in the office of the Registrar —

(a) a list of the officers of the organisation with their addresses; and

(b) 3 copies of the rules of the organisation; and

(c) the prescribed form of application.

(2) When the organisation has complied with the requirements of subsection (1) the Registrar shall publish in the required manner —

(a) a notice of the application; and

(b) a copy of such rules of the organisation as relate to the qualification of persons for membership of the organisation and, without limiting the generality thereof, including any rule by which the area of the State within which the organisation operates, or intends to operate, is limited; and

(c) notice that any person who objects to the registration of the organisation and who, having given notice of that objection within the time and in the manner prescribed, satisfies the Commission in Court Session that the person 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 Commission in Court Session until after the expiration of 30 days from the day on which the matters referred to in subsection (2) are first published.

(4) Notwithstanding that an organisation complies with section 53(1) or 54(1) or that the Commission in Court Session is satisfied for the purposes of section 53(2) or 54(2), the Commission in Court Session must refuse an application by the organisation under this section unless it is satisfied that —

(a) the application has been authorised in accordance with the rules of the organisation; and

(b) reasonable steps have been taken to adequately inform the members —

(i) of the intention of the organisation to apply for registration; and

(ii) of the proposed rules of the organisation; 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 organisation and any other relevant circumstance, the members have been afforded a reasonable opportunity to make such an objection; and

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

(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 authorised or approved the making of the application and the proposed rules;

and

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

(e) rules of the organisation 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 organisation complies with section 53(1) or 54(1), the Commission in Court Session must refuse an application by the organisation under this section if a registered organisation 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 organisation, to be members of the first-mentioned organisation unless the Commission in Court Session is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.

[Section 55 amended: No. 94 of 1984 s. 35 and 66; No. 79 of 1995 s. 31; No. 20 of 2002 s. 190(4) and (5); No. 39 of 2018 s. 32.]

56. Rules of organisations to provide for secret ballots etc. at elections

(1) The rules of an organisation —

(a) shall provide for the conduct of every election to an office within the organisation (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 organisation; and

(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; and

(c) shall provide for the election of the holder of each office within the organisation, 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;

and

(d) shall, in relation to any election for office —

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

(ii) make provision for —

(I) absent voting; and

(II) the manner in which persons may become candidates for election; and

(III) the appointment, conduct and duties of returning officers; and

(IV) the conduct of the ballot; and

(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;

and

(e) shall not permit a person to be elected to hold an office within the organisation 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 organisation 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 organisation to consult with him on the matter, allow the organisation 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 organisation to his satisfaction, pursuant to subsection (2) and thereupon the rules shall be deemed to be altered accordingly.

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

56A. Casual vacancies, rules as to filling

(1) This section has effect notwithstanding any other provision of this Act.

(2) Subject to subsection (3), rules made by an organisation 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 organisation (other than the first-mentioned rules), to have been elected to that office in accordance with those provisions.

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

57. Elections by direct voting system to be by secret postal ballot

(1) Every election by a direct voting system for an office in an organisation 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.

(3) Where the rules of an organisation 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 organisation in accordance with the regulations, by instrument in writing under his hand, exempt the organisation 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 organisation 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 organisation.

(5) This section does not apply to an election any step in which was taken, in accordance with the rules of the organisation, before the date of the coming into operation of this section.

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

58. Registering organisations, rules etc.

(1) Where, under this Act, the Registrar is authorised by the Commission in Court Session to register an organisation the Registrar must so register it by registering —

(a) its name; and

(b) its rules; and

(c) the address of the office where the business of the organisation is conducted,

and give to the organisation a certificate in the prescribed form which until cancelled is, subject to this Act, conclusive evidence of the registration of the organisation under this Act and of the organisation having complied with the prescribed conditions that entitle it to be so registered.

(2) Where the Commission in Court Session authorises the Registrar to register an organisation it may do so —

(a) unconditionally; or

(b) subject to the compliance by the organisation with any direction given to it by the Commission in Court Session in dealing with the application by the organisation for registration.

(3) On an application for the registration of an organisation the agent or representative of the applicant may request the Commission in Court Session to authorise the rules of the organisation 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 organisation under the rules as lodged under section 55(1)(b) and, if so requested, the Commission in Court Session may authorise the Registrar to register the rules in those terms.

[Section 58 amended: No. 94 of 1984 s. 37 and 66; No. 39 of 2018 s. 33.]

59. Names of registered organisations, restrictions on

(1) The Commission in Court Session must not authorise the registration of an organisation under a name identical with that by which any other organisation has been registered or which by reason of its resemblance to the name of another organisation or body or for any other reason is, in the opinion of the

Commission in Court Session, likely to deceive or mislead any person.

(2) The registered name shall clearly indicate whether the organisation is an organisation of employers or an organisation of employees.

(3) This section does not prevent the Commission in Court Session from authorising an organisation 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: No. 94 of 1984 s. 66; No. 39 of 2018 s. 34.]

60. Organisation becomes incorporated on registration

(1) An organisation 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 organisation may at any time, with the consent of the Commission in Court Session, change its name.

(2) An organisation 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 organisation of any process, notice, or document of any kind may be effected by delivering it to the secretary or principal executive officer of the organisation 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 organisation or in such other manner as may be prescribed.

[Section 60 amended: No. 94 of 1984 s. 66; No. 119 of 1987 s. 16; No. 39 of 2018 s. 35.]

61. Effect of registration

Upon and after registration, the organisation 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 organisation during the continuance of their membership.

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

62. Altering registered rules

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

(2) The Registrar shall not register any alteration to the rules of an organisation that relates to its name, qualifications of persons for membership, or a matter referred to in section 71(2) or (5) unless so authorised by the Commission in Court Session.

(3) Subject to section 71(8), the Registrar shall not register an alteration to any rule unless, after consulting with the Chief Commissioner, the Registrar is satisfied that —

(a) the application has been authorised in accordance with the rules of the organisation; and

(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 organisation, 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 organisation 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 authorised 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 organisation for alteration of a rule of a kind referred to in subsection (2).

[Section 62 amended: No. 94 of 1984 s. 38 and 66; No. 39 of 2018 s. 36.]

63. Records, organisations' duties as to etc.

(1) An organisation 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; and

(b) a list of the names, residential addresses, and occupations of the persons holding offices in the organisation; and

(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 organisation; and

(d) such other records as are prescribed.

(2) An organisation 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 organisation, certified by statutory declaration by the Secretary or other prescribed officer of the organisation to be a correct statement of the information contained therein.

(3) An organisation shall file with the Registrar in such manner and within such time as is prescribed notification of changes in the holding of offices.

[(4), (5) deleted]

(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 organisation shall be made available by the organisation for inspection by such persons as are authorised by the Registrar, at such times as are appointed by him, at the office of the organisation.

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

64. Membership register, Registrar may direct rectification of etc.

(1) Where it appears to the Registrar that the register of members of an organisation 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 organisation, he may direct the organisation 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 organisation 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 organisation so specified is, in all courts and proceedings, evidence of the facts so stated.

[Section 64 amended: No. 94 of 1984 s. 65 and 66.]

64A. Resigning from an organisation

(1) A member of an organisation may end that membership by written notice of resignation addressed to the organisation.

(2) A notice of resignation shall be served on the organisation by —

(a) delivering it personally to the organisation'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 organisation 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 organisation or on a later day specified in the notice.

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

64B. Membership ends if subscription not paid

(1) Where —

(a) a period in respect of which a subscription has been paid to an organisation for a person's membership of the organisation expires; and

(b) no subscription to continue or renew that membership has been paid to the organisation 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 organisation.

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

64C. Effect of s. 64A and 64B in relation to organisation's rules

(1) The ways of ending membership of an organisation set out in sections 64A and 64B are in addition to any ways of ending that membership provided for in the rules of the organisation.

(2) The ending of membership of an organisation under section 64A or 64B has effect despite anything in the rules of the organisation.

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

64D. Purging register, organisation's rules to provide for

The rules of an organisation 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: No. 79 of 1995 s. 32.]

65. Accounts of organisation, audit and filing of

The secretary of each organisation shall —

(a) cause the accounting records of that organisation to be properly audited by a person registered as an auditor under the *Corporations Act 2001* of the Commonwealth (in this section called the ***auditor***) within 6 calendar months after the end of each financial year of that organisation; 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 organisation audited by the auditor and made up to the date of the closing of the accounts of that organisation in respect of the financial year concerned; and

(ii) a statement of the receipts and expenditure of that organisation during the financial year concerned audited by the auditor; and

(iii) a cash flow statement of the organisation for the financial year concerned audited by the auditor.

[Section 65 inserted: No. 121 of 1982 s. 22; amended: No. 94 of 1984 s. 65 and 66; No. 79 of 1995 s. 6; No. 10 of 2001 s. 112; No. 74 of 2003 s. 68(2).]

65A. Auditor's powers

For the purposes of auditing the accounting records of an organisation or of performing any function conferred on the auditor under this Act, the auditor of an organisation 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 organisation, or the acquisition, use or disposal of assets of the organisation, or the incurring of liabilities by the organisation; and

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

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

66. Power of Chief Commissioner to deal with rules of organisation

(1) The following persons may apply to the Chief Commissioner for an order or direction under this section —

(a) a person who is or has been a member of an organisation; or

(b) a person who has applied for and not been admitted to membership in an organisation; or

(c) the Registrar acting on the complaint of or on behalf of a person referred to in paragraph (a) or of the Registrar's own motion.

(2) On an application made pursuant to this section, the Chief Commissioner may make such order or give such directions relating to the rules of the organisation, their observance or non-observance or the manner of their observance, either generally or in the particular case, as the Chief Commissioner considers to be appropriate and without limiting the generality of the foregoing may —

(a) disallow any rule which, in the opinion of the Chief Commissioner —

(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; or

(ii) is tyrannical or oppressive; or

(iii) prevents or hinders any member of the organisation from observing the law or the provisions of an award, industrial agreement, order or direction made, registered or given under this Act; or

(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 organisation by its members;

and

(b) instead of disallowing a rule under paragraph (a), direct the organisation to alter that rule within a specified time in such manner as the Chief Commissioner may direct; and

(c) disallow any rule which has not been altered by the organisation after a direction to do so pursuant to paragraph (b); and

(ca) where the Chief Commissioner disallows any rule under paragraph (a) or (c), give such directions as the Chief

Commissioner 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; and

(d) declare the true interpretation of any rule; and

(e) inquire into any election for an office in the organisation 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 Chief Commissioner considers necessary —

(i) to cure the irregularity including rectifying the register of members of the organisation; 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 Chief Commissioner 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 Chief Commissioner considers reasonable in the circumstances and specifies in the order, act or 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) deleted]

(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 organisation concerned.

[(5) deleted]

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

[(7), (8) deleted]

(9) The power of the Chief Commissioner under subsection (2)(d) may, on a reference made under section 27(1)(t), be exercised by the Commission in Court Session.

[Section 66 amended: No. 94 of 1984 s. 40 and 66; No. 119 of 1987 s. 17; No. 1 of 1995 s. 52 and 53; No. 79 of 1995 s. 33; No. 3 of 1997 s. 12; No. 39 of 2018 s. 37.]

67. Industrial associations, registering

(1) A council or other body, however designated, formed by and for the purpose of representing 2 or more organisations 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 organisations 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 organisations, 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: No. 94 of 1984 s. 41.]

68. Declaration as to certain functions

The Commission 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 organisation.

[Section 68 amended: No. 94 of 1984 s. 66; No. 39 of 2018 s. 38.]

69. Election, conduct of by Registrar or Electoral Commissioner

(1) An election for an office in an organisation 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 organisation on behalf of the organisation; or

(b) by a person authorised to make the request by and on behalf of not less than $1/20^{th}$ of the members of, or 250 of the members of the organisation, 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 organisation, 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 authorised in writing by the Electoral Commissioner.

(5) Notwithstanding anything contained in the rules of the organisation, 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; or

(b) to rectify the register of members of the organisation; 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 organisation 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 Account is to the necessary extent appropriated accordingly.

(9) The Secretary of the organisation 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 organisation 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 organisation were, at the date on which that request was so made, members of the organisation.

(11) Where the Registrar decides that a request has not been duly made under this section he shall inform the organisation 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 organisation or that person, as the case may be, being informed by the Registrar of the decision that the request has not been duly made, appeal to the Commission in Court Session in the manner prescribed against that decision.

[Section 69 amended: No. 94 of 1984 s. 42, 65 and 66; No. 98 of 1985 s. 3; No. 6 of 1993 s. 11; No. 1 of 1995 s. 53; No. 77 of 2006 s. 4; No. 39 of 2018 s. 39.]

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; or

(b) destroy, deface, alter, take, or otherwise interfere with a nomination paper, ballot paper, or envelope; or

(c) put or deliver a ballot paper or other paper —

(i) into a ballot box or other ballot receptacle; or

(ii) into the post; or

(iii) to a person receiving ballot papers for the purposes of the election;

or

(d) record a vote which he is not entitled to record; or

(e) record more than one vote; or

(f) forge or utter, knowing it to be forged, a nomination paper, ballot paper, or envelope; or

(g) supply a ballot paper; or

(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; or

(ii) a vote or an omission to vote; or

(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.

(3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

[Section 70 amended: No. 94 of 1984 s. 65; No. 1 of 1995 s. 53; No. 20 of 2002 s. 152(1).]

71. State branches of Federal organisations, rules of as to membership and offices

(1) In this section —

Branch means the Western Australian Branch of an organisation of employees registered under the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);

counterpart Federal body, in relation to a State organisation, 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 organisation relating to the corresponding subject matter; and

State organisation means an organisation that is registered under Division 4 of Part II.

(2) The rules of the State organisation 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 Commission in Court Session, they are substantially the same.

(3) The Commission in Court Session 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 organisation is, by reason of being a member of a particular class of

persons, ineligible to be a member of that State organisation'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 organisation.

(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 organisation prescribing the offices which shall exist in the State organisation if, for every office in the State organisation there is a corresponding office in the Branch.

(5) Where, after the coming into operation of this section —

(a) the rules of a State organisation are altered pursuant to section 62 to provide that each office in the State organisation may, from such time as the committee of management of the State organisation may determine, be held by the person who, in accordance with the rules of the State organisation's counterpart Federal body, holds the corresponding office in that body; and

(b) the committee of management of the State organisation decides and, in the prescribed manner notifies the Registrar accordingly, that from a date specified in the notification all offices in the State organisation will be filled in accordance with the rule referred to in paragraph (a),

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

(c) that the provisions of this Act relating to elections for office within a State organisation do not, from the date referred to in paragraph (b), apply in relation to offices in that State organisation; and

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

and the certificate has effect according to its tenor.

(6) A State organisation to which a certificate issued under this section applies may, notwithstanding any provision in its rules to the contrary, make an agreement with the organisation of which the State organisation's counterpart Federal body is the Branch, relating to the management and control of the funds or property, or both, of the State organisation.

(7) Where a memorandum of an agreement referred to in subsection (6) is —

(a) sealed with the respective seals of the State organisation and the other organisation concerned; and

(b) signed on behalf of the State organisation and the other organisation by the persons authorised under their respective rules to execute such an instrument; and

(c) lodged with the Registrar,

the Commission in Court Session 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 organisation and of its counterpart Federal body and will not prevent or hinder the State organisation from satisfying any debt or obligation howsoever arising, approve the agreement.

(8) Where the Commission in Court Session approves an agreement under subsection (7) the Registrar must —

(a) register the memorandum as an alteration to the rules of the State organisation; and

(b) amend, where necessary, the certificate issued to the State organisation under subsection (5) by declaring that the State organisation 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 Commission in Court Session may, having regard to the terms of the memorandum, direct; and

(c) notify the State organisation in writing of the matters referred to in paragraphs (a) and (b).

(9) After the issue to a State organisation 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 Commission in Court Session; and

(b) an alteration to any rule of the State organisation other than the rule referred to in paragraph (a) may be registered by the Registrar if the Registrar is satisfied that the rule as so altered is the same as a rule of the State organisation's counterpart Federal body; and

(c) every member of the State organisation's counterpart Federal body who is eligible to be a member of the State organisation 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 organisation.

(10) Before granting approval to an alteration of the rule or memorandum referred to in subsection (9)(a), the Commission in Court Session may require compliance by the State organisation with such conditions as the Commission in Court Session considers appropriate.

[Section 71 amended: No. 94 of 1984 s. 66; No. 119 of 1987 s. 18; No. 1 of 1995 s. 53; No. 74 of 2003 s. 68(3); No. 53 of 2011 s. 34; No. 39 of 2018 s. 40.]

71A. Rules of Federal organisation, State organisation may adopt

(1) In this section —

counterpart Federal body and ***State organisation*** have the same respective meanings as in section 71.

(2) Subject to this section, a State organisation 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 organisation; and

(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 organisation.

(3) Subject to subsection (5) where a State organisation alters its rules under subsection (2) the rules adopted by that State organisation are by force of this section, and notwithstanding anything to the contrary in section 62, deemed to be rules of the State organisation.

(4) The rules adopted under subsection (2) include, unless provision to the contrary is made by the State organisation 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 organisation makes an adopting provision under subsection (2) —

(a) the Registrar shall register that adopting provision as an alteration to the rules of that State organisation; 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: No. 99 of 1990 s. 9.]

72. Amalgamated organisations, registration of

(1) Where 2 or more organisations (in this section referred to as the amalgamating organisations) apply for the registration of a new organisation and the rules of the proposed new organisation are such that the only persons eligible for membership of the new organisation will be persons who, if the amalgamating organisations had remained in being, would have been eligible for membership of at least one of the amalgamating organisations, the new organisation may be registered by authority of the Commission in Court Session.

(2) An application under this section shall be made under the respective seals of the amalgamating organisations and shall be signed by the secretary and principal executive officer of each of those organisations.

(3) The provisions of this Division applying to and in relation to the registration of organisations 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 organisation under this section.

(4) Subsection (1) does not prevent the alteration, pursuant to this Act, at any time after an organisation has been registered under this section, of the rules referred to in that subsection.

(5) On and from the date on which an organisation is registered under this section —

(a) the registration of each of the amalgamating organisations is cancelled; and

(b) all the property, rights, duties, and obligations whatever held by, vested in, or imposed on each of those organisations shall be held by, vested in, or imposed on, as the case may be, the new organisation; and

(c) actions and other proceedings already commenced by or against any of those organisations may be continued by or against the new organisation and the new organisation

is substituted for each of those organisations as a party; and

(d) actions and other proceedings that could have been brought by or against any of those organisations may be brought by or against the new organisation.

[Section 72 inserted: No. 94 of 1984 s. 43; amended: No. 1 of 1995 s. 53; No. 79 of 1995 s. 34; No. 39 of 2018 s. 41.]

72A. Employee organisations, orders as to whom they represent

(1) In this section —

enterprise means —

(a) a business, or part of a business, that is carried on by a single employer; or

(b) a business, or part of a business, that is carried on by 2 or more employers as a joint venture or single enterprise; or

(c) activities carried on by a public authority, or part of those activities; or

(d) a single project, undertaking or place of work;

organisation means an organisation of employees and includes the Western Australian Branch of the Australian Medical Association Incorporated.

(2) An organisation, an employer or the Minister may apply to the Commission in Court Session for an order —

(a) that an organisation has the right, to the exclusion of another organisation or other organisations, 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 organisation;

(b) that an organisation 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 organisation 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 organisation.

(3) The Registrar must publish notice of an application under subsection (2) in the *Industrial Gazette* and —

(a) in a newspaper circulating throughout the State; or

(b) on an internet website maintained by the Commission,

and the application must not be listed for hearing before the Commission in Court Session until after the expiration of 30 days from the day on which the notice is first published.

(4) On an application under subsection (2), the Commission in Court Session may make one or more of the orders applied for, and may make any such order subject to any condition or limitation.

(5) The Commission in Court Session must not make any order described in subsection (2) without giving persons who, in its opinion, have a sufficient interest in the matter an opportunity of being heard.

(6) Where an order is made under subsection (4), the Commission in Court Session must refer the matter to the Chief Commissioner unless it is satisfied that the rules of the organisations concerned do not need to be altered.

(7) On a referral under subsection (6) the Chief Commissioner must, after giving the organisations concerned an opportunity of being heard, make such alterations (if any) to the rules of the organisations as are, in the Chief Commissioner's opinion, necessary to reflect the order made by the Commission in Court Session.

(8) An alteration must be made by instrument in writing signed by the Chief Commissioner and takes effect on a day specified in the instrument.

[Section 72A inserted: No. 15 of 1993 s. 20; amended: No. 79 of 1995 s. 35; No. 20 of 2002 s. 190(6); No. 39 of 2018 s. 42.]

72B. AMA may represent interests of medical practitioners

(1) In this section —

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

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 organisation of employees and for that purpose —

(a) the references to ***organisation*** 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 organisation of employees.

(3) The WA Branch of the AMA does not have the right, to the exclusion of an organisation or organisations, 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* 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.

(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: No. 79 of 1995 s. 36; amended: No. 22 of 2008 Sch. 3 cl. 30(2); No. 35 of 2010 s. 99.]

73. Cancelling and suspending registration of organisation, procedure for

(1) Subject to this section, the Commission constituted by a commissioner may of its own motion or at the request of the Minister or any employer or organisation at any time direct the Registrar in writing to issue to an organisation a summons to appear before the Commission in Court Session on a date specified in the summons, and show cause why the registration of the organisation 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 must ascertain from the Chief Commissioner the date to be specified in the summons referred to in subsection (1) and that date must 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 organisation is bound by an award made under the *Fair Work Act 2009* (Commonwealth) or continued in existence under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth),

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 organisation 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 organisation of its intention to do so and has invited such officers of the organisation 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 organisation 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) must not be one of the commissioners who constitute the Commission in Court Session for the purposes of this section.

(7) On the return of the summons (not being a summons to which subsection (7b) applies) if it appears to the Commission in Court Session that by reason of the conduct of the organisation 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 Commission in Court Session —

(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 organisation; or

(b) an order cancelling the rights of the organisation 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 Commission in Court Session 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 Commission in Court Session that a number of a group or class of employees who are, or are qualified to be, members of an organisation is bound by an award made under the *Fair Work Act 2009* (Commonwealth) or continued in existence under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth), the Commission in Court Session —

(a) shall make an order cancelling the rights of the organisation 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 Commission in Court Session may make include —

(a) an order with respect to the rules of the organisations 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.

(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 Commission in Court Session 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 organisation satisfies the Commission in Court Session that it has complied or is complying with conditions or requisitions made by the Commission in Court Session when making the order.

(10) An order made under this section may provide for the cancellation of the registration of an organisation after such period of suspension of rights under this Act as the Commission in Court Session considers necessary to enable any debts, liabilities, or obligations incurred by the organisation to be met and the period of suspension under this subsection may be extended by the Commission in Court Session to such extent as may appear to it to be necessary.

(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 Commission in Court Session must cancel the registration of an organisation if it is satisfied on the application of the Registrar that —

(a) the number of members of the organisation or, the number of employees of the members of the organisation would not entitle it to registration under section 53 or section 54, as the case may be; or

(b) the organisation is defunct; or

(c) the organisation 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 organisation, or any of its rights under this Act, shall not be instituted otherwise than under this section.

(14) During any period in which —

(a) an organisation of employees is not registered; or

(b) the registration of an organisation 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 organisation.

Penalty: $2 000.

[Section 73 amended: No. 121 of 1982 s. 23; No. 94 of 1984 s. 44 and 66; No. 119 of 1987 s. 19; No. 15 of 1993 s. 21; No. 3 of 1997 s. 9 and 19; No. 20 of 2002 s. 193(2) and 194(6); No. 53 of 2011 s. 35; No. 39 of 2018 s. 43; amended: Gazette 15 Aug 2003 p. 3686.]

Division 5 — Duties of officers of organisations

[Heading inserted: No. 79 of 1995 s. 8(1); amended: No. 3 of 1997 s. 4; No. 20 of 2002 s. 192(1).]

74. Finance official's duties

(1) In this section and in section 77 —

finance official means an officer of an organisation who is entitled to participate directly in the financial management of the organisation.

(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.

(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 organisation is to ensure that the organisation 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 organisation 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 organisation.

(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 organisation.

(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 organisation in accordance with the rules of the organisation.

(9) A finance official of an organisation 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 organisation.

(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 organisation is to provide the committee of management of the organisation with returns of the finance official's pecuniary interests at such times and in such form as are prescribed by the rules of the organisation.

(12) A finance official of an organisation who has a material personal interest in a matter involving the organisation is to disclose the nature of the interest to the committee of management of the organisation 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: No. 79 of 1995 s. 8(1); amended: No. 3 of 1997 s. 5; No. 20 of 2002 s. 192(2).]

75. Auditor to report on compliance with s. 74 duties

(1) In reporting on the accounting records of an organisation 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: No. 79 of 1995 s. 8(1).]

*[**76.** Deleted: No. 39 of 2018 s. 44.]*

77. Duty under s. 74, enforcing

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

(a) the organisation; or

(b) an officer of the organisation; or

(c) a member of the organisation; or

(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 organisation in respect of any loss or damage suffered by the organisation 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: No. 79 of 1995 s. 8(1); amended: No. 3 of 1997 s. 6.]

78. Failure to comply with s. 77(2)(e) 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: No. 3 of 1997 s. 7.]

79. Proceedings under s. 77, 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

(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: No. 3 of 1997 s. 7.]

80. Disqualification from office for breach of s. 74 duty

(1) If an order is made against an officer of an organisation 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 organisation 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 organisation 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: No. 3 of 1997 s. 7.]

Part IIA — Constituent authorities

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

[Division 1 (s. 73A, 80A, 80B) deleted: No. 1 of 1995 s. 10.]

Division 2 — Public service arbitrator and appeal boards

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

80C. Terms used and construction and application of 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 organisation 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

(aa) in relation to a government officer who is an employee within the meaning of the *Health Services Act 2016* section 6, means the employing authority of the employee; 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 —

(a) in relation to a government officer who is an employee within the meaning of the *Health Services Act 2016* section 6, an employing authority within the meaning of section 103 of that Act;

(b) in relation to any other government officer, an employing authority within the meaning of the *Public Sector Management Act 1994* section 5;

government officer means —

(a) every public service officer; and

(aa) each member of the Governor's Establishment within the meaning of the *Governor's Establishment Act 1992*; and

(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*; and

(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*,

but does not include —

(d) any teacher; or

(e) any railway officer as defined in section 80M; or

(f) any member of the academic staff of a post-secondary education institution;

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) This Division shall be read in conjunction with the *Public Sector Management Act 1994* and the *Health Services Act 2016*.

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

[Section 80C inserted: No. 94 of 1984 s. 47; amended: No. 40 of 1992 s. 9(1); No. 32 of 1994 s. 14; No. 103 of 1994 s. 18; No. 1 of 1995 s. 11; No. 79 of 1995 s. 36; No. 36 of 1999 s. 247; No. 11 of 2016 s. 295(3)-(5).]

80D. Public service arbitrators, appointment of etc.

(1) The Chief Commissioner —

(a) must appoint 1 commissioner as a public service arbitrator within the Commission; and

(b) may appoint 1 or more commissioners as additional public service arbitrators within the Commission.

(2) Without limiting subsection (1), the Chief Commissioner may be appointed as a public service arbitrator under that subsection.

[(3) deleted]

(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: No. 94 of 1984 s. 47; amended: No. 39 of 2018 s. 45.]

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) An Arbitrator also has the jurisdiction conferred on an Arbitrator as a relevant industrial authority by —

(a) Part VID Division 5 Subdivision 3; and

(b) section 97WI; and

(c) section 97WK.

(4) The jurisdiction referred to in subsection (3) is to be exercised in accordance with the relevant provisions of Part VID, and the provisions of —

(a) subsection (6); and

(b) section 80G,

do not apply to the exercise of any such jurisdiction by an Arbitrator.

(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 to the Commission in Court Session for hearing and determination by the Commission in Court Session —

(i) an industrial matter referred to in subsection (1) or any part of that industrial matter; or

(ii) any question of interpretation of the rules of an organisation arising in a matter before the Arbitrator;

and

(b) with the consent of the Chief Commissioner refer to the Full Bench for hearing and determination by the Full Bench any question of law arising in a matter before the Arbitrator, other than a question of interpretation of the rules of an organisation,

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.

(7) Despite 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 the following —

(a) any matter in respect of which a decision is, or may be, made under regulations referred to in the *Public Sector Management Act 1994* section 94 or 95A;

(b) any matter in respect of which a procedure referred to in the *Public Sector Management Act 1994* section 97(1)(a) is, or may be, prescribed under that Act.

[Section 80E inserted: No. 94 of 1984 s. 47; amended: No. 99 of 1990 s. 12; No. 1 of 1995 s. 28; No. 20 of 2002 s. 9; No. 8 of 2014 s. 5; No. 39 of 2018 s. 46.]

80F. Who may refer matters to Arbitrator

(1) Subject to subsections (2) and (3) an industrial matter may be referred to an Arbitrator under section 80E by an employer, organisation 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 organisation on his behalf, or by his employer.

(3) A claim mentioned in section 80E(2)(b) may be referred to an Arbitrator by an organisation or an employer.

(4) A government officer who is an employee under an employer-employee agreement may refer to an Arbitrator where

an Arbitrator is the relevant industrial authority under Part VID —

(a) any question, dispute or difficulty that an Arbitrator has jurisdiction to determine under section 97WI; and

(b) an allegation referred to in section 97WK(2).

[Section 80F inserted: No. 94 of 1984 s. 47; amended: No. 20 of 2002 s. 10.]

80G. Part II Div. 2 to 2G, application of

(1) Subject to this Division, the provisions of Part II Divisions 2 to 2G 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: No. 94 of 1984 s. 47; amended: No. 20 of 2002 s. 121(4).]

80H. Public Service Appeal Board, members of etc.

(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) deleted]

(4) The members of a Board shall be —

(a) a public service arbitrator, who shall be the chairman; and

(b) an employer's representative appointed by the employer of the appellant; and

(c) an employee's representative appointed by the relevant organisation.

(5) In subsection (4) ***relevant organisation*** means the Association unless the appellant is a member of another organisation in which case it means that organisation.

(6) In this section and section 80J ***organisation*** means an organisation of employees registered under Division 4 of Part II, an association of employees registered as an organisation pursuant to the provisions of the *Fair Work (Registered Organisations) Act 2009* (Commonwealth) 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.

(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: No. 94 of 1984 s. 47; amended: No 32 of 1994 s. 14; No. 79 of 1995 s. 67(2); No. 53 of 2011 s. 36; No. 39 of 2018 s. 47.]

80I. Board's jurisdiction

(1) Subject to the *Public Sector Management Act 1994* section 52, the *Health Services Act 2016* section 118 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 under the *Public Sector Management Act 1994* section 78 against a

decision or finding referred to in subsection (1)(b) of that section;

(c) an appeal by a government officer under the *Health Services Act 2016* section 172 against a decision or finding referred to in subsection (1)(b) of that section;

(d) an appeal, other than an appeal under the *Public Sector Management Act 1994* section 78(1) or the *Health Services Act 2016* section 172(2), by a government officer that the government officer be dismissed,

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

[(2) deleted]

(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 the *Public Sector Management Act 1994* section 94 or 95A.

[Section 80I inserted: No. 94 of 1984 s. 47; amended: No. 32 of 1994 s. 14; No. 1 of 1995 s. 29; No. 39 of 2010 s. 109; No. 8 of 2014 s. 6; No. 11 of 2016 s. 295(6).]

80J. Institution of appeals under s. 80I

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 organisation on his behalf.

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

80K. Proceedings of Board

(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 must be given in writing and must be signed and dated at the time it is made 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: No. 94 of 1984 s. 47; amended: No. 39 of 2018 s. 48.]

80L. Certain provisions of Part II Div. 2 apply

(1) Subject to this Division the provisions of sections 22B, 26(1) and (3), 27, 28, 31(1), (2), (3) and (5), 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: No. 94 of 1984 s. 47; amended: No. 20 of 2002 s. 153; No. 39 of 2018 s. 49.]

Division 3 — Railways Classification Board

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

80M. Terms used

(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 recognised divisions of the staff of the Public Transport Authority who receives his instructions from and communicates with the Public Transport Authority directly;

member means any member of the Board and includes the chairman;

Public Transport Authority means the Public Transport Authority of Western Australia established by the *Public Transport Authority Act 2003* section 5;

railway officer means any specified award employee (as defined in the *Government Railways Act 1904* section 73) —

(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 Public Transport Authority;

salaried position means a position in the service of the Public Transport Authority 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;

sub-head of branch means an officer in control of some recognised section of a division of the staff of the Public Transport Authority who receives his instructions from and communicates with the head of the branch directly;

transport Minister means the Minister responsible for the administration of the *Public Transport Authority Act 2003*;

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 organisation 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* 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: No. 94 of 1984 s. 47; amended: No. 31 of 2003 s. 147(2) and (5).]

80N. Railways Classification Board, members of etc.

(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 transport Minister and the Union, and shall be chairman of the Board; and

(b) one shall be a person nominated for appointment by the Public Transport Authority 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 Public Transport Authority, 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 Public Transport Authority 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 Public Transport Authority 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 Public Transport Authority for misconduct is not eligible for appointment as a member or the deputy of a member of the Board.

[Section 80N inserted: No. 94 of 1984 s. 47; amended: No. 31 of 2003 s. 147(3) and (5).]

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 Public Transport Authority of the member is withdrawn; or

(b) he resigns pursuant to subsection (6); or

(c) he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(d) his appointment is terminated pursuant to subsection (4); or

(e) he is dismissed from the service of the Public Transport Authority 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 transport Minister 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: No. 94 of 1984 s. 47; amended: No. 31 of 2003 s. 147(4) and (5); No. 18 of 2009 s. 45.]

80P. Extending appointments

(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, 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: 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: No. 94 of 1984 s. 47.]

80R. Board's jurisdiction

(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; and

(b) to create classes and to provide the minimum and maximum salaries of all salaried positions in any class; and

(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; and

(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; and

(e) to hear and determine any appeal by the Union in respect of the reclassification of a salaried position by the Public Transport Authority pursuant to section 80U(1); and

(f) to hear and determine any application by the Public Transport Authority 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.

(2c) The Board also has the jurisdiction conferred on it as a relevant industrial authority by —

(a) Part VID Division 5 Subdivision 3; and

(b) section 97WI; and

(c) section 97WK.

(2d) The jurisdiction referred to in subsection (2c) is to be exercised in accordance with the relevant provisions of Part VID, and the provisions of —

(a) subsection (3); and

(b) section 80W,

do not apply to the exercise of any such jurisdiction by the Board.

(3) Notwithstanding subsection (1) the Board may —

(a) with the consent of the Chief Commissioner refer to the Commission in Court Session for hearing and determination by the Commission in Court Session —

(i) an industrial matter referred to in subsection (1) or any part of that industrial matter; or

(ii) any question of interpretation of the rules of an organisation arising in a matter before the Board;

and

(b) with the consent of the Chief Commissioner refer to the Full Bench for hearing and determination by the Full Bench any question of law arising in a matter before the Board, other than a question of interpretation of the rules of an organisation,

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.

(4) Despite subsections (1) and (3), the Board does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench the following —

(a) any matter in respect of which a decision is, or may be, made under regulations referred to in the *Public Sector Management Act 1994* section 94 or 95A;

(b) any matter in respect of which a procedure referred to in the *Public Sector Management Act 1994* section 97(1)(a) is, or may be, prescribed under that Act.

[Section 80R inserted: No. 94 of 1984 s. 47; amended: No. 99 of 1990 s. 13; No. 1 of 1995 s. 36; No. 20 of 2002 s. 11; No. 31 of 2003 s. 147(5); No. 8 of 2014 s. 7; No. 39 of 2018 s. 50.]

80S. Who may refer matters 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 Public Transport Authority.

(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.

(3) A railway officer who is an employee under an employer-employee agreement may refer to the Board where the Board is the relevant industrial authority under Part VID —

(a) any question, dispute or difficulty that the Board has jurisdiction to determine under section 97WI; and

(b) an allegation referred to in section 97WK(2).

[Section 80S inserted: No. 94 of 1984 s. 47; amended: No. 20 of 2002 s. 12; No. 31 of 2003 s. 147(5).]

*[**80T.** Deleted: No. 1 of 1995 s. 30.]*

80U. Vacant salaried position, reclassification of

(1) Where any salaried position becomes vacant by reason of the retirement, resignation or voluntary transfer of an officer from that position, the Public Transport Authority 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 Public Transport Authority 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 Public Transport Authority 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: No. 94 of 1984 s. 47; amended: No. 31 of 2003 s. 147(5).]

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 must be in the form of an award, order, determination or declaration and must be signed and dated at the time it is made by the chairman.

(4) To the extent to which it is not prescribed the Board may regulate its own procedure.

[Section 80V inserted: No. 94 of 1984 s. 47; amended: No. 39 of 2018 s. 51.]

80W. Part II Div. 2 to 2G, application of

(1) Subject to this Division, the provisions of Part II Divisions 2 to 2G 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 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: No. 94 of 1984 s. 47; amended: No. 79 of 1995 s. 14; No. 20 of 2002 s. 121(5).]

[Division 4 (s. 80X-80Z, 80ZA-80ZD) deleted: No. 1 of 1995 s. 31.]

Part IIB — Enquiries

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

80ZE. Minister may refer matter to Commission for enquiry

(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.

[Section 80ZE inserted: No. 94 of 1984 s. 47; amended: No. 15 of 1993 s. 22; amended: Gazette 15 Aug 2003 p. 3686.]

Part IIC — Arrangements with other industrial authorities

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

80ZF. Term used: Fair Work Commission

In this Part —

Fair Work Commission includes a member of the Fair Work Commission.

[Section 80ZF inserted: No. 39 of 2018 s. 52.]

80ZG. Joint proceedings of Commission and Fair Work Commission

(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 Fair Work Commission; and

(b) the parties to an industrial dispute in relation to which the Fair Work Commission is exercising power; and

(c) any witness summoned by the Fair Work 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 Fair Work 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 Fair Work Commission or a person referred to in subsection (1)(b) or (c).

[Section 80ZG inserted: No. 94 of 1984 s. 47; amended: No. 53 of 2011 s. 39; No. 39 of 2018 s. 53.]

80ZH. Referring matters to Fair Work 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 Fair Work Commission to nominate a member of the Fair Work 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 Fair Work Commission nominates a member of the Fair Work 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 Fair Work 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 Fair Work 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: No. 94 of 1984 s. 47; amended: No. 53 of 2011 s. 39; No. 39 of 2018 s. 54.]

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 authority, the Chief Commissioner may, if that authority is willing, confer with that authority, or arrange for another commissioner 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, the Chief Commissioner may confer with the Fair Work 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 Fair Work 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: No. 94 of 1984 s. 47; amended: No. 53 of 2011 s. 39; No. 39 of 2018 s. 55.]

80ZJ. Commission may exercise powers conferred by *Fair Work Act 2009* (Cwlth) etc.

(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 *Fair Work Act 2009* (Commonwealth) 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: No. 94 of 1984 s. 47; amended: No. 53 of 2011 s. 37.]

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

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

81. Industrial magistrate's courts established

(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: No. 44 of 1991 s. 6.]

81A. Jurisdiction under this Act of industrial magistrate's court

An industrial magistrate's court has the jurisdiction conferred on it by sections 77, 80(1) and (2), 83, 83A, 83B, 83D, 83E, 96J, 97V(3), 97VJ(3), 97YC, 97YG, 110, 111 and 112.

[Section 81A inserted: No. 79 of 1995 s. 19; amended: No. 3 of 1997 s. 8, 18, and 21(1); No. 20 of 2002 s. 13, 160(1), 193(3) and 195(2).]

81AA. Jurisdiction under other Acts of industrial magistrate's court

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

(a) the *Construction Industry Portable Paid Long Service Leave Act 1985* section 53;

(ba) Part IV of the *Long Service Leave Act 1958*;

[(bb) deleted]

(bc) section 196(2) of the *Children and Community Services Act 2004*.

[(b) deleted]

[Section 81AA inserted: No. 15 of 1993 s. 24; amended: No. 79 of 1995 s. 20; No. 20 of 2002 s. 113(2) and 182; No. 34 of 2004 s. 251; No. 36 of 2006 s. 68; No. 53 of 2011 s. 29 and 42.]

81B. Industrial magistrate's courts, constitution of

(1) An industrial magistrate's court shall be constituted by an industrial magistrate.

(2) The Governor may, on the recommendation of the Chief Magistrate, appoint a person holding office as a magistrate to be an industrial magistrate.

(3) An industrial magistrate ceases to hold office as such when —

(a) he ceases to be a 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 recommendation of the Chief Magistrate, appoint a person holding office as a 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 Magistrate means the Chief Magistrate of the Magistrates Court.

[Section 81B inserted: No. 44 of 1991 s. 6; amended: No. 59 of 2004 s. 112; No. 39 of 2018 s. 56.]

81C. Sittings of industrial magistrate's courts

(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: No. 44 of 1991 s. 6.]

81CA. Procedure etc. of industrial magistrate's courts

(1) In this section —

general jurisdiction means the jurisdiction of an industrial magistrate's court under —

(a) section 77, 80(1) and (2), 83(1) to (7), 83A, 83B(1) to (9), 83E(1) to (8), 96J, 97V(3), 97VJ(3), 97YC, 97YG, 110, 111 or 112; or

(b) Part IV of the *Long Service Leave Act 1958*; or

(c) the *Construction Industry Portable Paid Long Service Leave Act 1985* section 53;

prosecution jurisdiction means the jurisdiction of an industrial magistrate's court under —

(a) section 83D; or

[(b), (c) deleted]

(d) section 196(2) of the *Children and Community Services Act 2004*.

(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 *Magistrates Court (Civil Proceedings) Act 2004* as if the proceedings were a case 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 4 of the *Magistrates Court (Civil Proceedings) Act 2004*.

[(4) deleted]

(5) When exercising prosecution jurisdiction an industrial magistrate's court constitutes a court of summary jurisdiction and the *Criminal Procedure Act 2004* applies.

[(6), (7) deleted]

(7a) Sections 15, 16, 35 and 36 and Part 3 Division 2 of the *Magistrates Court Act 2004* apply to and in relation to an industrial magistrate's court and its officers in the same way as they apply to and in relation to the Magistrates Court and its officers.

(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: No. 79 of 1995 s. 21; amended: No. 3 of 1997 s. 8, 18 and 21(2); No. 20 of 2002 s. 14, 113(3), 160(2), 182, 193(4) and 195(3) and (4); No. 34 of 2004 s. 251; No. 59 of 2004 s. 112; No. 84 of 2004 s. 78; No. 36 of 2006 s. 69; No. 5 of 2008 s. 61; No. 53 of 2011 s. 30.]

81CB. Industrial magistrate's court judgments, enforcement of

(1) In this section —

general jurisdiction has the meaning given to that term by section 81CA;

judgment includes an order, direction or decision.

(2) A person to whom money is to be paid under a judgment of an industrial magistrate's court made in the exercise of general jurisdiction may enforce it by lodging a copy of it, certified by a clerk of the court, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.

(3) If, or to the extent that, a judgment of an industrial magistrate's court made in the exercise of general jurisdiction does not require the payment of money, a person entitled to the benefit of the judgment may enforce it by lodging a copy of it, certified by a clerk of the court, and an affidavit stating to what extent it has not been complied with, with the Magistrates Court.

(4) A judgment that is lodged with a court under subsection (2) or (3) is to be taken to be a judgment of that court and may be enforced accordingly.

[Section 81CB inserted: No. 5 of 2008 s. 62.]

81D. Clerks of industrial magistrate's 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 that court like powers to those that a registrar of the Magistrates Court has for the purposes of the criminal jurisdiction of the Magistrates Court under the *Criminal Procedure Act 2004*.

(4) For the purposes of general jurisdiction, the clerk of an industrial magistrate's court has like powers to those that a registrar of the Magistrates Court has for the purposes of the civil jurisdiction of the Magistrates Court under the *Magistrates Court (Civil Proceedings) Act 2004*.

[Section 81D inserted: No. 44 of 1991 s. 6; amended: No. 15 of 1993 s. 25; No. 79 of 1995 s. 22; No. 59 of 2004 s. 109; No. 84 of 2004 s. 78.]

81E. Representation of parties in industrial magistrate's court

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

(a) appear in person; or

(b) be represented by an agent; or

(c) be represented by a legal practitioner.

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

81F. Industrial magistrate's court records, access to

(1) In respect of an industrial magistrate's court's records of proceedings under its prosecution jurisdiction (as defined in section 81CA), section 33 of the *Magistrates Court Act 2004*, with any necessary changes, applies.

(2) In respect of an industrial magistrate's court's records of proceedings under its general jurisdiction (as defined in section 81CA), subsections (3) to (9) apply.

(3) A party to the proceedings may, on request, inspect or obtain a copy of any document that is part of the court's record of those proceedings.

(4) A person who is not a party to the proceedings may, with the leave of the court, inspect or obtain a copy of any document that is part of the court's record of the proceedings.

(5) Any person may, with the leave of the court, inspect or obtain a copy of any thing (other than a document) received by the court in the proceedings on which information is recorded or stored, such as a photograph, tape or disc.

(6) Any person may, with the leave of the court, listen to, view or obtain a copy of a recording of the proceedings.

(7) When giving leave under subsection (4), (5) or (6) the court may impose conditions on the person's access to information, including a condition prohibiting or limiting the publication or use of the information.

(8) A decision by the court under subsection (4), (5), (6) or (7) is administrative and is final and not subject to any form of review.

(9) If under this section a document may be supplied to a person it may, at the request of the person, be supplied in an electronic form.

(10) The regulations may prescribe fees to be paid for inspecting, obtaining a copy of, listening to or viewing information in relation to proceedings in both the general jurisdiction and the prosecution jurisdiction of an industrial magistrate's court.

[Section 81F inserted: No. 59 of 2004 s. 110.]

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) a civil penalty provision; or

(b) a provision of this Act, if a contravention of or failure to comply with the provision constitutes an offence against this Act.

[Section 82 inserted: No. 44 of 1991 s. 6; amended: No. 20 of 2002 s. 154.]

82A. Time limit for certain applications

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

[Section 82A inserted: No. 94 of 1984 s. 50; amended: No. 79 of 1995 s. 23; No. 20 of 2002 s. 160(3).]

83. Enforcing awards etc.

(1) Subject to this Act, where a person contravenes or fails to comply with a provision of an instrument to which this section applies any of the following may apply in the prescribed manner to an industrial magistrate's court for the enforcement of the provision —

(a) the Registrar or a deputy registrar;

(b) an industrial inspector;

(c) in the case of an award or industrial agreement, any organisation or association named as a party to it;

(d) in the case of an award, industrial agreement or order, an employer bound by it;

(e) any person on his or her own behalf who is a party to the instrument or to whom it applies;

(f) if an employee under an employer-employee agreement is a represented person, a representative acting on his or her behalf.

(2) In this section —

instrument to which this section applies means —

(a) an award; and

(b) an industrial agreement; and

(c) an employer-employee agreement; and

(d) an order made by the Commission, other than an order made under section 23A, 32, 44(6) or 66.

(3) An application for the enforcement of an instrument to which this section applies shall not be made otherwise than under subsection (1).

(4) 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 —

(i) issue a caution; or

(ii) impose such penalty as the industrial magistrate's court thinks just but not exceeding $2 000 in the case of an employer, organisation or association and $500 in any other case;

or

(b) dismiss the application.

(5) If a contravention or failure to comply with a provision of an instrument to which this section applies is proved against a person as mentioned in subsection (4) the industrial magistrate's court may, in addition to imposing a penalty under that subsection, make an order against the person for the purpose of preventing any further contravention or failure to comply with the provision.

(6) An order under subsection (5) —

(a) may be made subject to any terms and conditions the court thinks appropriate; and

(b) may be revoked at any time.

(7) An interim order may be made under subsection (5) pending final determination of an application under subsection (1).

(8) A person shall comply with an order made against him or her under subsection (5).

Penalty: $5 000 and a daily penalty of $500.

[Section 83 inserted: No. 20 of 2002 s. 155(1).]

83A. Underpayment of employee, orders to remedy

(1) Where in any proceedings brought under section 83(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 the employee was entitled to be paid under an instrument to which that section applies the industrial magistrate's court shall, subject to subsection (2), order that employer to pay to that employee the amount by which the employee has been underpaid.

(2) An order may only be made under subsection (1) —

(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 appears to the industrial magistrate's court, or has been found under section 83E, to have contravened section 102(1)(a) or (b) by reason of having failed —

(i) to produce or exhibit a record relevant to the proceedings; or

(ii) to allow such a record to be examined; or

(iii) to answer a question relevant to the proceedings truthfully to the best of the employer's

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.

(3) When an order is made under subsection (1), the amount stated in the order shall be taken 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 section 83F.

(4) Nothing in this section limits the operation of section 83.

[Section 83A inserted: No. 20 of 2002 s. 155(1).]

83B. Unfair dismissal, enforcing s. 23A order as to

(1) Where an employer contravenes or fails to comply with an order made under section 23A any of the following may apply in the prescribed manner to an industrial magistrate's court for the enforcement of the order —

(a) the Registrar or a deputy registrar; and

(b) an industrial inspector; and

(c) an organisation of employees in which the employee in relation to whom the order is made is eligible to be enrolled as a member or an association that represents such an organisation; and

(d) the employee in relation to whom the order is made.

(2) No fee is payable for the filing of an application under subsection (1).

(3) On an application under subsection (1) in respect of a contravention or failure to comply with an order under section 23A(3) or (4), the industrial magistrate's court may —

(a) if the contravention or failure to comply is proved, make an order for whichever of the following type of remedy was requested in the application —

(i) an order that the employer do any specified thing, or cease any specified activity, for the

purpose of preventing any further contravention or failure to comply with the order;

(ii) an order revoking the order, and any associated orders, made under section 23A and, subject to subsection (7), ordering the employer to pay to the employee an amount decided by the industrial magistrate's court;

or

(b) dismiss the application.

(4) On an application under subsection (1) in respect of a contravention or failure to comply with an order under section 23A(5), (6) or (12), the industrial magistrate's court may —

(a) if the contravention or failure to comply is proved, order the person to do any specified thing, or to cease any specified activity, for the purpose of preventing any further contravention or failure to comply with the order; or

(b) dismiss the application.

(5) The industrial magistrate's court may, in addition to making an order under subsection (3)(a) or (4)(a) —

(a) issue a caution or impose such penalty as the industrial magistrate's court thinks just but not exceeding $5 000; and

(b) in the case of an order under subsection (3)(a), order the employer to pay to the employee, in addition to any remuneration or amount ordered to be paid, the remuneration lost, or likely to have been lost, by the employee because of the contravention or failure to comply with the order under section 23A; and

(c) make any ancillary or incidental order that the court thinks necessary for giving effect to any order made under this section.

(6) An order under subsection (3)(a) or (4)(a) —

(a) shall, unless it has immediate effect, specify a time within which the order must be obeyed (which time may be extended by the court); and

(b) may be made subject to any terms and conditions the court thinks appropriate.

(7) The amount ordered to be paid under subsection (3)(a)(ii) —

(a) is not to be less than 6 months' remuneration of the employee in relation to whom the order is made; and

(b) is not to exceed 12 months' remuneration of the employee in relation to whom the order is made.

(8) For the purposes of subsection (7) the industrial magistrate's court may calculate the amount on the basis of an average rate received by the employee during any relevant period of employment.

(9) In deciding an amount for the purposes of making an order under subsection (3)(a)(ii), the industrial magistrate's court is to have regard to —

(a) the efforts (if any) of the employer and employee to mitigate the loss suffered by the former employee as a result of the dismissal; and

(b) any redress the employee has obtained under another enactment where the evidence necessary to establish the claim for that redress was also the evidence necessary to establish the claim before the Commission under section 23A; and

(c) any other matter that the court considers relevant.

(10) A person shall comply with an order made against that person under subsection (3)(a) or (4)(a).

Penalty: $5 000 and a daily penalty of $500.

[Section 83B inserted: No. 20 of 2002 s. 155(1).]

83C. Costs of enforcement orders under s. 83, 83A and 83B

(1) Subject to subsection (2), an order under section 83, 83A or 83B may be made 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.

(2) In proceedings under section 83 or 83B 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.

[Section 83C inserted: No. 20 of 2002 s. 155(1).]

83D. Offences under this Act, jurisdiction as to

(1) An industrial magistrate's court has jurisdiction to hear and determine any charge of an offence under this Act other than an offence under section 80(3).

(2) A determination of an industrial magistrate's court made in the exercise of the jurisdiction conferred by subsection (1) cannot be appealed under the *Criminal Appeals Act 2004*.

(3) Without limiting section 84 or section 19(1) of the *Children's Court of Western Australia Act 1988*, the jurisdiction referred to in subsection (1) shall not be exercised by any other court.

[Section 83D inserted as section 83A: No. 79 of 1995 s. 25; renumbered as section 83D: No. 20 of 2002 s. 156; amended: No. 59 of 2004 s. 112; No. 84 of 2004 s. 78 and 80; No. 5 of 2008 s. 63.]

83E. Civil penalty provision, proceedings for contravening

(1) If a person contravenes a civil penalty provision, an industrial magistrate's court may make an order imposing a penalty on the person, not exceeding —

(a) in the case of an employer, organisation or association, $5 000; and

(b) in any other case, $1 000.

(2) Subject to subsection (3), if a person contravenes a civil penalty provision an industrial magistrate's court may, instead of or in addition to making an order under subsection (1), make an order against the person for the purpose of preventing any further contravention of that provision.

(3) In the case of a contravention of section 49D(2) or (3), the court is not to make an order under subsection (2) instead of making an order under subsection (1) but may make an order under subsection (2) in addition to making an order under subsection (1).

(4) An order under subsection (2) —

(a) may be subject to any terms and conditions the court thinks appropriate; and

(b) may be revoked at any time.

(5) An interim order may be made under subsection (2) pending final determination of an application under this section.

(6) Except as provided in subsections (6a) and (7A), an application for an order under this section may be made by —

(a) a person directly affected by the contravention or, if that person is a represented person, his or her representative; or

(b) an organisation or association of which a person who comes within paragraph (a) is a member; or

(c) the Registrar or a deputy registrar; or

(d) an industrial inspector.

(6a) Subsection (6)(c) does not apply in the case of a contravention of section 8(3), 44(3) or 45(1) of the MCE Act or of section 26(2) or 26A(1) of the *Long Service Leave Act 1958*.

(7A) In the case of a contravention of a provision under the *Construction Industry Portable Paid Long Service Leave Act 1985* that is a civil penalty provision —

(a) subsection (6) does not apply; and

(b) an application for an order under this section may be made, with the written consent of the Construction Industry Long Service Leave Payments Board established under section 5 of that Act, by an officer of the Board.

(7) An application under subsection (6) or (7A)(b) must be made in accordance with regulations made by the Governor.

(8) The standard of proof to be applied in determining whether there has been a contravention of a civil penalty provision is the standard observed in civil proceedings.

(9) A person must comply with an order made against him or her under subsection (2).

Penalty: $5 000 and a daily penalty of $500.

(10) Where, on an application under subsection (6), the industrial magistrate's court does not make an order under subsection (1) or (2), the court may, by order, dismiss the application.

(11) An order under subsection (1), (2) or (10) may be made in any case with or without costs, but in no case shall any costs be given against the Registrar, the deputy registrar, or an industrial inspector.

(12) 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.

[Section 83E inserted: No. 20 of 2002 s. 157; amended: No. 36 of 2006 s. 70; No. 53 of 2011 s. 31.]

83F. Costs and penalties, payment of

(1) Where the industrial magistrate's court, by an order made under section 83, 83A, 83B or 83E, imposes a penalty or costs the industrial magistrate's court shall state in the order —

(a) the name of the person liable to pay the penalty or costs; and

(b) the name of the person to whom the penalty is, or costs are, payable.

(2) An industrial magistrate's court imposing a penalty by order under section 83, 83A, 83B or 83E may order that the amount of the penalty, or part of that amount, be paid to —

(a) a person directly affected by the conduct to which the contravention relates; or

(b) the applicant; or

(c) the Treasurer.

(3) In making an order for payment to a person referred to in subsection (2)(a) the court must take into account any other compensation that the person has received or is likely to receive in respect of the conduct concerned.

[Section 83F inserted: No. 20 of 2002 s. 157.]

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

(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 section 96J.

(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; and

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

[Section 84 amended: No. 94 of 1984 s. 66; No. 44 of 1991 s. 8; No. 15 of 1993 s. 26; No. 20 of 2002 s. 113(4).]

84A. Certain contraventions of Act, enforcement of before Full Bench

(1) Subject to this section, if a person contravenes or fails to comply with —

(a) any provision of this Act (other than section 42B(1), 44(3), 51S or 74) or an order or direction made or given under section 66 —

(i) the Minister; or

(ii) the Registrar or a deputy registrar; or

(iii) an industrial inspector; or

(iv) any organisation, 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) deleted]

(3) Subsection (1) does not apply to a contravention of or a failure to comply with —

(a) a civil penalty provision; or

(b) a provision of this Act if the contravention or failure 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, organisation, 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.

(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: No. 94 of 1984 s. 52; amended: No. 119 of 1987 s. 21; No. 79 of 1995 s. 8(2); No. 20 of 2002 s. 134 and 158; No. 36 of 2006 s. 26.]

[Part IIIA (s. 84B-84O) deleted: No. 20 of 2002 s. 193(1).]

Part IV — Western Australian Industrial Appeal Court

85. Constitution of 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; and

(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.

(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 authorises 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) Subject to subsection (9), the chief executive officer of the Registrar's Department is to be the clerk of the Court.

(8) The *Public Sector Management Act 1994* section 32(1) does not apply to the performance of functions of the clerk of the Court by the chief executive officer of the Registrar's Department.

(9) The chief executive officer of the Registrar's Department may designate a Registrar's Department officer as the clerk of the Court.

[Section 85 amended: No. 94 of 1984 s. 53; No. 32 of 1994 s. 14; No. 53 of 2011 s. 43.]

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: 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 authorised 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: No. 94 of 1984 s. 66.]

88. Judgments, enforcement of

(1) In this section —

judgment includes an order, direction or decision.

(2) A person to whom money is to be paid under a judgment of the Court may enforce it by lodging a copy of it, certified by a clerk of the court, and an affidavit stating to what extent it has not been complied with, with the Supreme Court.

(3) If, or to the extent that, a judgment of the Court does not require the payment of money, a person entitled to the benefit of the judgment may enforce it by lodging a copy of it, certified by a clerk of the court, and an affidavit stating to what extent it has not been complied with, with the Supreme Court.

(4) A judgment that is lodged with the Supreme Court under subsection (2) or (3) is to be taken to be a judgment of that court and may be enforced accordingly.

[Section 88 inserted: No. 59 of 2004 s. 111.]

*[**89.** Deleted: No. 59 of 2004 s. 111.]*

90. Appeal from Commission to Court

(1) Subject to this section, an appeal lies to the Court in the manner prescribed from any decision of the Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session —

(a) on the ground that the decision is in excess of jurisdiction in that the matter the subject of the decision is not an industrial matter; or

(b) on the ground that the decision is erroneous in law in that there has been an error in the construction or interpretation of any Act, regulation, award, industrial agreement or order in the course of making the decision appealed against; or

(c) on the ground that the appellant has been denied the right to be heard,

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 Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session, as the case requires, for further hearing and determination according to law.

(3a) If any ground of the appeal is made out but the Court is satisfied that no injustice has been suffered by the appellant or a person who is a member of or represented by the appellant, the Court shall confirm the decision the subject of appeal unless it considers that there is good reason not to do so.

(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: No. 94 of 1984 s. 54; No. 119 of 1987 s. 22; No. 20 of 2002 s. 126; No. 8 of 2009 s. 77(5); No. 39 of 2018 s. 57.]

91. Representation before Court

(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.

[Section 91 amended: No. 21 of 2008 s. 668(6).]

92. Contempt, Court's powers as to

(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) deleted]

[Section 92 amended: No. 121 of 1982 s. 28; No. 39 of 2018 s. 58.]

Part V — The Registrar and other officers of the Commission

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

93. Appointment and duties of officers

(1) Subject to subsection (1AB), the chief executive officer of the Registrar's Department is to be the Registrar.

(1AA) The *Public Sector Management Act 1994* section 32(1) does not apply to the performance of functions of the Registrar by the chief executive officer of the Registrar's Department.

(1AB) The chief executive officer of the Registrar's Department may, after consultation with the Chief Commissioner, designate a Registrar's Department officer as the Registrar.

(1AC) The Registrar may designate a Registrar's Department officer as a deputy registrar.

(1AD) There are to be as many deputy registrars as are 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 public service officers.

(2) The duties of officers of the Commission shall be as prescribed and as directed by the Commission.

(3A) Subsection (2) applies despite the *Public Sector Management Act 1994* but if the chief executive officer of the Registrar's Department is the Registrar, nothing in that subsection affects the functions of the Registrar as chief executive officer.

(3) The Registrar shall publish in the *Industrial Gazette* and —

(a) in a newspaper circulating throughout the State; or

(b) on an internet website maintained by the Commission,

all awards and orders filed in his office and all notices and matters set out in Schedule 1.

(4) The *Industrial Gazette* shall be published 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, including copies of all cancelled industrial agreements.

(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* and —

(a) in a newspaper circulating throughout the State; or

(b) on an internet website maintained by the Commission,

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* 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; and

(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, 83, 83B, 83E or 84A or to institute proceedings for an offence against this Act.

(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: 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); No. 20 of 2002 s. 135, 160(4) and 190(7)-(9); No. 53 of 2011 s. 44.]

94. Authority of officers to do acts as directed

Wherever this Act authorises 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: No. 1 of 1995 s. 53.]

95. Deputy registrar's functions

(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: No. 94 of 1984 s. 57.]

96. Delegation by Commission to Registrar

(1) In this section —

Registrar means the Registrar or a deputy registrar.

(2) Subject to subsection (3), the regulations may provide for and in relation to the delegation to a Registrar of all or any of the functions of the Commission in relation to the following —

(a) claims referred to in section 29(1)(b);

(b) the review of awards for the purposes of section 40B;

(c) applications under section 49I(7).

(3) The powers of the Commission —

(a) to make an order under section 23A; and

(b) to make an order that an employee has not been allowed by his or her employer a benefit to which he or she is entitled under his or her contract of service; and

(c) to make an order under section 40B,

cannot be delegated to a Registrar.

(4) The Chief Commissioner may from time to time give directions in writing to a Registrar with respect to the performance of any of the Registrar's functions under this section and the Registrar is to give effect to any such direction.

(5) A direction may be either general or with respect to a particular matter.

(6) A function performed by a Registrar as a delegate of the Commission is to be taken to be performed by the Commission.

(7) A function may be performed by the Commission despite it being a delegated function.

(8) Except as provided in subsection (4) and despite any other provision of this Act, the *Public Sector Management Act 1994* or any other written law, a Registrar is not subject to the direction or control of any person in relation to the manner in which the Registrar performs a delegated function.

(9) A party to proceedings in which a Registrar has performed a delegated function may, within the time prescribed by, or within such further time as is allowed in accordance with, the regulations, apply to the Commission to review a direction, determination or order made by a Registrar in the performance of the delegated function.

(10) The Commission constituted by a commissioner may, on application under subsection (9), review the direction, determination or order and may —

(a) affirm the direction, determination or order; or

(b) revoke the direction, determination or order and make a direction, determination or order the Commission

considers appropriate with respect to the matter to which the performance of the delegated function related.

(11) The Chief Commissioner of his or her own motion may review, or may assign a commissioner to review, a direction, determination or order made by a Registrar in the performance of a delegated function and the Commission constituted by the Chief Commissioner or the commissioner assigned may —

(a) affirm the direction, determination or order; or

(b) revoke the direction, determination or order and make a direction, determination or order the Commission considers appropriate with respect to the matter to which the performance of the delegated function related.

(12) A review under subsection (11) may be carried out within the time prescribed by, or within such further time as is allowed in accordance with, the regulations.

(13) The Chief Commissioner may make regulations for the purposes of this section.

[Section 96 inserted: No. 20 of 2002 s. 161.]

[Part VI deleted: No. 94 of 1984 s. 58.]

Part VIA — Freedom of association

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

96A. Terms used

In this Part, unless the contrary intention appears —

organisation means an organisation of employers or an organisation of employees;

organisation of employees means —

(a) an organisation of employees, whether constituted, incorporated or registered under this Act or any other Act or under any Commonwealth Act and by whatever name called; or

(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 organisation of employees referred to in paragraph (a).

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

96B. Awards etc. not to contain certain provisions about membership of organisations

(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 organisation; or

(ii) to cease to be a member of an organisation; or

(iii) not to become a member of an organisation; 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 organisation;

or

(b) confer on any person by reason of that person's membership or non-membership of an organisation 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*.

(3) A requirement that is contrary to this section is of no effect.

[Section 96B inserted: No. 15 of 1993 s. 28.]

96C. Discrimination because of membership of organisation, offence

(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 organisation.

(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 organisation 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;

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

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

96D. Discriminatory etc. acts against persons performing work for employers because of membership or non-membership of employee organisation, offence

(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 organisation 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; or

(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 organisation of employees; or

(b) that the person is not, or is intending to not remain, a member or officer of an organisation 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: No. 15 of 1993 s. 28.]

96E. Discriminatory etc. acts against persons because of non-membership of employee organisation, offence

(1) A person, including an organisation 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 organisation of employees.

(2) A person, including an organisation 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 organisation of employees.

(3) A person, including an organisation 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 organisation of employees; or

(b) with intent to coerce the employer to join an organisation 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; or

(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: No. 15 of 1993 s. 28.]

96F. Penalties under s. 96C, 96D and 96E, provisions about

(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 organisation of employees for an offence against section 96C, 96D or 96E and the organisation does not forthwith pay the penalty, the rights of the organisation and its members referred to in subsection (4) are suspended until the penalty is paid.

(3) An industrial magistrate's court may permit an organisation 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 organisation concerned or any of its members; and

(b) the organisation concerned shall not be joined as an applicant in any proceeding referred to in paragraph (a); and

(c) an award or order shall not be made or be deemed to have been made for the benefit of the organisation concerned or any of its members; and

(d) rights or entitlements shall be deemed not to become due to the organisation or its members under this Act or any award or order in force thereunder.

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

96G. Criminal responsibility of officers etc. for offences in s. 96C, 96D and 96E

(1) If an organisation of employees is guilty of an offence against section 96C, 96D or 96E, any officer or member of the organisation 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 organisation of employees is guilty of an offence against section 96C, 96D or 96E, the organisation is also guilty of that offence unless it is proved that all reasonable steps were taken by the organisation to prevent the commission by the organisation or its officers or members of offences against section 96C, 96D or 96E.

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

96H. Criminal responsibility of corporations etc. for offences in s. 96C, 96D and 96E

(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 means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, other than an exempt body within the meaning of section 66A of that Act.

[Section 96H inserted: No. 15 of 1993 s. 28; amended: No. 10 of 2001 s. 113; No. 20 of 2003 s. 32.]

96I. Evidentiary provisions for s. 96C, 96D and 96E

(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 organisation; or

(b) after the person disclosed an intention to become or cease to be a member or officer of an organisation,

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 organisation of employees; or

(b) after the person disclosed an intention to become or cease to be a member or officer of an organisation 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 charge, are proved, it lies on the accused to prove that that action was not actuated by that reason or taken with that intent.

[Section 96I inserted: No. 15 of 1993 s. 28; amended: No. 84 of 2004 s. 80 and 82.]

96J. Court may order compliance with s. 96C, 96D or 96E

(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

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

[(3) deleted]

(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: No. 15 of 1993 s. 28; amended: No. 79 of 1995 s. 26.]

96K. Appeal against decision under s. 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; or

(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: No. 15 of 1993 s. 28.]

96L. Other court orders after conviction under s. 96C, 96D or 96E

(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; or

(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: No. 15 of 1993 s. 28.]

*[**96M.** Deleted: No. 79 of 1995 s. 37.]*

[Part VIB (s. 97-97M) deleted: No. 20 of 2002 s. 194(1).]

[Part VIC (s. 97N-97U) deleted: No. 20 of 2002 s. 195(1).]

Part VID — Employer-employee agreements

[Heading inserted: No. 20 of 2002 s. 4.]

Division 1 — Preliminary

[Heading inserted: No. 20 of 2002 s. 4.]

97U. Terms used

(1) In this Part, unless the contrary intention appears —

award, except in section 97UG(2)(c), Division 6 Subdivision 1 and sections 97YA(1)(a) and 97YB(2)(a), includes an industrial agreement or order of the Commission under this Act;

bargaining agent means a person appointed as a bargaining agent under section 97UJ;

cancellation agreement means an agreement under section 97UV(1);

EEA dispute provisions means the provisions included in an EEA for the purposes of section 97UN;

employment services for persons with disabilities means employment services —

(a) that are provided for persons with disabilities who are eligible for the Supported Wage System; and

(b) for which, at the relevant time, financial assistance has been granted under the *Disability Services Act 1986* of the Commonwealth;

existing employee means an employee —

(a) who signs; or

(b) on whose behalf a representative signs,

an EEA after commencing the employment to which the EEA relates;

new employee means an employee —

(a) who signs; or

(b) on whose behalf a representative signs,

an EEA before, or at the time of, the commencement of the employment to which the EEA relates;

no-disadvantage test means the no-disadvantage test provided for by Division 6 Subdivision 1;

party, in relation to an EEA —

(a) means the employer or employee; and

(b) in the provisions mentioned in subsection (4), if the employee is a represented person, also means his or her representative;

regulations means regulations made by the Governor under section 97YJ;

relevant industrial authority means —

(a) where the EEA relates to employment as a government officer to whom Part IIA Division 2 applies, the Commission constituted by a public service arbitrator under that Division; and

(b) where the EEA relates to employment as a railway officer to whom Part IIA Division 3 applies, the Commission constituted by the Railways Classification Board under that Division; and

(c) subject to paragraphs (a) and (b), the Commission constituted by a commissioner;

section 97UM signatory means a person who has signed an EEA for the purposes of section 97UM(2);

supported wage provisions means provisions that enable an employer to pay an employee with a disability a wage that is related to the employee's productive capacity;

Supported Wage System means the scheme established by the Commonwealth Government to promote the employment of persons whose productive capacity is reduced because of a disability.

(2) References in this Part to ***employer*** and ***employee*** include, where the context so requires, a person who will be an employer or employee if a proposed EEA takes effect.

(3) Subsection (2) is not to be taken as showing that the terms ***employer*** and ***employee***, as defined in section 7(1), do not also include a prospective employer and a prospective employee for the purposes of other provisions of this Act, including without limitation the definition of ***industrial matter***.

(4) The provisions referred to in paragraph (b) of the definition of ***party*** in subsection (1) are sections 29(1a), 97UJ(4), 97UK(2), 97UL(3), 97UP, 97UY(1), 97VC, 97VD(2), 97VF(1), 97VG, 97VM(2), 97VN(2), 97VP(3), 97WG(1), 97WK(1) and (2) and 97WP(2).

[Section 97U inserted: No. 20 of 2002 s. 4; amended: No. 50 of 2016 s. 7.]

Division 2 — The making of an EEA

[Heading inserted: No. 20 of 2002 s. 4.]

97UA. Employer and employee may make EEA

A single employer and a single employee may make an agreement, called an employer-employee agreement, that deals with any industrial matter.

[Section 97UA inserted: No. 20 of 2002 s. 4.]

97UB. EEA may deal with post-employment matters

(1) An EEA may deal with rights and obligations that are to take effect after the termination of employment between the persons who, before the termination, were the employer and the employee.

(2) The provisions of this Act and of the EEA concerned apply in relation to the rights and obligations referred to in subsection (1) even though the employment has terminated.

[Section 97UB inserted: No. 20 of 2002 s. 4.]

97UC. Other provisions about making EEA

(1) An EEA may be made before the commencement of the employment.

(2) The ability of an employer and employee to make an EEA extends to any employment referred to in section 3(1).

(3) The matters that may be dealt with in EEAs made with certain categories of employees are subject to the restrictions in —

(a) section 99(2)[8] of the *Public Sector Management Act 1994*; and

(b) section 16(4a) of the *Port Authorities Act 1999*.

[Section 97UC inserted: No. 20 of 2002 s. 4.]

97UD. Making of EEA by person with a mental disability

(1) An EEA may be made for a represented person as an employee by the person's representative.

(2) The EEA is to be made in the name of the represented person as an employee but is to be signed on his or her behalf by the representative.

(3) An EEA so made has effect as if —

(a) it were made by the represented person; and

(b) the represented person were of full legal capacity.

[Section 97UD inserted: No. 20 of 2002 s. 4.]

97UE. Effect of EEA

(1) An EEA, while it has effect, operates to prevent from extending to the employee any award that would otherwise do so, including an award that comes into operation after the EEA takes effect.

(2) An EEA, while it has effect, does not displace any contract of employment between an employer and an employee, but the EEA has effect —

(a) as if it formed part of that contract; and

(b) regardless of the provisions of that contract.

(3) The provisions of an EEA have effect subject to section 5 of the MCE Act.

[Section 97UE inserted: No. 20 of 2002 s. 4.]

97UF. EEA not to be made while industrial agreement in operation

(1) An EEA in respect of the employment of an employee cannot be made —

(a) during the term of an industrial agreement that extends to that employee; or

(b) during any period when such an agreement is continued in force by section 41(6).

(2) For the purposes of subsection (1), an EEA is to be regarded as made when it has been signed by —

(a) the employer; and

(b) the employee or, where applicable, his or her representative,

and, if section 97UM applies to the EEA, when it has also been signed by a section 97UM signatory.

(3) Subsection (1) does not apply to an EEA if —

(a) the industrial agreement concerned does not contain supported wage provisions; and

(b) employment under the EEA has been arranged through an entity that provides employment services for persons with disabilities.

[Section 97UF inserted: No. 20 of 2002 s. 4; amended: No. 50 of 2016 s. 8.]

97UG. Documents etc. to be given to employee before EEA signed

(1) An employer must not make an EEA with an employee unless he or she has given a copy of certain documents —

(a) to the employee; or

(b) if the employee is a represented person, to his or her representative.

(2) The documents are —

(a) the proposed EEA; and

(b) the information statement prescribed under section 97UI; and

(c) any —

(i) award; or

(ii) relevant order as defined in section 97VR,

that will extend to the employee if the EEA does not take effect.

(3) It is sufficient for the purposes of subsections (1) and (2)(c)(i) if the employer gives a document —

(a) containing a summary of the award approved by the Registrar for the purposes of this section; and

(b) having a statement at the head of the document to the effect that it is a summary of the award so approved.

(4) The documents must be given under subsection (1) —

(a) in the case of a new employee, not less than 5 days before the EEA is signed by the employee or his or her representative, as the case may be; or

(b) in the case of an existing employee, not less than 14 days before the EEA is so signed.

(5) An employer must also comply with any regulations prescribing requirements for the giving of information or documents to an employee before an EEA is made.

(6) A contravention of subsection (1) or (5) is not an offence but will, under Schedule 4 clause 1(1)(d), prevent the EEA from being in order for registration.

(7) In subsections (2)(c)(i) and (3) —

award includes an enterprise order.

[Section 97UG inserted: No. 20 of 2002 s. 4; amended: No. 50 of 2016 s. 9.]

97UH. Application of s. 97UG if draft EEA amended

If —

(a) an employer has complied with section 97UG in relation to a proposed EEA; and

(b) the proposed EEA is later amended, whether once or more than once, before it is signed —

(i) by the employee or his or her representative; and

(ii) if section 97UM applies to the EEA, by a section 97UM signatory,

the employer is not required to comply with that section again in relation to the proposed EEA unless the employee in writing requests him or her to do so.

[Section 97UH inserted: No. 20 of 2002 s. 4.]

97UI. EEA information statement, form of (s. 97UG(2)(b))

(1) The Registrar is to prescribe, by order published in the *Gazette*, a form of information statement that is to be given to employees under section 97UG(2)(b).

(2) The form must include information about the following matters —

(a) the effect of section 97UE; and

(b) the employee's rights under section 97UJ in relation to bargaining agents; and

(c) the requirements of sections 97XZ, 97Y, 97YA, 97YB and 97YF; and

(d) the commencement and expiry of an EEA as provided for by sections 97UQ, 97UR and 97US.

(3) The form may contain other information that the Registrar considers should be included.

[Section 97UI inserted: No. 20 of 2002 s. 4.]

97UJ. Bargaining agents, appointing etc.

(1) An employer or employee may, by instrument in writing, appoint a person to be his or her bargaining agent —

(a) for the negotiation and making of an EEA; or

(b) in connection with the registration of an EEA; or

(c) for the negotiation and making of a cancellation agreement; or

(d) for the purpose of acting for him or her in connection with any question, dispute or difficulty that has arisen or may arise out of or in the course of the employment.

(2) Any person may be appointed as a bargaining agent, including an organisation or association that is registered under Part II Division 4.

(3) An appointment of a bargaining agent may be terminated at any time by notice of termination given in writing to the agent.

(4) A copy of an instrument of appointment or a notice of termination must be given to the other party.

(5) For the purposes of section 12 of the *Legal Profession Act 2008* a bargaining agent is authorised —

(a) to appear for a party in proceedings as mentioned in section 97WJ; and

(b) to provide advice and other services in performing the functions referred to in subsection (1).

(6) Subject to section 112A(1a)(c)(i), subsection (1)(d) does not affect the requirement of that section that only a person who is registered under that section may appear as an agent under section 31, 81E or 91.

[Section 97UJ inserted: No. 20 of 2002 s. 4; amended: No. 65 of 2003 s. 41(3); No. 21 of 2008 s. 668(5).]

97UK. Prohibited conduct relating to bargaining agents

(1) An employer or employee or a representative must not refuse to recognise a bargaining agent of the other party if section 97UJ(4) has been complied with.

(2) An employer or employee or a representative must not coerce or induce, or attempt to coerce or induce, the other party —

(a) to appoint, or not to appoint, a particular person as a bargaining agent; or

(b) to terminate the appointment of a bargaining agent.

(3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

[Section 97UK inserted: No. 20 of 2002 s. 4.]

Division 3 — Form and content of EEA

[Heading inserted: No. 20 of 2002 s. 4.]

97UL. Form of EEA

(1) An EEA must —

(a) be in writing; and

(b) name the employer and employee who are parties to it; and

(c) specify whether the employment to which it relates is full-time, part-time or casual; and

(d) be signed by —

(i) the employer; and

(ii) the employee, or where applicable, his or her representative.

(2) An EEA may be signed on behalf of a body corporate by an authorised officer, and need not be made under its seal.

(3) The signature of —

(a) the employer; and

(b) the employee or, where applicable, his or her representative,

must be witnessed by a person who has reached 18 years of age and is not a party to the EEA.

[Section 97UL inserted: No. 20 of 2002 s. 4.]

97UM. Additional formalities for EEA made with employee under 18

(1) This section applies to an EEA made with a person as the employee who —

(a) is under 18 years of age; and

(b) is not a represented person.

(2) For the purposes of this Act or any other law, the EEA can only have effect if after it has been signed by the employee it is also signed —

(a) by a person who is legally responsible for the day to day care and welfare of the employee; or

(b) in circumstances prescribed by the regulations, by a person who belongs to a class of persons so prescribed.

(3) The signature of a person who signs an EEA under subsection (2) must be witnessed by a person who has reached 18 years of age and is not a party to the EEA.

(4) Subject to subsections (2) and (3), an EEA to which this section applies binds the employee as if he or she were of full age.

[Section 97UM inserted: No. 20 of 2002 s. 4.]

97UN. EEA must provide for resolution of disputes

(1) An EEA must include provisions for the resolution of any question, dispute or difficulty that arises out of or in the course of the employment.

(2) EEA dispute provisions cannot confer jurisdiction on an arbitrator, including a relevant industrial authority acting under a provision mentioned in section 97UP, to enforce an EEA by making an order or determination that an industrial magistrate's court may make under section 83.

(3) EEA dispute provisions have effect subject to Division 8.

(4) The regulations may prescribe model provisions as a guide to the kind of provisions that may be inserted in an EEA for the purposes of subsection (1).

(5) An EEA that sets out the model provisions in the way provided for by the regulations is to be taken to comply with subsection (1).

[Section 97UN inserted: No. 20 of 2002 s. 4.]

97UO. EEA dispute provisions, content of

(1) EEA dispute provisions must, if section 97UP does not apply —

(a) provide for —

(i) the referral to a single arbitrator of any question, dispute or difficulty that arises out of or in the course of the employment; and

(ii) the manner in which the referral is to be made;

and

(b) provide for the appointment of an arbitrator by —

(i) naming the arbitrator, and if desired any alternate arbitrator; or

(ii) setting out how an arbitrator is to be appointed;

and

(c) specify the means for making any new appointment that may be required.

(2) EEA dispute provisions must, including where section 97UP applies —

(a) require the parties to confer together and make a genuine attempt to settle any question, dispute or difficulty that arises out of or in the course of the employment; and

(b) comply with any requirement of the regulations that specifies any step, series of steps or process that is to be part of the EEA dispute provisions; and

(c) comply with any requirement of the regulations that limits the time that the EEA dispute provisions may allow for —

(i) doing any act; or

(ii) taking any step or series of steps; or

(iii) completing any process,

specified in the regulations; and

(d) specify how any costs of an arbitration are to be borne, which provision cannot make an employee liable for more than the share of those costs that is prescribed by the regulations at the time when the EEA is made.

[Section 97UO inserted: No. 20 of 2002 s. 4.]

97UP. Industrial authority may be specified as arbitrator

EEA dispute provisions may provide for a party to refer to the relevant industrial authority, for arbitration in accordance with

section 97WI, any question, dispute or difficulty that arises out of or in the course of the employment.

[Section 97UP inserted: No. 20 of 2002 s. 4.]

Division 4 — Commencement, duration and variation

[Heading inserted: No. 20 of 2002 s. 4.]

97UQ. New employee, when EEA commences

(1) An EEA made with a new employee may take effect before it is registered under Division 5, but under section 97UZ will automatically terminate if it is not lodged for registration as mentioned in that section.

(2) An EEA referred to in subsection (1) takes effect on —

(a) the day on which the employment commences; or

(b) a later day provided for in the EEA.

[Section 97UQ inserted: No. 20 of 2002 s. 4.]

97UR. Existing employee, when EEA commences

(1) An EEA made with an existing employee does not have effect unless it is registered under Division 5.

(2) An EEA referred to in subsection (1) takes effect on —

(a) the day after the day on which it is registered under Division 5; or

(b) a later day provided for in the EEA.

[Section 97UR inserted: No. 20 of 2002 s. 4.]

97US. Expiry of EEA

(1) An EEA must provide for the day on which it expires which cannot be more than 3 years from and including the day on which it takes effect under section 97UQ or 97UR.

(2) The expiry of an EEA does not of itself terminate the contract of employment between the employer and the employee.

[Section 97US inserted: No. 20 of 2002 s. 4.]

97UT. Employment conditions applicable on expiry of EEA

(1) On the expiry of an EEA —

(a) any relevant award provisions extend to the employee unless a new EEA then takes effect; and

(b) to the extent that paragraph (a) does not apply, the employment of the employee becomes subject to a contract of employment containing the same provisions as those of the EEA that has expired other than —

(i) the provision specifying the term of the EEA; and

(ii) the EEA dispute provisions.

(2) A contract referred to in subsection (1)(b) —

(a) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee; and

(b) has effect regardless of the provisions of any contract of employment referred to in section 97UE(2) between the employer and the employee.

[Section 97UT inserted: No. 20 of 2002 s. 4.]

97UU. EEA cannot be varied

(1) The parties to an EEA cannot vary the provisions of the EEA once it has been signed by —

(a) the employer; and

(b) the employee or, where applicable, his or her representative,

or, if section 97UM applies to the EEA, once it has been signed by the employer, the employee and the section 97UM signatory.

(2) Subsection (1) applies even though the EEA has not taken effect.

(3) However, subsection (1) does not affect the provisions of —

(a) section 97UV relating to the cancellation of an EEA; or

(b) sections 97VE and 97VO relating to the revision of an EEA so that it is in order for registration.

[Section 97UU inserted: No. 20 of 2002 s. 4.]

97UV. Cancelling EEA

(1) The parties to an EEA may at any time make an agreement in writing cancelling the EEA with effect on and from a specified day.

(2) Section 97UT applies on the cancellation of an EEA that has taken effect as if the EEA had expired.

[Section 97UV inserted: No. 20 of 2002 s. 4.]

97UW. Termination of employment, effect of on EEA

The termination of the contract of employment of an employee terminates an EEA that applies to the employment.

[Section 97UW inserted: No. 20 of 2002 s. 4.]

Division 5 — Registration of EEAs

[Heading inserted: No. 20 of 2002 s. 4.]

Subdivision 1 — Preliminary

[Heading inserted: No. 20 of 2002 s. 4.]

97UX. Delegation by Registrar

(1) The Registrar may delegate to an officer of the Commission the performance of a function of the Registrar under this Division, other than this power of delegation.

(2) A delegation —

(a) must be made by instrument in writing; and

(b) may be either general or as otherwise provided by the instrument.

(3) An officer of the Commission performing a function under this Division is to be taken to do so in accordance with the terms of a delegation under this section, unless the contrary is shown.

(4) A function performed by an officer of the Commission as a delegate of the Registrar is to be taken to be performed by the Registrar.

[Section 97UX inserted: No. 20 of 2002 s. 4.]

Subdivision 2 — Registration

[Heading inserted: No. 20 of 2002 s. 4.]

97UY. Lodgment of EEA for registration

(1) A party to an EEA may, in accordance with the regulations, lodge it with the Registrar for registration.

(2) An EEA must be lodged not later than the end of the period beginning with the day of execution and ending with the 21st day after that day.

(3) The Registrar is not to accept an EEA for registration if —

(a) it is presented for lodgment after the end of the period referred to in subsection (2); or

(b) any provision of the regulations relating to lodgment has not been complied with.

(4) The Registrar must issue to a person who has duly lodged an EEA under this section a receipt showing the day of lodgment.

(5) The receipt must be issued within 7 days after the day of lodgment.

(6) In subsection (2) —

day of execution means —

(a) the day on which the EEA was signed by —

(i) the employer; and

(ii) the employee or, where applicable, his or her representative; and

(iii) if section 97UM applies, the section 97UM signatory;

or

(b) if they signed on different days, the latest of those days.

[Section 97UY inserted: No. 20 of 2002 s. 4.]

97UZ. EEA with new employee, effect of not lodging

If an EEA made with a new employee —

(a) has taken effect; but

(b) is not lodged for registration within the period allowed by section 97UY(2),

it ceases to have effect for the purposes of this Part immediately after the expiry of that period.

[Section 97UZ inserted: No. 20 of 2002 s. 4.]

97V. Recovery of money if s. 97UZ applies

(1) Where section 97UZ applies, either party may, subject to subsection (2), recover from the other any amount which, if the EEA had not taken effect, he or she —

(a) would have been entitled to receive; or

(b) would not have been required to pay,

as the case may be, in respect of the period allowed by section 97UY(2) for lodgment.

(2) The entitlement of an employee is to be determined for the purposes of subsection (1) as if any relevant award provision

extended to and bound the employer and the employee during the period referred to in that subsection.

(3) An amount referred to in subsection (1) may be recovered by action in an industrial magistrate's court.

[Section 97V inserted: No. 20 of 2002 s. 4.]

97VA. Employment conditions of new employee if EEA not lodged

(1) If an EEA ceases to have effect under section 97UZ —

(a) any relevant award provisions extend to the employee; or

(b) if there are no such provisions, his or her employment becomes subject to a contract of employment containing the same provisions as those of the EEA that was not lodged for registration within the allowed period, other than —

(i) the provision specifying the term of the EEA; and

(ii) the EEA dispute provisions.

(2) A contract referred to in subsection (1)(b) —

(a) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee; and

(b) has effect regardless of the provisions of any contract of employment referred to in section 97UE(2) between the employer and the employee.

[Section 97VA inserted: No. 20 of 2002 s. 4.]

97VB. Registrar to be satisfied EEA is in order for registration

Where an EEA is lodged under section 97UY, the Registrar must satisfy himself or herself that it is in order for registration as required by the provisions of Schedule 4.

[Section 97VB inserted: No. 20 of 2002 s. 4.]

97VC. Registrar's powers for s. 97VB

(1) The Registrar may —

(a) meet with the parties; and

(b) otherwise obtain information in any way that the Registrar thinks appropriate,

for the purposes of section 97VB.

(2) A meeting may be held with the parties together or separately, and a party may be represented at a meeting by a bargaining agent.

(3) A party to an EEA that has been lodged for registration, or his or her bargaining agent, may make written submissions to the Registrar for the purposes of section 97VB.

(4) For the purposes of performing the function in section 97VB the Registrar, or a delegate of the Registrar, is an authorised person within the meaning of that term in Schedule 5.

(5) In this section —

party includes a section 97UM signatory.

[Section 97VC inserted: No. 20 of 2002 s. 4.]

97VD. Registrar to notify parties of certain deficiencies in EEA

(1) This section applies where the Registrar is not satisfied that an EEA is in order for registration for one or more of the following reasons —

(a) it does not comply with section 97UL, 97UN or 97US;

(b) it does not pass the no-disadvantage test;

(c) it purports to provide for a condition of employment that is less favourable to the employee than a minimum condition of employment under the MCE Act.

(2) Where this section applies the Registrar must give notice in writing to the parties setting out —

(a) the deficiencies in the EEA that, in his or her opinion, will make it necessary for the Registrar to refuse to register it; and

(b) the terms of subsection (1) of section 97VE and the period within which the parties may comply with that subsection.

[Section 97VD inserted: No. 20 of 2002 s. 4.]

97VE. Parties may correct deficiencies in EEA

(1) If a notice is given to the parties under section 97VD they may, in accordance with the regulations, lodge a revised EEA with the Registrar within the time specified in the notice.

(2) A revised EEA so lodged is to be treated as if it were an EEA duly lodged under section 97UY.

(3) Section 97VD does not apply to a revised EEA lodged under subsection (1).

(4) If —

(a) the Registrar has given a notice under section 97VD; but

(b) a revised EEA is not lodged in accordance with subsection (1),

the Registrar must determine under section 97VG that registration of the EEA is refused.

[Section 97VE inserted: No. 20 of 2002 s. 4.]

97VF. Registration of EEA

(1) If the Registrar is satisfied that an EEA is in order for registration, the Registrar must —

(a) register the EEA; and

(b) give to each party notice in writing of the registration and of the day on which it occurred, not later than 7 days after that day.

(2) The Registrar is not to register an EEA before the 14th day after the day on which it was lodged under section 97UY.

[Section 97VF inserted: No. 20 of 2002 s. 4.]

97VG. Refusal of registration of EEA

If the Registrar is not satisfied that an EEA is in order for registration, the Registrar must —

(a) determine that registration is refused; and

(b) within 7 days after making that determination, give to each party a notice in writing of the refusal and of the reasons for it.

[Section 97VG inserted: No. 20 of 2002 s. 4.]

97VH. When refusal has effect

(1) A refusal of registration comes into force —

(a) on the expiry of the period of 14 days allowed by section 97VM(2) for the bringing of an appeal against the refusal without an appeal being duly brought; or

(b) if an appeal is duly brought, on the failure of the appeal.

(2) For the purpose of subsection (1)(b) an appeal fails if —

(a) the refusal of registration is confirmed under section 97VP(2); or

(b) the appeal is withdrawn or is dismissed by the relevant industrial authority for want of prosecution.

[Section 97VH inserted: No. 20 of 2002 s. 4.]

97VI. EEA for new employee refused registration, effect ceases

If an EEA made with a new employee —

(a) has taken effect; but

(b) is refused registration under section 97VG,

the EEA ceases to have effect for the purposes of this Part as from the day on which the refusal comes into force under section 97VH.

[Section 97VI inserted: No. 20 of 2002 s. 4.]

97VJ. Recovery of money if s. 97VI applies

(1) Where section 97VI applies either party may, subject to subsection (2), recover from the other any amount which, if the EEA had not taken effect, he or she —

(a) would have been entitled to receive; or

(b) would not have been required to pay,

as the case may be, in respect of the period between the day when the EEA took effect and the day on which the refusal of registration came into force.

(2) The entitlement of an employee is to be determined for the purposes of subsection (1) as if any relevant award provision extended to and bound the employer and the employee during the period referred to in that subsection.

(3) An amount referred to in subsection (1) may be recovered by action in an industrial magistrate's court.

[Section 97VJ inserted: No. 20 of 2002 s. 4.]

97VK. Employment conditions of new employee if registration refused

(1) If an EEA ceases to have effect under section 97VI —

(a) any relevant award provisions extend to the employee; or

(b) if there are no such provisions, his or her employment becomes subject to a contract of employment containing the same provisions as those of the EEA that was refused registration, other than —

(i) the provision specifying the term of the EEA; and

(ii) the EEA dispute provisions.

(2) A contract referred to in subsection (1)(b) —

(a) has effect, and may be varied or terminated, as if it were a contract entered into between the employer and the employee; and

(b) has effect regardless of the provisions of any contract of employment referred to in section 97UE(2) between the employer and the employee.

[Section 97VK inserted: No. 20 of 2002 s. 4.]

97VL. Registrar to provide copy of registered EEA

(1) The Registrar must give a copy of an EEA that is registered —

(a) to the employer and the employee; and

(b) where applicable, to the employee's representative.

(2) The Registrar must comply with subsection (1) not later than 7 days after the day on which the EEA is registered —

(a) under section 97VF; or

(b) by order of a relevant industrial authority under section 97VP(2)(b).

[Section 97VL inserted: No. 20 of 2002 s. 4.]

Subdivision 3 — Appeal against refusal of registration

[Heading inserted: No. 20 of 2002 s. 4.]

97VM. Appeal against refusal of registration

(1) The employer or the employee under an EEA may appeal to the relevant industrial authority against a refusal by the Registrar to register the EEA.

(2) An appeal must be brought within 14 days after the day on which the party received notice of the refusal under section 97VG.

(3) The time limit specified in subsection (2) cannot be extended under section 27(1)(n).

[Section 97VM inserted: No. 20 of 2002 s. 4.]

97VN. Relevant industrial authority to notify parties of certain deficiencies in EEA

(1) This section applies on an appeal against a refusal by the Registrar to register an EEA for one or more of the following reasons —

(a) it does not comply with section 97UL, 97UN or 97US;

(b) it does not pass the no-disadvantage test;

(c) it purports to provide for a condition of employment that is less favourable to the employee than a minimum condition of employment under the MCE Act.

(2) Where this section applies the relevant industrial authority may give notice in writing to the parties setting out —

(a) the deficiencies in the EEA that, in the opinion of that authority, make it necessary for registration to be refused; and

(b) the terms of subsection (1) of section 97VO and the period within which the parties may comply with that subsection.

[Section 97VN inserted: No. 20 of 2002 s. 4.]

97VO. Parties may correct deficiencies in EEA

(1) If a notice is given to the parties under section 97VN they may, in accordance with the regulations, lodge a revised EEA with the relevant industrial authority within the time specified in the notice.

(2) If —

(a) a revised EEA is so lodged; and

(b) the relevant industrial authority is satisfied that it is in order for registration,

the authority may cause it to be registered by disposing of the appeal in the manner provided for by section 97VP(2)(b)(i).

(3) If —

(a) the relevant industrial authority has given a notice under section 97VN; but

(b) a revised EEA is not lodged in accordance with subsection (1),

the authority must dispose of the appeal in the manner provided for by section 97VP(2)(a).

[Section 97VO inserted: No. 20 of 2002 s. 4.]

97VP. Determination of appeal

(1) In determining an appeal the relevant industrial authority is not limited to the material that was before the Registrar, but may inform itself in such manner as it thinks fit.

(2) On the determination of an appeal the relevant industrial authority may —

(a) confirm the refusal of registration; or

(b) set aside the refusal and —

(i) order the Registrar to register the EEA; or

(ii) remit the matter to the Registrar for reconsideration with any direction or recommendation the relevant industrial authority thinks fit.

(3) The relevant industrial authority must give the parties notice in writing of its determination within 7 days after it is made.

[Section 97VP inserted: No. 20 of 2002 s. 4.]

97VQ. Procedure on appeal

(1) The Commission may make regulations under section 113 providing for the practice and procedure to be followed for the purposes of appeals under this Subdivision.

(2) Subject to subsection (1), the relevant industrial authority may exercise such of the powers set out in sections 27, 28 and 33 as the authority considers it necessary or expedient to exercise for the purposes of an appeal under this Subdivision.

[Section 97VQ inserted: No. 20 of 2002 s. 4.]

Division 6 — No-disadvantage test

[Heading inserted: No. 20 of 2002 s. 4.]

Subdivision 1 — Definition

[Heading inserted: No. 20 of 2002 s. 4.]

97VR. Terms used

In this Subdivision —

comparable award, in relation to an employee, means an award or awards regulating the terms and conditions of employment of employees engaged in the same kind of work as the employee;

relevant order means any order under this Act that is prescribed by the regulations for the purposes of section 97VS.

[Section 97VR inserted: No. 20 of 2002 s. 4; amended: No. 50 of 2016 s. 10.]

97VS. No-disadvantage test defined

(1) For the purposes of Schedule 4 clause 1(1)(e), an EEA passes the no-disadvantage test if it does not disadvantage the employee in relation to the terms and conditions of his or her employment.

(2) An EEA disadvantages an employee as mentioned in subsection (1) only if its provisions result, on balance, in a reduction in the overall entitlements of the employee under —

(a) an award; or

(b) a relevant order,

to which this subsection applies.

(3) Despite subsection (2), an EEA is to be taken to disadvantage the employee as mentioned in subsection (1) if —

(a) it confers on the employer a power to change any term or condition of the employment without the consent of the employee; and

(b) the employer could exercise the power in a way that would result, on balance, in a reduction in the overall entitlements of the employee referred to in subsection (2).

(4) Subsection (2) applies to —

(a) an award; or

(b) a relevant order,

that the Registrar determines, whether under section 97VT or otherwise, would otherwise extend to the employee.

(5) If the Registrar is satisfied that there is no award that would otherwise extend to the employee, subsection (2) applies to —

(a) any award, including an award made under the *Fair Work Act 2009* (Commonwealth) or continued in existence under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth), that the Registrar determines, whether under section 97VT or otherwise, to be a comparable award; and

(b) a relevant order.

(6) If —

(a) the Registrar is not able to determine an award for the purposes of subsection (4) or (5); or

(b) section 97VT(2)(b) applies,

the EEA is to be taken not to disadvantage the employee in relation to the terms and conditions of his or her employment.

Note:

By virtue of section 5(2) of the *Minimum Conditions of Employment Act 1993* a provision of an employer-employee agreement is of no effect if it is less favourable to the employee than a minimum condition of employment under that Act.

[Section 97VS inserted: No. 20 of 2002 s. 4; amended: No. 53 of 2011 s. 38.]

97VT. Determining which award etc. is relevant for s. 97VS

(1) If an employer —

(a) proposes to enter into an EEA; but

(b) is unsure which award, comparable award or relevant order will be relevant to the employment for the purposes of section 97VS,

the employer may apply in writing to the Registrar for the making of a determination of that matter.

(2) Upon such an application being made the Registrar must —

(a) determine which award, comparable award or relevant order will be relevant for the purposes of section 97VS; or

(b) determine that there is no such award, comparable award or relevant order.

(3) A determination under subsection (2) is binding on the Registrar for the purposes of section 97VS if the EEA concerned is lodged for registration under Division 5, unless the Registrar

considers that the circumstances existing at the time when the determination was made have changed in a material way.

[Section 97VT inserted: No. 20 of 2002 s. 4.]

97VU. All entitlements to be considered

In comparing the entitlements of an employee under an EEA to the entitlements that would be provided to the employee under —

(a) an award or a comparable award; or

(b) a relevant order,

the Registrar must take into account all relevant benefits whether in the form of money or otherwise.

[Section 97VU inserted: No. 20 of 2002 s. 4.]

97VV. Application of test if Supported Wage System applies

An EEA does not disadvantage an employee in relation to his or her employment by reason only of a reduction of the employee's wages if —

(a) the employee is eligible for the Supported Wage System; and

(b) the EEA provides for the payment of wages to the employee at a rate that is not less than the rate set in accordance with that System for persons of a class that includes the employee.

[Section 97VV inserted: No. 20 of 2002 s. 4.]

Subdivision 2 — Principles to be followed in application of no-disadvantage test

[Heading inserted: No. 20 of 2002 s. 4.]

97VW. Term used: Commission

In this Subdivision —

Commission means the Commission in Court Session.

[Section 97VW inserted: No. 20 of 2002 s. 4.]

97VX. Commission to establish principles and guidelines

(1) The Commission must prepare an instrument setting out the principles and guidelines that are to be followed by the Registrar in determining whether an EEA passes the no-disadvantage test.

(2) The instrument must not be inconsistent with this Part.

(3) Section 43(7), (8) and (9) of the *Interpretation Act 1984* apply to the instrument as if it were subsidiary legislation.

(4) Subject to section 97W, the Commission may amend the instrument or revoke it and substitute another instrument for it.

(5) The Commission must cause the instrument, and any amendment or substituted instrument, to be published in the *Industrial Gazette* and —

(a) in a newspaper circulating throughout the State; or

(b) on an internet website maintained by the Commission.

[Section 97VX inserted: No. 20 of 2002 s. 4.]

97VY. Registrar and Commission to give effect to s. 97VX instrument

The provisions of an instrument under section 97VX are to be complied with —

(a) by the Registrar and officers of the Commission in making determinations for the purposes of paragraph (e) of Schedule 4 clause 1(1); and

(b) by the relevant industrial authority in the determination of an appeal under section 97VP, so far as it relates to a determination under that paragraph.

[Section 97VY inserted: No. 20 of 2002 s. 4.]

97VZ. Minister or peak industry body may seek amendment etc. of s. 97VX instrument

(1) The Minister or a peak industrial body may at any time apply to the Commission to have the instrument under section 97VX —

(a) amended so that it makes provision to the effect set out in the application; or

(b) replaced by a new instrument that makes provision to the effect set out in the application.

(2) If an application is so made the Commission may —

(a) exercise its powers under section 97VX(4); or

(b) decline to do so.

(3) In subsection (1) —

peak industrial body means UnionsWA, the Chamber and the Mines and Metals Association.

[Section 97VZ inserted: No. 20 of 2002 s. 4; amended: No. 53 of 2011 s. 48.]

97W. Public comment to be sought before s. 97VX instrument amended etc.

Before the Commission exercises any power in section 97VX(4), whether on an application under section 97VZ or otherwise, it must call for public comment in accordance with section 97WA.

[Section 97W inserted: No. 20 of 2002 s. 4.]

97WA. How public comment to be sought

(1) Where this section applies the Commission must make available for public comment a draft (the ***exposure draft***) of —

(a) any proposed amendment to the instrument under section 97VX; or

(b) the instrument that is proposed to be substituted for that instrument,

as the case may be.

(2) The Commission must —

(a) cause a notice giving a general description of the exposure draft to be published in a daily newspaper circulating throughout the State; and

(b) include in the notice the following information —

(i) the places at which a copy of the exposure draft may be obtained; and

(ii) a statement that written submissions on the exposure draft may be made to the Commission by any person within a specified period; and

(iii) the address to which the submissions may be delivered or posted.

(3) The period specified under subsection (2)(b)(ii) must be not less than 30 days after notice has been published under subsection (2)(a).

(4) The Commission must have regard to any submission made in accordance with the notice.

[Section 97WA inserted: No. 20 of 2002 s. 4.]

Division 7 — Register

[Heading inserted: No. 20 of 2002 s. 4.]

97WB. Terms used

(1) In this Division —

protected information means —

(a) the name of the employee under an EEA; and

(b) the provisions of an EEA, or any particular provision, declared under section 97WE to be exempt from the operation of section 97WD(1); and

(c) the address of the employee under an EEA.

(2) In subsection (1)(a) and (b) —

EEA does not include an EEA that is made with a person who is an employee within the meaning in the *Public Sector Management Act 1994*.

[Section 97WB inserted: No. 20 of 2002 s. 4.]

97WC. Register of EEAs

(1) The Registrar must keep a register for the purposes of Division 5.

(2) The register —

(a) must record particulars of every EEA that is registered under Division 5; and

(b) may do so in a form and manner determined by the Registrar.

(3) The Registrar may determine that the register is to be in the form of information stored on a computer.

[Section 97WC inserted: No. 20 of 2002 s. 4.]

97WD. Inspection of register

(1) The Registrar must allow any person, on payment of the fee (if any) prescribed by the regulations, to inspect an EEA registered under Division 5.

(2) Subsection (1) does not include the inspection of protected information.

[Section 97WD inserted: No. 20 of 2002 s. 4.]

97WE. Commission may exempt an EEA from inspection

(1) The Commission may, by order —

(a) exempt the provisions of an EEA, or any particular provision, from the operation of section 97WD(1); or

(b) vary an order so made,

if it considers that it is in the public interest to do so.

(2) An order under subsection (1) may be revoked by the Commission if it considers that the continuation of the order is no longer in the public interest.

(3) The powers of the Commission under this section are exercisable on application made by a party to the EEA concerned.

(4) This section does not apply to an EEA that is made with a person who is an employee within the meaning in the *Public Sector Management Act 1994*.

[Section 97WE inserted: No. 20 of 2002 s. 4.]

97WF. Protected information not to be disclosed

(1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of protected information obtained in the course of performing functions under this Part except —

(a) in the course of performing those functions; or

(b) as required or allowed by this Act or any other written law; or

(c) for the purpose of proceedings in a court; or

(d) with the written authority of the employer or employee to whom the protected information relates; or

(e) in other circumstances prescribed by the regulations.

Penalty: $5 000.

(2) Subsection (1) applies to a person who —

(a) holds or has held office as the Registrar or a deputy registrar; or

(b) otherwise is or has been an officer of the Commission.

[Section 97WF inserted: No. 20 of 2002 s. 4.]

97WG. Certified copies of EEAs

(1) The Registrar or a deputy registrar may, on payment of the fee (if any) prescribed by the regulations, issue to a party or a section 97UM signatory to an EEA that is registered under Division 5 a certified copy of the EEA.

(2) In all courts and proceedings a certified copy so issued is evidence of the EEA of which it is a copy.

(3) A document that purports to be a certified copy of an EEA issued by the Registrar or a deputy registrar is to be taken to be such a copy unless the contrary is proved.

[Section 97WG inserted: No. 20 of 2002 s. 4.]

Division 8 — Disputes

[Heading inserted: No. 20 of 2002 s. 4.]

97WH. Terms used

In this Division —

arbitrator means —

(a) an arbitrator appointed by or under EEA dispute provisions; or

(b) where a provision made under section 97UP applies, a relevant industrial authority;

dispute means a question, dispute or difficulty that has arisen out of or in the course of employment under an EEA.

[Section 97WH inserted: No. 20 of 2002 s. 4.]

97WI. Arbitration jurisdiction of relevant industrial authority

(1) A relevant industrial authority has jurisdiction to deal with and determine any dispute that is referred to the authority for arbitration under a provision of the kind mentioned in section 97UP that is included in EEA dispute provisions.

(2) In conducting an arbitration the relevant industrial authority —

(a) must comply with the provisions of the EEA concerned; and

(b) may exercise powers under this Act, other than this Division, only to the extent that the authority is empowered by the provisions of the EEA to do so.

[Section 97WI inserted: No. 20 of 2002 s. 4.]

97WJ. Representation of parties

An employer or an employee may be represented by his or her bargaining agent in connection with a dispute, including in proceedings before an arbitrator under EEA dispute provisions.

[Section 97WJ inserted: No. 20 of 2002 s. 4.]

97WK. Alleged delay in dispute resolution, referral of to relevant industrial authority etc.

(1) This section applies if —

(a) a dispute has arisen (the ***original dispute***); and

(b) a party to the EEA concerned alleges that the other party has failed to comply with any time limit included in the EEA dispute provisions under section 97UO(2)(c).

(2) The party who alleges the non-compliance may refer the allegation to the relevant industrial authority.

(3) A referral under subsection (2) operates —

(a) as a bar to the referral of the original dispute to arbitration; or

(b) as a stay of any arbitration proceedings that have been commenced in respect of that dispute,

unless the referral is dismissed under subsection (6) or is sooner withdrawn.

(4) If the relevant industrial authority is satisfied that the allegation is proved it must enter on and complete an arbitration of the original dispute in place of any other arbitrator provided for by, or that could be or has been appointed under, the EEA dispute provisions.

(5) The relevant industrial authority —

(a) has jurisdiction to act under subsection (4) despite the EEA dispute provisions; and

(b) when doing so has the same powers and duties in respect of the original dispute as an arbitrator acting under those provisions would have had.

(6) If the relevant industrial authority is not satisfied that the allegation is proved —

(a) the authority must order that the matter be dismissed; and

(b) the EEA dispute provisions have effect as if there had been no referral under this section.

[Section 97WK inserted: No. 20 of 2002 s. 4.]

97WL. Several disputes may be subject of one arbitration

(1) This section applies where —

(a) 2 or more employees have a dispute with the same employer; and

(b) the issues involved are substantially the same or similar in each case; and

(c) the EEA dispute provisions in each EEA are substantially the same.

(2) The employees may agree in writing that, subject to the approval of the arbitrator, all matters are to be heard and determined at the same time in one arbitration proceeding.

(3) An agreement under subsection (2) must be made before an arbitrator has entered on the arbitration.

(4) Subject to the approval mentioned in subsection (2), the employer must ensure that effect is given to the agreement, so long as it remains in force.

[Section 97WL inserted: No. 20 of 2002 s. 4.]

97WM. Arbitrator's power to obtain information

An arbitrator acting under EEA dispute provisions is an authorised person within the meaning of that term in Schedule 5.

[Section 97WM inserted: No. 20 of 2002 s. 4.]

97WN. Orders and determinations of arbitrators

(1) This section applies where —

(a) a dispute has been referred to an arbitrator under EEA dispute provisions; or

(b) a relevant industrial authority is acting under section 97WK(4).

(2) The powers conferred by this section are subject to the limitations that they do not empower an arbitrator —

(a) to enforce an EEA by making any order or determination that an industrial magistrate's court may make under section 83; or

(b) to make an order or determination that is in conflict, or is inconsistent, with the EEA or the contract of employment concerned.

(3) An arbitrator may —

(a) make one or more of the orders or determinations described in subsection (4); or

(b) refuse to make any order or determination if he or she considers that —

(i) the referral was vexatious; or

(ii) the subject matter of the dispute is lacking in substance.

(4) An arbitrator may —

(a) determine the meaning or effect of the EEA concerned; or

(b) order a party —

(i) to do a specified thing; or

(ii) cease any specified activity;

or

(c) make any other order or determination that he or she considers necessary or expedient to resolve the dispute.

(5) If there is any conflict or inconsistency between the provisions of subsections (3) or (4) on the one hand and those of the EEA or the contract of employment concerned on the other, the latter prevail.

[Section 97WN inserted: No. 20 of 2002 s. 4.]

97WO. Orders and determinations, form of etc.

An order or determination of an arbitrator —

(a) must be in writing and accompanied by the reasons for its making; and

(b) is final and not subject to appeal; and

(c) must be complied with by the employer and the employee unless they agree in writing not to give effect to it.

[Section 97WO inserted: No. 20 of 2002 s. 4.]

97WP. Enforcing orders and determinations

(1) An order or determination referred to in section 97WN(4)(b) and (c) made by an arbitrator that is a relevant industrial authority is enforceable under section 83.

(2) Where an order or determination referred to in section 97WN(4)(b) and (c) is made by an arbitrator that is not a relevant industrial authority, the arbitrator must, at the request of a party and in accordance with any requirements of the regulations, lodge a copy of the order or determination with the Commission.

(3) An order or determination lodged under subsection (2) is enforceable under section 83 as if it were an order of the Commission.

[Section 97WP inserted: No. 20 of 2002 s. 4.]

97WQ. Industrial magistrate's court not bound by arbitrator's interpretation of EEA

In any proceedings under section 83 for the enforcement of a provision of an EEA, an industrial magistrate's court is not bound by a determination of the meaning or effect of the provision made by an arbitrator under the EEA dispute provisions.

[Section 97WQ inserted: No. 20 of 2002 s. 4.]

Division 9 — EEAs for persons with mental disabilities

[Heading inserted: No. 20 of 2002 s. 4.]

Subdivision 1 — Preliminary

[Heading inserted: No. 20 of 2002 s. 4.]

97WR. Terms used

In this Division —

applicant means the person who has made an application under section 97WV or 97XM;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

mental disability includes —

(a) an intellectual disability; or

(b) a psychiatric condition; or

(c) an acquired brain injury; or

(d) dementia;

person with a mental disability means the person with a mental disability who has made an application under section 97WV or 97XM, or on whose behalf such an application has been made;

proposed representative has the meaning given by section 97WV(3) or 97XM(3), as the case may be;

Public Advocate has the meaning given to that term in the *Guardianship and Administration Act 1990* section 3;

revocation order has the meaning given by section 97XI(1).

[Section 97WR inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(2); No. 22 of 2008 Sch. 3 cl. 30(3); No. 35 of 2010 s. 100.]

97WS. *Guardianship and Administration Act 1990*, relationship of this Division to

(1) An order cannot be made under section 97WZ or 97XN approving a representative of a person if a guardianship order is in force under which there is appointed —

(a) a plenary guardian of the person; or

(b) a limited guardian of the person in whom are vested functions that are conferred on a representative by sections 97UD and 97XD.

(2) The making of a guardianship order in respect of a person automatically revokes an order under section 97WZ or 97XN

approving a representative of the person if under the guardianship order there is appointed —

(a) a plenary guardian of the person; or

(b) a limited guardian of the person in whom are vested functions that are conferred on a representative by sections 97UD and 97XD.

(3) The revocation of an order by operation of subsection (2) does not affect anything done in good faith by the representative concerned before he or she received notice of the revocation.

(4) In this section and in section 97WU the expressions ***guardianship order***, ***plenary guardian*** and ***limited guardian*** have the same meanings as they have in the *Guardianship and Administration Act 1990*.

[Section 97WS inserted: No. 20 of 2002 s. 4.]

97WT. Registrar to notify Public Advocate of applications and orders for approval of representative

(1) The Registrar must give the Public Advocate notice in writing of every —

(a) application that is made under section 97WV or 97XM; and

(b) order that is made under section 97WZ or 97XN.

(2) A notice under subsection (1)(a) must identify —

(a) the person with a mental disability to whom the application relates; and

(b) the proposed representative.

(3) A notice under subsection (1)(b) must identify —

(a) the represented person; and

(b) the representative,

to whom the order relates.

(4) The Registrar must not dispose of an application under section 97WV or 97XM until the Public Advocate has given the Registrar the information required by section 97WU.

[Section 97WT inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(8) and (9).]

97WU. Public Advocate to notify Registrar of relevant guardianship orders

(1) Where the Public Advocate receives a notice under section 97WT he or she must —

(a) inform the Registrar in writing whether or not there is any relevant guardianship order in force in respect of the person with a mental disability or the represented person, as the case may be; and

(b) if there is such an order in force, provide the Registrar with particulars of it.

(2) A guardianship order is relevant for the purposes of subsection (1) if it appoints —

(a) a plenary guardian; or

(b) a limited guardian in whom are vested functions that are conferred on a representative by sections 97UD and 97XD.

(3) Where the Public Advocate —

(a) has received notice under section 97WT of an order made under section 97WZ or 97XN; and

(b) the State Administrative Tribunal subsequently makes a guardianship order in respect of the represented person concerned that, by operation of section 97WS(2), automatically revokes the order referred to in paragraph (a),

the Public Advocate must give the Registrar notice in writing of the guardianship order so made.

(4) The Registrar must give to the representative and the employer concerned notice in writing of the revocation referred to in subsection (3).

[Section 97WU inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(3), (4) and (9).]

Subdivision 2 — Approval of person to act on behalf of person with a mental disability

[Heading inserted: No. 20 of 2002 s. 4.]

97WV. Application for approval

(1) This section applies to a person —

(a) who has the prospect of being employed by an employer under an EEA; but

(b) who is in general incapable, because of a mental disability, of making reasonable decisions on matters pertaining to an employer-employee relationship.

(2) An application may be made to the Registrar by or on behalf of a person to whom this section applies for an order approving a person to act on his or her behalf in relation to —

(a) the making of an EEA as provided by section 97UD; and

(b) the matters referred to in section 97XD(1) in connection with an EEA so made.

(3) The person sought to be approved (the ***proposed representative***) must be one who satisfies the requirements of section 97WY.

[Section 97WV inserted: No. 20 of 2002 s. 4.]

97WW. Requirements for s. 97WV application

(1) An application under section 97WV must be made —

(a) in the form prescribed under section 97WX; and

(b) in accordance with the regulations.

(2) The proposed representative may be the applicant.

(3) An application must be accompanied by a certificate in respect of the person with a mental disability —

(a) in the form prescribed under section 97WX; and

(b) duly completed by a person who is stated in the form to be a medical practitioner.

(4) The applicant must also provide such information and evidence as the Registrar may request in writing.

[Section 97WW inserted: No. 20 of 2002 s. 4.]

97WX. Forms for s. 97WW to be prescribed

(1) The Registrar is to prescribe, by order published in the *Gazette*, the forms that are to be used for the purposes of section 97WW.

(2) The form of application must include provision for the proposed representative to signify his or her consent to the application.

(3) The form of certificate must be designed to show that, in the opinion of a medical practitioner, the person with a mental disability is in general incapable, because of the disability, of making reasonable decisions on matters pertaining to an employer-employee relationship.

[Section 97WX inserted: No. 20 of 2002 s. 4.]

97WY. Who may be approved as a representative

(1) A person may be approved under section 97WZ or 97XN only if he or she —

(a) is the spouse, or de facto partner, of the person with a mental disability and has reached 18 years of age; or

(b) is closely associated with the person with a mental disability and has reached 18 years of age; or

(c) belongs to a class of persons that is prescribed by the regulations.

(2) For the purposes of subsection (1)(b), a person is closely associated with the person with a mental disability if, and only if, the first-mentioned person —

(a) regularly provides or arranges for domestic services and support to; or

(b) maintains a close personal relationship with,

the person with a mental disability.

(3) It is immaterial for the purposes of subsection (2) whether or not the person is related in any way to the person with a mental disability.

[Section 97WY inserted: No. 20 of 2002 s. 4; amended: No. 28 of 2003 s. 90.]

97WZ. Approval of representative

(1) Where an application is made under section 97WV, the Registrar must make an order approving the proposed representative if he or she is satisfied that —

(a) the application is not one that is prohibited by section 97WS(1); and

(b) section 97WW has been complied with; and

(c) the proposed representative —

(i) satisfies the requirements of section 97WY; and

(ii) consents to the application.

(2) The Registrar is to rely on the certificate given under section 97WW(3) and it is not his or her function to be satisfied —

(a) that the person with a mental disability is a person to whom section 97WV applies; or

(b) that the certificate has been correctly given.

(3) The Registrar must give notice in writing of the making of an order under subsection (1) within 7 days after it is made to —

(a) the represented person, the applicant (if he or she was not the represented person) and the representative; and

(b) the Public Advocate.

[Section 97WZ inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(8).]

97X. Effect of s. 97WZ order

An order under section 97WZ authorises the person approved by the order (the ***representative***), so long as the order remains in force, to act on behalf of the person with a mental disability (the ***represented person***) in relation to —

(a) the making of one or more EEAs under section 97UD; and

(b) the matters referred to in section 97XD(1).

[Section 97X inserted: No. 20 of 2002 s. 4.]

97XA. Refusal of approval

If the Registrar is not satisfied as mentioned in section 97WZ(1) he or she must —

(a) refuse to make an order under that section; and

(b) within 7 days after doing so give the applicant and the proposed representative notice in writing of the refusal, including a statement of the reasons for it.

[Section 97XA inserted: No. 20 of 2002 s. 4.]

97XB. Appeal against refusal of approval

(1) If the Registrar refuses to make an order under section 97WZ the person with a mental disability, or a person acting on his or her behalf, may appeal to the Commission against the refusal.

(2) An appeal must be brought within 14 days after the day on which the applicant received notice of the refusal under section 97XA.

[Section 97XB inserted: No. 20 of 2002 s. 4.]

97XC. Determination of appeal

(1) An appeal to the Commission under section 97XB must be heard and determined by a commissioner.

(2) In determining an appeal the Commission is not limited to the material that was before the Registrar, but may inform itself in such manner as it thinks fit.

(3) On the determination of an appeal the Commission may —

(a) confirm the refusal to make an order; or

(b) quash the Registrar's determination and make an order approving the proposed representative; or

(c) remit the matter to the Registrar for reconsideration with any direction or recommendation the Commission thinks fit.

(4) The Commission must give the appellant and the proposed representative notice in writing of its determination within 7 days after it is made.

[Section 97XC inserted: No. 20 of 2002 s. 4.]

Subdivision 3 — Functions of representative

[Heading inserted: No. 20 of 2002 s. 4.]

97XD. Functions

(1) In addition to his or her functions under section 97UD, a representative —

(a) may act on behalf of the represented person in relation to the operation and enforcement of an EEA; and

(b) in particular, may perform any function described in subsection (2) on behalf of the represented person.

(2) The functions referred to in subsection (1)(b) are —

(a) to make a request under section 97UH; and

(b) to appoint, or terminate the appointment of, a bargaining agent under section 97UJ; and

(c) to make a cancellation agreement; and

(d) to make and lodge a revised EEA under section 97VE(1) or 97VO(1); and

(e) to recover any amount referred to in section 97V or 97VJ; and

(f) to bring an appeal under section 97VM; and

(g) to make an application referred to in section 97WE(3); and

(h) to give a written authority for the purposes of section 97WF(1)(d); and

(i) to act on behalf of the represented person for the purpose of carrying out any EEA dispute provision; and

(j) to make a referral under section 97WK(2); and

(k) to refer a matter to the Commission as mentioned in section 29(1a).

[Section 97XD inserted: No. 20 of 2002 s. 4.]

97XE. Effect of acts of representative

The performance of a function referred to in section 97XD by a representative has effect as if —

(a) it were the performance of the represented person; and

(b) the represented person were of full legal capacity.

[Section 97XE inserted: No. 20 of 2002 s. 4.]

97XF. Duties of representative

(1) In performing the functions referred to in section 97XD a representative is to act according to his or her opinion of the best interests of the represented person.

(2) Without limiting subsection (1), a representative acts in the best interests of the represented person if he or she acts as far as possible —

(a) as an advocate of the represented person in relation to any EEA; and

(b) in such a way as to encourage the represented person to become capable of making reasonable decisions on matters pertaining to an employer-employee relationship; and

(c) in such a way as to protect the represented person from abuse or exploitation in employment; and

(d) in consultation with, and taking into account the wishes of, the represented person.

(3) A failure of a representative to observe the duty mentioned in subsection (1) does not give rise to any liability on the part of the representative, but this does not affect the operation of —

(a) Subdivision 4; or

(b) any other written law.

[Section 97XF inserted: No. 20 of 2002 s. 4.]

Subdivision 4 — Termination of representative's authority to act

[Heading inserted: No. 20 of 2002 s. 4.]

97XG. Duration of order approving representative

An order under section 97WZ(1) or 97XN(1) remains in force until —

(a) the representative resigns in accordance with section 97XH; or

(b) the order is revoked —

(i) by operation of section 97WS(2); or

(ii) by an order (a ***revocation order***) made under section 97XK.

[Section 97XG inserted: No. 20 of 2002 s. 4.]

97XH. Resignation of representative

(1) A representative may give notice in writing to the Registrar of his or her wish to resign from the position of representative.

(2) Where notice is so given the Registrar must approve the resignation.

(3) The resignation has effect —

(a) on the day on which notice in writing of the approval is given to the representative by the Registrar; or

(b) on a later day specified by the Registrar in that notice.

[Section 97XH inserted: No. 20 of 2002 s. 4.]

97XI. Revocation order, application to SAT for

(1) An application may be made to the State Administrative Tribunal for an order (a ***revocation order***) revoking an order under section 97WZ(1) or 97XN(1).

(2) The application may be made by —

(a) the represented person or a person acting on his or her behalf; or

(b) any other person who satisfies the State Administrative Tribunal that he or she has a sufficient interest in the application.

(3) The application may only be made on one or more of the following grounds —

(a) that the represented person is no longer a person to whom section 97WV(1)(b) applies;

(b) that the representative has failed to act in the best interests of the represented person;

(c) that it is for some other reason no longer in the interests of the represented person for the representative to act on his or her behalf.

[Section 97XI inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(5) and (10).]

97XJ. Right to be heard on s. 97XI application

(1) The representative must be given a reasonable opportunity to be heard on an application for a revocation order.

(2) The represented person, or another person acting on his or her behalf, must be given a reasonable opportunity to be heard if an application for a revocation order is made other than by or on behalf of the represented person.

[Section 97XJ inserted: No. 20 of 2002 s. 4.]

97XK. SAT may make revocation order

(1) Where an application is made to it under section 97XI, the State Administrative Tribunal must make a revocation order if it is satisfied that —

(a) the grounds on which the application is made have been established; or

(b) it is for some other reason no longer in the interests of the represented person for the representative to act on his or her behalf.

(2) Where the State Administrative Tribunal makes a revocation order it may also exercise the power conferred on the Registrar by subsection (1) of section 97XN if it is satisfied as to the matters set out in each of the paragraphs of that subsection, other than paragraph (c).

(3) If the State Administrative Tribunal is not satisfied as mentioned in subsection (1) it must order that the application is refused.

(4) The executive officer of the State Administrative Tribunal must give notice in writing to the Registrar of the determination of the State Administrative Tribunal.

(5) An order under subsection (1) or (2) takes effect —

(a) on the day on which notice of the order is given to the representative; or

(b) on a later day specified in the order.

[Section 97XK inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(10).]

97XL. *Guardianship and Administration Act 1990*, application of for s. 97XK

(1) The following provisions of the *Guardianship and Administration Act 1990* apply for the purposes of section 97XK, with all necessary changes, in the same way as they apply for the purposes of that Act —

(a) sections 113 and 114 and Schedule 1 Part B, other than clause 13;

(b) clause 13(2) of Schedule 1 Part B, but subject to section 97XJ of this Act.

(2) Part 3 Divisions 2A and 3 of the *Guardianship and Administration Act 1990* do not apply to a determination of the State Administrative Tribunal under section 97XK.

[Section 97XL inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(6), (7) and (10).]

Subdivision 5 — Approval of new representative

[Heading inserted: No. 20 of 2002 s. 4.]

97XM. Application for new approval where representative dies or approval is revoked

(1) This section applies where —

(a) a representative dies; or

(b) the approval of a representative is revoked under subsection (1) of section 97XK without a new representative being approved under subsection (2) of that section.

(2) An application may be made to the Registrar by or on behalf of the person who immediately before the death or revocation was

the represented person for an order approving a person to act in place of the representative who has died or whose approval has been revoked.

(3) The person sought to be approved (the ***proposed representative***) must be one who satisfies the requirements of section 97WY.

(4) The application must be made —

(a) in the form prescribed under subsection (6); and

(b) in accordance with the regulations.

(5) The proposed representative may be the applicant.

(6) The Registrar is to prescribe, by order published in the *Gazette*, the form of application that is to be used for the purposes of subsection (2).

(7) The form must include provision for the proposed representative to signify his or her consent to the application.

(8) The applicant must also provide such information and evidence as the Registrar may request in writing.

[Section 97XM inserted: No. 20 of 2002 s. 4.]

97XN. Approval of representative

(1) Where an application is made under section 97XM, the Registrar must make an order approving the proposed representative if he or she is satisfied that —

(a) the circumstances mentioned in subsection (1)(a) or (b) of that section apply; and

(b) the application is not one that is prohibited by section 97WS(1); and

(c) section 97XM(4) has been complied with; and

(d) the proposed representative —

(i) satisfies the requirements of section 97WY; and

(ii) consents to the application.

(2) The Registrar must give notice in writing of an order within 7 days after it is made to —

(a) the represented person, the applicant (if he or she was not the represented person) and the representative; and

(b) the Public Advocate.

[Section 97XN inserted: No. 20 of 2002 s. 4; amended: No. 55 of 2004 s. 469(8).]

97XO. Effect of s. 97XN order

An order under section 97XN authorises the person approved by the order (the ***representative***), so long as the order remains in force, to act on behalf of the person with a mental disability (the ***represented person***) in relation to —

(a) the making of one or more EEAs under section 97UD; and

(b) the matters referred to in section 97XD(1).

[Section 97XO inserted: No. 20 of 2002 s. 4.]

97XP. Refusal of approval

If the Registrar is not satisfied as mentioned in section 97XN(1) he or she must —

(a) refuse to make an order under that section; and

(b) within 7 days after doing so give the applicant and the proposed representative notice in writing of the refusal, including a statement of the reasons for it.

[Section 97XP inserted: No. 20 of 2002 s. 4.]

97XQ. Appeal against refusal of approval

Sections 97XB and 97XC apply where the Registrar refuses to make an order under section 97XN in the same way as they apply to a refusal of approval under section 97XA.

[Section 97XQ inserted: No. 20 of 2002 s. 4.]

Subdivision 6 — Miscellaneous

[Heading inserted: No. 20 of 2002 s. 4.]

97XR. Registrar's powers for s. 97WV and 97XM

For the purpose of determining an application under section 97WV or 97XM, the Registrar may —

(a) meet with the persons who are concerned in the application; and

(b) otherwise obtain information in any way that the Registrar thinks appropriate.

[Section 97XR inserted: No. 20 of 2002 s. 4.]

97XS. EEA not affected by revocation of order or vacancy in position of representative

An EEA to which a represented person is a party is not affected by —

(a) the operation of section 97WS(2); or

(b) the fact that the position of representative is vacant because of —

(i) the making of a revocation order; or

(ii) the resignation or death of the representative.

[Section 97XS inserted: No. 20 of 2002 s. 4.]

97XT. Register of s. 97WZ and 97XN orders

(1) The Registrar must keep a register for the purposes of this Division.

(2) The register —

(a) must record particulars of every order that is made under section 97WZ or 97XN; and

(b) may do so in a form and manner determined by the Registrar.

(3) The Registrar may determine that the register is to be in the form of information stored on a computer.

(4) Subject to any restriction on inspection imposed by the regulations, the Registrar must allow any person to inspect the register on payment of the prescribed fee, if any.

[Section 97XT inserted: No. 20 of 2002 s. 4.]

97XU. Certified copies of registered entry

(1) The Registrar or a deputy registrar may, on payment of the fee (if any) prescribed by the regulations, issue to any person a certified copy of an entry in the register kept under section 97XT.

(2) In all courts and proceedings a certified copy so issued is evidence of the matters to which it relates.

(3) A document that purports to be a certified copy of an entry in the register issued by the Registrar or a deputy registrar is to be taken to be such a copy unless the contrary is proved.

[Section 97XU inserted: No. 20 of 2002 s. 4.]

97XV. Information obtained under this Division not to be disclosed

(1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of information obtained in the course of performing functions under this Division except —

(a) in the course of performing those functions; or

(b) as required or allowed by this Act or any other written law; or

(c) for the purpose of proceedings in a court; or

(d) with the written authority of each person to whom the information relates; or

(e) in other circumstances prescribed by the regulations.

Penalty: $5 000.

(2) Subsection (1) applies to a person who —

(a) holds or has held office as the Registrar or a deputy registrar; or

(b) otherwise is or has been an officer of the Commission.

[Section 97XV inserted: No. 20 of 2002 s. 4.]

97XW. Procedure in proceedings under this Division

(1) The Commission may make regulations under section 113 providing for the practice and procedure to be followed for the purposes of —

(a) an application under section 97WV, 97XI or 97XM; and

(b) an appeal under section 97XB or 97XQ.

(2) Provision made under subsection (1)(a) must not be inconsistent with the provisions that have effect under section 97XL(1).

(3) Subject to subsection (1)(b), the Commission may exercise such of the powers set out in sections 27, 28 and 33 as the Commission considers it is necessary or expedient to exercise for the purposes of an appeal under section 97XB or 97XQ.

[Section 97XW inserted: No. 20 of 2002 s. 4.]

Division 10 — Certain conduct prohibited

[Heading inserted: No. 20 of 2002 s. 4.]

97XX. Purpose of this Division

The purpose of this Division is to ensure, as far as possible, that employees are given —

(a) a genuine choice as to their employment arrangements; and

(b) sufficient information to enable them to make informed choices about those arrangements.

[Section 97XX inserted: No. 20 of 2002 s. 4.]

97XY. Enforcing prohibitions in this Division

A contravention of section 97XZ, 97Y, 97YB, 97YD, 97YE or 97YF is not an offence but those sections —

(a) are civil penalty provisions for the purposes of section 83E; and

(b) in the case of sections 97YB and 97YF, are also enforceable under sections 97YC and 97YG respectively.

[Section 97XY inserted: No. 20 of 2002 s. 4.]

97XZ. Making employment etc. conditional on EEA being entered into prohibited

(1) Except as provided by section 97YA, a person must not —

(a) offer a person —

(i) employment; or

(ii) a promotion or transfer in employment;

or

(b) intimate to a person that he or she will be —

(i) employed; or

(ii) promoted or transferred in employment,

only if the person agrees to the employment or the continued employment, as the case may be, being under an EEA to be entered into.

(2) Except as provided by section 97YA, a person must not —

(a) offer a represented person —

(i) employment; or

(ii) a promotion or transfer in employment;

or

(b) intimate to the representative of a represented person that the represented person will be —

(i) employed; or

(ii) promoted or transferred in employment,

only if the representative agrees to the employment or the continued employment, as the case may be, being under an EEA to be entered into.

[Section 97XZ inserted: No. 20 of 2002 s. 4.]

97Y. Certain advertising prohibited

A person must not advertise the availability of employment in terms that show an intention that any employment relationship is to be under an EEA and not otherwise.

[Section 97Y inserted: No. 20 of 2002 s. 4.]

97YA. Exception to s. 97XZ and 97YB

(1) Section 97XZ(1) or (2) or 97YB does not apply to an offer of employment made, or an intimation of employment given, that would otherwise come within that provision if —

(a) there is no award, enterprise order or industrial agreement containing supported wage provisions that extends to the employee; and

(b) the employment is being arranged through an entity that provides employment services for persons with disabilities.

(2) In any proceedings under this Act it is for the person who made the offer or gave the intimation to satisfy the industrial magistrate's court that the exception in subsection (1) applies to the offer or intimation.

[Section 97YA inserted: No. 20 of 2002 s. 4; amended: No. 50 of 2016 s. 11.]

97YB. Employer offering EEA to also offer other employment arrangements

(1) This section applies where —

(a) a person offers —

(i) to employ a person; or

(ii) to promote or transfer an employee,

in terms that the prospective or continued employment, as the case may be, is to be under an EEA to be entered into; and

(b) the offer does not come within the exception in section 97YA.

(2) Where this section applies the person must also offer the employee the choice of the employment or continued employment being —

(a) under any relevant award or enterprise order; or

(b) if there is no such award or enterprise order, under a contract of employment containing the same provisions as those of the proposed EEA other than —

(i) the provision specifying the term of the EEA; and

(ii) the EEA dispute provisions.

(3) An offer required by subsection (2) must be made at the same time and in the same way as the offer referred to in subsection (1).

[Section 97YB inserted: No. 20 of 2002 s. 4.]

97YC. Order for compliance with s. 97YB

(1) If an industrial magistrate's court determines under section 83E that a person has contravened subsection (2) of section 97YB, the court may order the person to offer the employee the choices set out in that subsection.

(2) It does not matter for the purposes of subsection (1) whether or not the employee agreed to the employment or continued employment being under the proposed EEA.

(3) The court may make an order under this section in addition to imposing a penalty under section 83E.

(4) A person must comply with an order made against him or her under this section.

Penalty: $5 000 and a daily penalty of $500.

[Section 97YC inserted: No. 20 of 2002 s. 4.]

97YD. Threats and intimidation as to EEA prohibited

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

(a) an EEA; or

(b) an EEA that contains or does not contain particular provisions; or

(c) a cancellation agreement.

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

(a) an EEA; or

(b) an EEA that contains or does not contain particular provisions; or

(c) a cancellation agreement.

(3) A person must not intimidate a representative, or threaten injury or harm to the person or property of a representative, because the represented person is or is not a party to —

(a) an EEA; or

(b) an EEA that contains or does not contain particular provisions; or

(c) a cancellation agreement.

[Section 97YD inserted: No. 20 of 2002 s. 4.]

97YE. Misinformation prohibited

A person must not make or give to another person any misleading statement or information with intent to persuade that other person to enter into, or not to enter into —

(a) an EEA; or

(b) an EEA that contains or does not contain particular provisions; or

(c) a cancellation agreement.

[Section 97YE inserted: No. 20 of 2002 s. 4.]

97YF. Dismissal etc. because of refusal to make or cancel EEA prohibited

An employer must not —

(a) dismiss an employee; or

(b) alter an employee's position to his or her disadvantage; or

(c) refuse to promote or transfer an employee; or

(d) otherwise injure an employee in relation to his or her employment,

for the reason, or for reasons that include the reason, that the employee, or where applicable the representative of a represented person, has refused to enter into —

(e) an EEA; or

(f) an EEA that contains or does not contain particular provisions; or

(g) a cancellation agreement.

[Section 97YF inserted: No. 20 of 2002 s. 4.]

97YG. Breach of s. 97YF, court orders that may be made for

(1) If under section 83E an industrial magistrate's court determines that an employer has contravened section 97YF in relation to a

person who is or was an employee, the court may make an order under this section.

(2) The court may order the employer —

(a) to reinstate the person if he or she was dismissed from employment; or

(b) subject to subsection (5), to pay to the person compensation for any loss or injury suffered as a result of the contravention,

or to do both of those things.

(3) The court may make an order under this section in addition to imposing a penalty under section 83E.

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

(5) The court does not have jurisdiction under subsection (2) to order that there be paid —

(a) to an employee who has been dismissed, any amount exceeding 6 months' remuneration of the employee; and

(b) in any other case, any amount exceeding $5 000 or such other amount as is prescribed by the regulations.

(6) For the purposes of subsection (5)(a) the court may calculate the amount on the basis of an average rate received during any relevant period of employment.

(7) A person must comply with an order made against him or her under this section.

Penalty: $5 000 and a daily penalty of $500.

[Section 97YG inserted: No. 20 of 2002 s. 4.]

97YH. Burden of proof in s. 97YF proceedings

In any proceedings for a contravention of section 97YF, if it is proved that an employer took any course of action mentioned in that section against or in relation to an employee after the

employee, or where applicable the representative of a represented person, refused to enter into —

(a) an EEA; or

(b) an EEA that contains or does not contain particular provisions; or

(c) a cancellation agreement,

it is for the employer to prove that he or she took that course of action for some reason other than because the employee or representative refused to enter into any EEA or cancellation agreement, as the case may be.

[Section 97YH inserted: No. 20 of 2002 s. 4.]

Division 11 — General

[Heading inserted: No. 20 of 2002 s. 4.]

97YI. Review of Div. 5, 6 and 7

(1) The Commission in Court Session, as required by subsection (2), is to —

(a) carry out a review of the operation and effectiveness of Divisions 5, 6 and 7, including Schedules 4 and 5; and

(b) submit a report based on the review to the Minister with any recommendation it thinks fit to make.

(2) A review is to be carried out at such times as the Minister may in writing request.

[Section 97YI inserted: No. 20 of 2002 s. 4; amended: No. 50 of 2016 s. 17.]

97YJ. Regulations

The Governor may make any regulation that is required or permitted to be made, or necessary or convenient, for the purposes of this Part.

[Section 97YJ inserted: No. 20 of 2002 s. 4.]

Part VII — Miscellaneous

98. Industrial inspectors, designation and functions of etc.

(1) The CEO may designate a departmental officer as an industrial inspector.

(2A) There are to be as many industrial inspectors as are necessary to perform the functions conferred on industrial inspectors by this Act or any other written law.

(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 and of any instrument to which this section applies 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 instrument to which this section applies are being or have been observed; and

(b) inspect and view any work, material, machinery, appliance, article, record, matter or thing whatsoever which is in an industrial location; and

(c) take with him into an industrial location any person he may require to provide assistance which he considers to be necessary; and

(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; and

(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; and

(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; and

(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 this section —

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;

instrument to which this section applies means —

(a) an award; and

(b) an industrial agreement; and

(c) an order made by the Commission; and

(d) an employer-employee agreement or contract of employment to the extent, and only to the extent, that a condition is implied in that agreement or contract by section 5 of the MCE Act.

(7) A reference to this Act in subsection (2), (3) or (5) includes a reference to another written law referred to in subsection (2A).

[Section 98 amended: No. 121 of 1982 s. 32; No. 32 of 1994 s. 14; No. 79 of 1995 s. 38; No. 20 of 2002 s. 147; No. 14 of 2005 s. 9; No. 53 of 2011 s. 45; No. 39 of 2018 s. 59.]

99A. Identity cards for industrial inspectors

(1) Every industrial inspector is to be provided with an identity card signed by the CEO or a departmental officer authorised in that behalf by the CEO.

(2) An identity card purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it or of the person's authority to have signed it, evidence in a court —

(a) of the appointment to which the identity card purports to relate; and

(b) of any other matter specified on the identity card.

(3) If the designation of a person under section 98(1) is revoked or ceases to have effect, the person must, as soon as practicable, but within 21 days, after the designation is revoked or ceases to have effect, return the identity card to the CEO or a departmental officer authorised by the CEO to receive it, unless the person has a reasonable excuse.

Penalty: a fine of $2 000.

[Section 99A inserted: No. 53 of 2011 s. 46.]

99B. Production of identity card

(1) An industrial inspector must, if requested to do so by a person in respect of whom the industrial inspector has exercised, or is about to exercise, a power under this Act or any other written law, produce the industrial inspector's identity card for the person's inspection.

(2) Subsection (1) only applies if the industrial inspector is in the physical presence of the person in respect of whom the power has been, or is about to be, exercised.

(3) If for any reason it is not practicable to comply with subsection (1), the industrial inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

[Section 99B inserted: No. 53 of 2011 s. 46.]

99C. Staff for Department

(1) In this section —

employed in the Department or the Registrar's Department includes seconded to perform functions or services for, or duties in the service of, that department.

(2) As many public service officers are to be employed in the Department as are necessary for the purposes of this Act.

(3) As many public service officers are to be employed in the Registrar's Department as are necessary —

(a) for the performance of the Court's functions; and

(b) for the performance of the Commission's functions; and

(c) otherwise for the purposes of this Act.

[Section 99C inserted: No. 53 of 2011 s. 46.]

99D. Designation of officers, generally

(1) This section applies to the following —

(a) the designation of a person under section 85(9) to be the clerk of the Court;

(b) the designation of a person under section 93(1AB) to be the Registrar;

(c) the designation of a person under section 93(1AC) to be a deputy registrar;

(d) the designation of a person under section 98(1) to be an industrial inspector.

(2) A designation is to be in writing and the *Interpretation Act 1984* section 52 applies to it in the same way as that section applies to an appointment.

(3) A designation referred to in subsection (1)(a), (b) or (c) ceases to have effect if the person designated ceases to be a Registrar's Department officer.

(4) A designation referred to in subsection (1)(d) ceases to have effect if the person designated ceases to be a departmental officer.

(5) The chief executive officer of the Registrar's Department, the Registrar or the CEO, as the case may be, may, in writing, delegate the power to make a designation to another person.

[Section 99D inserted: No. 53 of 2011 s. 46; amended: No. 39 of 2018 s. 60.]

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.** Deleted: No. 121 of 1982 s. 33.]*

*[**101.** Deleted: No. 94 of 1984 s. 59.]*

102. Obstruction etc. prohibited

(1) A person shall not —

(a) being lawfully required to do so fail to produce or exhibit, or allow to be examined, a record; or

(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; or

(c) being an officer of an organisation, 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 organisation as the returning officer requires; or

(d) falsely represent in an application made under this Act that he is a member of an organisation.

(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.

(3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of section 83E.

[Section 102 amended: No. 121 of 1982 s. 34; No. 94 of 1984 s. 65; No. 1 of 1995 s. 53; No. 20 of 2002 s. 148 and 159.]

102A. Institution of certain proceedings, powers of Registrar etc. for

(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, 83, 83B, 83E or 84A.

(2) Subject to this Act, an industrial inspector may, of his own motion, make an application under section 77, 83, 83B, 83E or 84A.

[Section 102A inserted: No. 94 of 1984 s. 60; amended: No. 79 of 1995 s. 8(2) and 39; No. 20 of 2002 s. 160(5) and (6).]

103. Certain applications may relate to more than one breach

(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, 83, 83B, 83E or 84A;

breach means a contravention or failure to comply with a provision of this Act or an award, industrial agreement, employer-employee 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: No. 94 of 1984 s. 60; amended: No. 44 of 1991 s. 8; No. 79 of 1995 s. 8(2); No. 20 of 2002 s. 15 and 160(7).]

104. Prosecutions

(1) A person authorised by the Minister to prosecute offences under this Act of a particular kind may commence and conduct a prosecution for an offence of that kind.

(2) If a prosecution notice states that the prosecutor is authorised 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, commence and conduct a prosecution for an offence under this Act.

(4) The Registrar or a deputy registrar may, of his own motion, and shall, if he is directed under this Act to do so, commence and conduct a prosecution for an offence under this Act.

(5) A person not referred to in subsection (1), (3) or (4) may commence a prosecution for an offence under this Act but the charge must be dismissed for want of prosecution unless the court is satisfied that the prosecutor has been affected by the conduct giving rise to the offence.

[Section 104 inserted: No. 79 of 1995 s. 40; amended: No. 84 of 2004 s. 80.]

105. Awards etc., evidence of

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: No. 94 of 1984 s. 66.]

106. Official signatures and appointments, judicial notice of

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, 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: No. 121 of 1982 s. 36; No. 94 of 1984 s. 66; No. 44 of 1991 s. 8; No. 39 of 2018 s. 61.]

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: No. 94 of 1984 s. 66.]

108. Organisations and associations not affected by certain Imperial Acts

An organisation 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 organisation or association.

[Section 108 amended: No. 94 of 1984 s. 66.]

109. Dues payable to organisation or association may be sued for

All fines, subscriptions and levies payable under its rules to an organisation or association by any member thereof or to any association by any organisation represented therein may, in so far as they are owing to the organisation 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 organisation 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: No. 94 of 1984 s. 66; No. 79 of 1995 s. 41.]

110. Disputes between organisation or association and its members, how to be determined

(1) Every dispute between an organisation and any of its members, or between an association and any organisation represented therein, shall, subject to section 66, be decided in the manner directed by the rules of the organisation, or, as the case may be, by the rules of the association.

(2) On the application of an organisation or association, an industrial magistrate's court may order the payment by any member or, in the case of an association, by any organisation represented therein of any fine, penalty, or subscription payable in pursuance of the rules of the organisation 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: No. 94 of 1984 s. 66; No. 44 of 1991 s. 8.]

111. No premiums etc. 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: No. 94 of 1984 s. 65 and 66; No. 1 of 1995 s. 53; No. 79 of 1995 s. 27.]

112. Certain rules of organisation as to penalties invalid

(1) Where the rules of an organisation contain a provision that authorises or purports to authorise 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 organisation 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: No. 94 of 1984 s. 65 and 66; No. 1 of 1995 s. 53; No. 79 of 1995 s. 28.]

112A. Industrial agents, registration of

(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.

(1a) Despite subsection (1), a reference to carrying on business as an industrial agent does not include —

(a) carrying on business by an organisation, UnionsWA, the Chamber or the Mines and Metals Association; or

(b) carrying on business as a person who acts as a bargaining agent within the meaning of section 42B(4); or

(c) carrying on business as a person who —

(i) appears in proceedings as provided by section 97WJ; or

(ii) provides advice or other services in relation to industrial matters, in the capacity of a bargaining agent under section 97UJ.

(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 12 of the *Legal Profession Act 2008* a person who is —

(a) registered under this section; or

(b) acting under a contract of employment for a person who is registered under this section; or

(c) an employee or officer of any organisation, UnionsWA, the Chamber, the Mines and Metals Association, or a prescribed body or class of body, acting on behalf of that body,

is authorised to —

(d) 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; and

(b) prescribe a code of conduct for persons registered under this section; and

(c) prescribe the circumstances in which, and the procedures by which, a person may be disqualified from obtaining registration, or registration may be cancelled; and

(d) provide for appeals to the Full Bench from disqualification or cancellation of registration; and

(e) prescribe any matter or thing which is authorised or required to be prescribed for the purposes of this section.

[Section 112A inserted: No. 79 of 1995 s. 16; amended: No. 20 of 2002 s. 136; No. 65 of 2003 s. 41(3); No. 21 of 2008 s. 668(5); No. 53 of 2011 s. 48.]

113. Regulations

(1) The Court with respect to any of the following purposes that relate to the Court, and the Chief Commissioner, after consultation with the other commissioners, with respect to any of those purposes that relate to the Commission may make regulations —

(a) prescribing or providing for the approval of the forms of certificates, notices, returns, or other instruments or documents to be used for the purposes of this Act; and

(b) prescribing the duties of the Registrar and of all other officers and persons acting in the administration of this Act; and

(ba) prescribing the practice and procedure to be followed in the mediation of a claim of harsh, oppressive or unfair dismissal, and other matters related to that mediation; and

(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; and

(ii) the summoning of parties and of witnesses; and

(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;

and

(d) without limiting paragraph (c), regulating the practice and procedure to be followed in relation to —

(i) appeals under section 33P of the *Police Act 1892*; and

(ii) the referral, bringing, hearing and determination of matters, claims and appeals under —

(I) the *Occupational Safety and Health Act 1984*; and

(II) the *Mines Safety and Inspection Act 1994*; and

(IIIA) the *Owner-Drivers (Contracts and Disputes) Act 2007*; and

(III) the *Petroleum and Geothermal Energy Resources Act 1967*; and

(IV) the *Petroleum Pipelines Act 1969*; and

(V) the *Petroleum (Submerged Lands) Act 1982*;

and

(da) providing for the payment of remuneration, travelling and other allowances to members of constituent authorities and their deputies (other than commissioners); and

(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 or provide for the approval of 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.

(3a) The Governor may make regulations in any case where this Act contemplates the making of regulations by the Governor.

(3b) The Governor may make regulations 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.

(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 $1 000 for offences against the regulations.

[Section 113 amended: No. 121 of 1982 s. 37; No. 92 of 1984 s. 5; No. 94 of 1984 s. 61, 65 and 66; No. 44 of 1991 s. 8; No. 92 of 1994 s. 14; No. 1 of 1995 s. 13, 32 and 53; No. 3 of

1997 s. 38; No. 20 of 2002 s. 162; No. 7 of 2003 s. 10(2); No. 51 of 2004 s. 70(4); No. 68 of 2004 s. 87(4); No. 13 of 2005 s. 49(4)(b); No. 7 of 2007 s. 58; No. 35 of 2007 s. 97(4); No. 5 of 2008 s. 64; No. 53 of 2011 s. 47; No. 39 of 2018 s. 62.]

114. Contracting out from awards etc. prohibited

(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.

(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.

[Section 114 amended: No. 94 of 1984 s. 62; No. 119 of 1987 s. 24; No. 15 of 1993 s. 29; amended: Gazette 15 Aug 2003 p. 3686.]

115. Police officers, application of Act to (Sch. 3)

Schedule 3 has effect.

[Section 115 inserted: No. 58 of 2000 s. 4.]

116. Transitional provisions for *Industrial Relations Amendment Act 2018*

(1) Schedule 6 sets out transitional provisions.

(2) Schedule 6 does not affect the operation of the *Interpretation Act 1984* Part V.

[Section 116 inserted: No. 39 of 2018 s. 63.]

[Part VIII deleted: No. 39 of 2018 s. 64.]

Schedule 1 — Matters to be published in the "*Western Australian Industrial Gazette*"

[s. 93(3) and 105]

[Heading amended: No. 19 of 2010 s. 4.]

1. Retirements from industrial agreements.

2. All decisions and published reasons for decision of —
   (a) the Court; and
   (b) the Full Bench; and
   [(c) deleted]
   (d) the Commission; and
   (e) industrial magistrates; and
   (f) Boards of Reference.

3. All directions and orders which alter the qualifications for membership of any organisation the area in respect of which the organisation is registered, or the name of the organisation.

4. A list of organisations registered under the Act and the registered offices of those organisations.

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 or the Chief Commissioner to be published or which the Registrar may consider should be published.

[Schedule 1 amended: No. 94 of 1984 s. 66; No. 15 of 1993 s. 30; No. 79 of 1995 s. 42; No. 20 of 2002 s. 113(5) and 190(10); No. 39 of 2018 s. 65.]

[Schedule 2 deleted: No. 20 of 2002 s. 194(7).]

Schedule 3 — Police officers

[s. 115]

[Heading inserted: No. 58 of 2000 s. 5.]

1. Term used: Arbitrator

In this Schedule —

Arbitrator has the same meaning as in section 80C(1).

[Clause 1 inserted: No. 58 of 2000 s. 5; amended: No. 8 of 2008 s. 13 and 23(3).]

2. Application of Act to police officer

(1) Before the coming into operation of the *Industrial Relations Amendment Act 2000* this Act is taken to have applied to and in respect of a police officer, and to have had effect accordingly, as if —

(a) the police officer were an employee; and

(b) the Minister for Police were the employer of the police officer.

(2) On and from the coming into operation of the *Industrial Relations Amendment Act 2000* this Act applies to and in respect of a police officer, and has effect accordingly, as if —

(a) the police officer were a government officer within the meaning of section 80C; and

(b) the Commissioner of Police were the employer, within the meaning of section 80C, of the police officer,

and for that purpose, a reference in the Act to an employee is taken to include a reference to a government officer.

(3) Despite subclause (2), 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 relating to or arising from the transfer, demotion, reduction in salary, suspension from duty, removal, discharge, dismissal or cancellation of the appointment under the *Police Act 1892* of a police officer, police auxiliary officer or Aboriginal police liaison officer or, in the case of a special constable, the cancellation under that Act of the constable's appointment.

[Clause 2 inserted: No. 58 of 2000 s. 5; amended: No. 59 of 2006 s. 73; No. 42 of 2009 s. 19.]

3. Western Australian Police Union of Workers, status of

The Western Australian Police Union of Workers is taken to be, and to have always been, an organisation of employees.

[Clause 3 inserted: No. 58 of 2000 s. 5.]

Schedule 4 — Registration requirements for EEAs

[s. 97VB]

[Heading inserted: No. 20 of 2002 s. 5.]

1. When EEA is in order for registration

(1) An EEA is in order for registration if —

(a) section 97UF(1) does not apply to it; and

(b) it complies with sections 97UL, 97UN and 97US; and

(c) if section 97UM applies, it has been signed in accordance with, and by a person who meets the requirements of, section 97UM(2); and

(d) the employer has complied with section 97UG; and

(e) it passes the no-disadvantage test; and

(f) it does not purport to provide for a condition of employment that is less favourable to the employee than a minimum condition of employment under the MCE Act; and

Note:

If a provision of an employer-employee agreement is less favourable as mentioned in paragraph (f) it is of no effect by virtue of section 5(2) of the *Minimum Conditions of Employment Act 1993*.

(g) in relation to the making of the EEA, the employer did not —

(i) offer employment to the employee; or

(ii) intimate to the employee that he or she would be employed,

only if he or she agreed to the employment being under an EEA; and

(h) in relation to the making of the EEA, the employer did not —

(i) offer the employee a transfer or promotion in his or her employment; or

(ii) intimate to the employee that he or she would be transferred or promoted,

only if he or she agreed to the employment being under an EEA; and

(i) each party appears to understand his or her rights and obligations under the EEA; and

(j) no party or a representative was persuaded by threats or intimidation to enter into the EEA; and

(k) each party genuinely wishes to have the EEA registered.

(2) Subclause (1)(g) does not apply to an offer of employment made, or an intimation of employment given, that would otherwise come within that provision if —

(a) there is no award or industrial agreement containing supported wage provisions that extends to the employee; and

(b) the employment was arranged through an entity that provides employment services for persons with disabilities.

(3) In subclause (1)(i) and (k) —

party means —

(a) the employer and the employee; or

(b) if the employee is a represented person, the employer and the representative.

[Schedule 4 inserted: No. 20 of 2002 s. 5.]

Schedule 5 — Powers to obtain information, and related provisions

[s. 97VC(4), 97WM]

[Heading inserted: No. 20 of 2002 s. 5.]

1. Authorised person's powers to obtain information

An authorised person may —

(a) by notice in writing require the attendance of any person at a place and time specified in the notice;

(b) by notice in writing require any person to produce at a place and time specified in the notice any book, document or record that is in the possession or under the control of that person;

(c) inspect any book, document or record produced and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents;

(d) require any person to take an oath or make an affirmation and may administer an oath or affirmation to any person;

(e) require any person to answer any question put to that person;

(f) take statements and receive affidavits;

(g) enter any relevant workplace.

[Clause 1 inserted: No. 20 of 2002 s. 5.]

2. Obstructing authorised person

A person must not hinder or obstruct an authorised person in the exercise of any power conferred by this Schedule.

Penalty: $2 000.

[Clause 2 inserted: No. 20 of 2002 s. 5.]

3. False statement to authorised person

A person must not make a statement or give an answer to an authorised person if the first-mentioned person knows that the statement or answer is false or misleading in a material particular.

Penalty: $2 000.

[Clause 3 inserted: No. 20 of 2002 s. 5.]

4. Failure to comply with cl. 1 requirement

(1) A person must not, without lawful excuse, refuse or fail —

(a) to attend; or

(b) to produce a book, document or record,

as required by a notice under clause 1.

Penalty: $2 000.

(2) A person must not, without lawful excuse, refuse or fail —

(a) to be sworn or make an affirmation; or

(b) to answer a question,

when required to do so under clause 1.

Penalty: $2 000.

[Clause 4 inserted: No. 20 of 2002 s. 5.]

5. Legal professional privilege overridden

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

[Clause 5 inserted: No. 20 of 2002 s. 5.]

6. Incriminating answers or documents

(1) It is not a lawful excuse for the purposes of clause 4 for a person to refuse to answer a question or produce a book, document or record on the grounds that the answer or the book, document or record might tend to incriminate the person, or make the person liable to a penalty.

(2) Despite subclause (1), an answer given or any statement made for the purposes of clause 4 is not, except in proceedings under clause 2, 3 or 4, admissible in evidence in any civil or criminal proceedings against the person giving the answer or making the statement.

[Clause 6 inserted: No. 20 of 2002 s. 5.]

Schedule 6 — Transitional provisions

[s. 116]

[Heading inserted: No. 39 of 2018 s. 66.]

Division 1 — Preliminary

[Heading inserted: No. 39 of 2018 s. 66.]

1. Terms used

In this Schedule —

amended Act means this Act as amended by the amending Act;

amending Act means the *Industrial Relations Amendment Act 2018*;

commencement day means the day on which the amending Act section 66 comes into operation;

former, in relation to a section, means the section as in force immediately before commencement day;

former acting President — see clause 2(1);

matter includes any application, reference, proceeding or appeal.

[Clause 1 inserted: No. 39 of 2018 s. 66.]

Division 2 — Provisions for President

[Heading inserted: No. 39 of 2018 s. 66.]

2. Acting President: continuation in office

(1) A person who holds the office of acting President immediately before commencement day (the ***former acting President***) may, for a period approved by the Minister, remain in office with the functions and entitlements of the former acting President for the purpose of completing any matter or inquiry not completed by the former acting President before commencement day.

(2) The Minister may extend, or further extend, the period approved under subclause (1) and may do so even if the period has expired.

[Clause 2 inserted: No. 39 of 2018 s. 66.]

3. Past President's pension entitlements

Despite the amendments made by the amending Act section 19(3), former section 20(12) and (13) continues to apply in relation to a person who held office as President or acting President before commencement day or the surviving spouse, de facto partner or child of that person.

[Clause 3 inserted: No. 39 of 2018 s. 66.]

4. Judicial notice of signature and appointment of President

All courts and persons acting judicially must take judicial notice of the official signature of every person who has remained in office under clause 2 or has at any time been or acted in the office of President of the Commission under the Act and of the fact that the person has held or acted in the office.

[Clause 4 inserted: No. 39 of 2018 s. 66.]

Division 3 — Provisions for pending matters

[Heading inserted: No. 39 of 2018 s. 66.]

5. Pending matters

(1) In this clause —

Commission means the Commission constituted by the former acting President, or constituted including the former acting President;

former Act means the Act as in force immediately before commencement day.

(2) A matter is to be dealt with in accordance with the relevant provisions of the amended Act if —

(a) the matter was before the Commission immediately before commencement day; but

(b) the Commission had not begun to hear the matter.

(3) Except as provided in subclauses (4) and (5), if the Commission has begun or completed hearing a matter, but has not finally determined the matter immediately before commencement day, the matter is to continue to be dealt with on or after that day in accordance with the relevant provisions of the former Act.

(4) A matter is to be dealt with in accordance with the relevant provisions of the amended Act if —

(a) the matter was before the Commission immediately before commencement day; and

(b) the Commission has begun or completed hearing a matter, but has not finally determined the matter; and

(c) the former acting President is not in the office of acting President immediately after commencement day, or ceases to remain in office after commencement day.

(5) The Chief Commissioner may, after consulting with the former acting President, direct that —

(a) subclause (3) does not apply to a matter specified in the direction; and

(b) the matter is to be dealt with in accordance with the relevant provisions of the amended Act.

(6) A direction under subclause (5) has effect in accordance with its terms.

[Clause 5 inserted: No. 39 of 2018 s. 66.]

6. Order under former s. 49 does not begin hearing of appeal

An appeal under section 49 has not commenced to be heard merely because an application for an order under section 49(11) in respect of the decision appealed against has been made, heard or determined.

[Clause 6 inserted: No. 39 of 2018 s. 66.]

7. Notices and applications under former s. 55

(1) If a notice published under former section 55(2) in relation to an application refers to the Full Bench, but on commencement day the Full Bench has not begun to hear the application, the reference is taken to be a reference to the Commission in Court Session.

(2) If the hearing of an application made under former section 55 has not begun immediately before commencement day, the application must be dealt with under section 55 of the amended Act.

[Clause 7 inserted: No. 39 of 2018 s. 66.]

8. Summonses under former s. 73

(1) In this clause —

former section 73 summons means a summons issued under former section 73.

(2) A former section 73 summons to appear before the Full Bench on a date that is on or after commencement day —

(a) is taken to be a summons issued under section 73 of the amended Act to appear before the Commission in Court Session on that date; and

(b) is to be dealt with under the amended Act as if it were a summons issued under section 73 of the amended Act to appear before the Commission in Court Session.

[Clause 8 inserted: No. 39 of 2018 s. 66.]

Notes

[1] This is a compilation of the *Industrial Relations Act 1979* and includes the amendments made by the other written laws referred to in the following table [1a]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Industrial Arbitration Act 1979 [9]	114 of 1979	21 Dec 1979	1 Mar 1980 (see s. 2 and *Gazette* 8 Feb 1980 p. 383)
Industrial Arbitration Amendment Act 1980	82 of 1980	5 Dec 1980	5 Dec 1980
Industrial Arbitration Amendment Act 1981	11 of 1981	22 May 1981	22 May 1981
Companies (Consequential Amendments) Act 1982 s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and *Gazette* 25 Jun 1982 p. 2079)
Industrial Arbitration Amendment Act (No. 2) 1982	121 of 1982	9 Dec 1982	9 Dec 1982
Reprint of the *Industrial Arbitration Act 1979* approved 21 Mar 1983 (includes amendments listed above)			
Industrial Arbitration Amendment Act (No. 2) 1984	92 of 1984	29 Nov 1984	Act other than s. 4 and 5: 29 Nov 1984 (see s. 2(1)); s. 4 and 5: 1 Mar 1985 (see s. 2(2) and (3) and *Gazette* 1 Mar 1985 p. 778)
Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984 Pt. II	94 of 1984	11 Dec 1984	1 Mar 1985 (see s. 2(2) and *Gazette* 1 Mar 1985 p. 778)
Reprint of the *Industrial Relations Act 1979* as at 12 May 1985 (includes amendments listed above)			
Industrial Relations Amendment Act 1985	42 of 1985	13 May 1985	13 May 1985 (see s. 2)
Reprint of the *Industrial Relations Act 1979* as at 9 Jun 1985 (does not include amendments in the *Industrial Relations Amendment Act 1985*)			

Short title	Number and year	Assent	Commencement
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3ustr	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)
Judges' Salaries and Pensions Amendment Act 1987 s. 8	82 of 1987	1 Dec 1987	1 Dec 1987 (see s. 2)
The Rural and Industries Bank of Western Australia Act 1987 s. 38	83 of 1987	1 Dec 1987	1 Apr 1988 (see s. 2)
Industrial Relations Amendment Act (No. 4) 1987	119 of 1987	31 Dec 1987	s. 1 and 2: 31 Dec 1987; Act other than s. 1, 2 and 7(1): 4 Mar 1988 (see s. 2 and *Gazette* 4 Mar 1988 p. 665); s. 7(1): 3 Nov 1992 (see s. 2 and *Gazette* 3 Nov 1992 p. 5389)
Acts Amendment (Education) Act 1988 Pt. 6	7 of 1988	30 Jun 1988	8 Jul 1988 (see s. 2 and *Gazette* 8 Jul 1988 p. 2371)
R & I Bank Act 1990 s. 45(1)	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and *Gazette* 28 Dec 1990 p. 6369)
Industrial Relations Amendment Act 1990 [10]	99 of 1990 (as amended by No. 1 of 1995 s. 35)	22 Dec 1990	Act other than s. 10 and 14: 19 Jan 1991 (see s. 2(1)); s. 10: 21 Jun 1991 (see s. 2(2) and *Gazette* 21 Jun 1991 p. 3005)
Reprint of the *Industrial Relations Act 1979* as at 12 Jun 1991 (includes amendments listed above except those in the *Industrial Relations Amendment Act 1990* s. 10 and 14 [11])			
Acts Amendment (Industrial Magistrate's Courts) Act 1991 Pt. 3 [11]	44 of 1991	17 Dec 1991	3 Jan 1992 (see s. 2 and *Gazette* 3 Jan 1992 p. 41)
Western Australian Land Authority Act 1992 s. 49	35 of 1992	23 Jun 1992	1 Jul 1992 (see s. 2(2) and *Gazette* 30 Jun 1992 p. 2869)
Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992 Pt. 4 [12]	40 of 1992	2 Oct 1992	3 Nov 1992 (see s. 2 and *Gazette* 3 Nov 1992 p. 5389)
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Industrial Relations Amendment Act 1993 [13]	15 of 1993	29 Nov 1993	1 Dec 1993 (see s. 2 and *Gazette* 30 Nov 1993 p. 6439)

Short title	Number and year	Assent	Commencement
Reprint of the *Industrial Relations Act 1979* as at 11 May 1994 (includes amendments listed above except those in the *Industrial Relations Amendment Act 1990* s. 14)			
Acts Amendment (Public Sector Management) Act 1994 s. 14	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Taxi Act 1994 s. 50	83 of 1994	20 Dec 1994	10 Jan 1995 (see s. 2 and *Gazette* 10 Jan 1995 p. 73)
Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 7	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and *Gazette* 30 Dec 1994 p. 7211)
Hospitals Amendment Act 1994 s. 18 [14]	103 of 1994 (as amended by No. 79 of 1995 s. 36(4))	11 Jan 1995	3 Feb 1995 (see s. 2 and *Gazette* 3 Feb 1995 p. 333)
Industrial Legislation Amendment Act 1995 [15]	1 of 1995	9 May 1995	Act other than Pt. 3: 9 May 1995 (see s. 2(1)); Pt. 3: 1 Jan 1996 (see s. 2(2) and *Gazette* 24 Nov 1995 p. 5389)
Marketing of Potatoes Amendment Act 1995 s. 58(5)	11 of 1995	30 Jun 1995	4 Sep 1995 (see s. 2 and *Gazette* 1 Sep 1995 p. 4063)
Occupational Safety and Health Legislation Amendment Act 1995 Pt. 4	30 of 1995	11 Sep 1995	20 Jan 1996 (see s. 2 and *Gazette* 19 Jan 1996 p. 201)
Sentencing (Consequential Provisions) Act 1995 Pt. 40	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)
Industrial Relations Legislation Amendment and Repeal Act 1995 [16]	79 of 1995	16 Jan 1996	Act other than Pt. 2 and 5 and s. 12(1), 13, 35, 36 and 66(2): 16 Jan 1996 (see s. 3(1)); s. 66(2): 18 May 1996 (see s. 3(2) and *Gazette* 14 May 1996 p. 2019); s. 12(1): 16 Jul 1996 (see s. 3(2) and *Gazette* 15 Jul 1996 p. 3393); Pt. 2 and s. 35 and 36: 1 Nov 1996 (see s. 3(2) and *Gazette* 1 Nov 1996 p. 5765); Pt. 5: 5 Dec 1997 (see s. 3(2) and *Gazette* 4 Dec 1997 p. 7071); s. 13: 1 Jan 1998 (see s. 3(2) and *Gazette* 31 Dec 1997 p. 7609)

Short title	Number and year	Assent	Commencement
Reprint of the *Industrial Relations Act 1979* as at 27 May 1996 (includes amendments listed above except those in the *Sentencing (Consequential Provisions) Act 1995* and the *Industrial Relations Legislation Amendment and Repeal Act 1995* Pt. 2 and 5 and s. 12(1), 13, 35 and 36)			
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Vocational Education and Training Act 1996 s. 71(1)[17]	42 of 1996	16 Oct 1996	1 Jan 1997 (see s. 2 and *Gazette* 12 Nov 1996 p. 6301)
Labour Relations Legislation Amendment Act 1997	3 of 1997 (as amended by No. 20 of 2002 s. 191(3))	23 May 1997	s. 22-24, 29-33, 35(a) and 38: 23 May 1997 (see s. 2(1)); Pt. 2 and 4: 20 Jun 1997 (see s. 2(2)); s. 34: 17 Oct 1997 (see s. 2(3) and *Gazette* 30 Sep 1997 p. 5415); Pt. 3 and s. 35(b), 36 and 37: 1 Jan 1998 (see s. 2(3) and *Gazette* 31 Dec 1997 p. 7603); Pt. 5: 5 Jun 1998 (see s. 2(3) and *Gazette* 24 Apr 1998 p. 2171)
Reprint of the *Industrial Relations Act 1979* as at 20 Jun 1997 (includes amendments listed above except those in the *Industrial Relations Legislation Amendment and Repeal Act 1995* s. 13 and Pt. 5 and the *Labour Relations Legislation Amendment Act 1997* Pt. 3 and 5 and s. 34, 35(b), 36 and 37)			
School Education Act 1999 s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7904)
Reprint of the *Industrial Relations Act 1979* as at 4 Feb 2000 (includes amendments listed above except those in the *School Education Act 1999*)			
Industrial Relations Amendment Act 2000	58 of 2000	4 Dec 2000	4 Dec 2000 (see s. 2)
Corporations (Consequential Amendments) Act 2001 Pt. 33	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)

Short title	Number and year	Assent	Commencement
Labour Relations Reform Act 2002 Pt. 2 Div. 1-2, Pt. 3 (s. 111-113), Pt. 4-9, Pt. 10 Div. 2, Pt. 11 and Sch. 1	20 of 2002	8 Jul 2002	s. 111(6): 8 Jul 2002 (see s. 2(3)); Pt. 4-9, Pt. 10 Div. 2, Pt. 11 and Sch. 1: 1 Aug 2002 (see s. 2 and *Gazette* 26 Jul 2002 p. 3459); Pt. 2 Div. 1-2, s. 111(1)-(5) and 112: 15 Sep 2002 (see s. 2 and *Gazette* 6 Sep 2002 p. 4487); s. 113: 15 Sep 2003 (see s. 2(4))
Reprint of the *Industrial Relations Act 1979* as at 8 Nov 2002 (includes amendments listed above except those in the *Labour Relations Reform Act 2002* s. 113)			
Police Amendment Act 2003 s. 10	7 of 2003	27 Mar 2003	27 Aug 2003 (see s. 2 and *Gazette* 26 Aug 2003 p. 3753)
Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 12	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and Cwlth *Gazette* 13 Jul 2001 No. S285)
Acts Amendment (Equality of Status) Act 2003 Pt. 31	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Public Transport Authority Act 2003 s. 147	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and *Gazette* 27 Jun 2003 p. 2384)
Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 4 published by Gazette 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 41	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Statutes (Repeals and Minor Amendments) Act 2003 s. 68	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 9: The *Industrial Relations Act 1979* as at 18 Jun 2004 [18] (includes amendments listed above)			
Children and Community Services Act 2004 Sch. 2 cl. 15	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)
Occupational Safety and Health Legislation Amendment and Repeal Act 2004 Pt. 6 Div. 2	51 of 2004	12 Nov 2004	4 Apr 2005 (see s. 2 and *Gazette* 14 Dec 2004 p. 5999-6000)

Short title	Number and year	Assent	Commencement
Courts Legislation Amendment and Repeal Act 2004 Pt. 14	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 s. 469 [19]	55 of 2004	24 Nov 2004	24 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Mines Safety and Inspection Amendment Act 2004 Pt. 7 Div. 2	68 of 2004	8 Dec 2004	4 Apr 2005 (see s. 2(3)(a) and *Gazette* 14 Dec 2004 p. 5999-6000)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78, 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction by Gazette 7 Jan 2005 p. 53))
Reprint 10: The *Industrial Relations Act 1979* as at 8 Jul 2005 [18] (includes amendments listed above except those in the *Children and Community Services Act 2004*)			
Petroleum Legislation Amendment and Repeal Act 2005 s. 49(1), (2)(b), (3) and (4)(b) [20]	13 of 2005	1 Sep 2005	28 Mar 2007 (see s. 2 and *Gazette* 27 Mar 2007 p. 1405)
Industrial Relations Amendment Act 2005	14 of 2005	21 Sep 2005	22 Sep 2005 (see s. 2)
Labour Relations Legislation Amendment Act 2006 Pt. 3-5 and 8 [21]	36 of 2006	4 Jul 2006	4 Jul 2006 (see s. 2(1))
Reprint 11: The *Industrial Relations Act 1979* as at 3 Nov 2006 [18] (includes amendments listed above except those in the *Petroleum Legislation Amendment and Repeal Act 2005*)			
Criminal Investigation (Consequential Provisions) Act 2006 s. 73	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and *Gazette* 22 Jun 2007 p. 2838)
Financial Legislation Amendment and Repeal Act 2006 s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Owner-Drivers (Contracts and Disputes) Act 2007 s. 58	7 of 2007	6 Jun 2007	1 Aug 2008 (see s. 2 and *Gazette* 18 Jul 2008 p. 3329)
Petroleum Amendment Act 2007 s. 97	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and *Gazette* 18 Jan 2008 p. 147)

Short title	Number and year	Assent	Commencement
Acts Amendment (Justice) Act 2008 Pt. 13	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253)
Police Amendment Act 2008 s. 13 and 23(3)	8 of 2008	31 Mar 2008	s. 13: 1 Apr 2008 (see s. 2(1)); s. 23(3): 21 Jun 2008 (see s. 2(2) and *Gazette* 20 Jun 2008 p. 2706)
Legal Profession Act 2008 s. 668	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Medical Practitioners Act 2008 Sch. 3 cl. 30	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Training Legislation Amendment and Repeal Act 2008 s. 53	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))
Reprint 12: The *Industrial Relations Act 1979* as at 2 Jan 2009 [18] (includes amendments listed above except those in the *Legal Profession Act 2008* and the *Training Legislation Amendment and Repeal Act 2008*)			
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 77	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 45	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Occupational Safety and Health Legislation Amendment Act 2009 Pt. 3	36 of 2009	3 Dec 2009	31 Dec 2009 (see s. 2(c))
Police Amendment Act 2009 s. 19	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and *Gazette* 12 Mar 2010 p. 941)
Reprint 13: The *Industrial Relations Act 1979* as at 9 Apr 2010 [18] (includes amendments listed above)			
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 29	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6)
Public Sector Reform Act 2010 s. 109	39 of 2010	1 Oct 2010	28 Mar 2011 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)

Short title	Number and year	Assent	Commencement
Industrial Legislation Amendment Act 2011 Pt. 3	53 of 2011	11 Nov 2011	1 Apr 2012 (see s. 2(b) and *Gazette* 16 Mar 2012 p. 1246)
Reprint 14: The *Industrial Relations Act 1979* as at 24 Aug 2012 [18] (includes amendments listed above)			
Workforce Reform Act 2014 Pt. 2	8 of 2014	20 May 2014	1 Jul 2014 (see s. 2(b) and *Gazette* 27 Jun 2014 p. 2301)
Health Services Act 2016 s. 295	11 of 2016	26 May 2016	1 Jul 2016 (see s. 2(b) and *Gazette* 24 Jun 2016 p. 2291)
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 18	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Universities Legislation Amendment Act 2016 Pt. 7 Div. 4	32 of 2016	19 Oct 2016	2 Jan 2017 (see s. 2(b) and *Gazette* 9 Dec 2016 p. 5557)
Statutes (Repeals) Act 2016 Pt. 2 Div 3 and Pt. 3 Div. 2	50 of 2016	28 Nov 2016	29 Nov 2016 (see s. 2(b))
Reprint 15: The *Industrial Relations Act 1979* as at 3 Nov 2017 [18] (includes amendments listed above)			
Industrial Relations Amendment Act 2018 Pt. 2	39 of 2018	12 Dec 2018	19 Dec 2018 (see s. 2(b) and *Gazette* 18 Dec 2018 p. 4835)

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 75 [7]	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
Police Amendment (Medical Retirement) Act 2019 Pt. 3 [22]	19 of 2019	15 Aug 2019	To be proclaimed (see s. 2(b))

[2] Repealed by the *Fisheries Legislation (Consequential Provisions) Act 1991*. Now see the *Fisheries Management Act 1991* s. 4(1) (Cwlth).

[3] Repealed by the *Offshore Petroleum (Repeals and Consequential Amendments) Act 2006* s. 3 (Cwlth).

[4] Repealed by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth). Now see the *Fair Work Act 2009* (Cwlth).

[5] The *Labour Relations Legislation Amendment Act 1997* s. 22 contains a transitional provision relating to claims made before that section came into operation. Sections 29, 32 and 34 contain transitional provisions in relation to awards, orders and industrial agreements in force when those sections came into operation. Section 29 was amended by the *Labour Relations Reform Act 2002* s. 193(3).

[6] The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section.

[7] On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

> **75. Various provisions repealed**
>
> The provisions listed in the Table to this section are repealed.
>
> **Table of provisions repealed**
>
> | **Act** | **Provision** |
> |---|---|
> | ..... | ..... |
> | *Industrial Relations Act 1979* | s. 20(8), (8a), (8b), (8c), (8d) |

[8] Deleted by the *Public Sector Reform Act 2010* s. 57.

[9] Now known as the *Industrial Relations Act 1979*; short title changed (see note under s. 1).

[10] The *Industrial Relations Amendment Act 1990* s. 14 was deleted before it came into operation by the *Industrial Legislation Amendment Act 1995* s. 35.

[11] The *Acts Amendment (Industrial Magistrate's Courts) Act 1991* s. 6 contains transitional provisions relating to persons who were industrial magistrates when

that section commenced and to proceedings begun and decisions made before that commencement.

[12] The *Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992* s. 9(2) is a transitional provision that is spent.

[13] The *Industrial Relations Amendment Act 1993* s. 15(2) is a transitional provision that is spent. Section 18 of that Act contains savings provisions relating to the Long Service Leave General Order.

[14] The *Hospitals Amendment Act 1994* the Table to s. 18 it. 11 fourth paragraph was deleted before it came into operation by the *Industrial Legislation Amendment and Repeal Act 1995* s. 36(4).

[15] The *Industrial Legislation Amendment Act 1995* contains transitional and other provisions —

(a) in Part 2 Div. 3, relating to the Government School Teachers Tribunal;

(b) in s. 34, relating to the Promotions Appeal Board; and

(c) in s. 42, relating to dismissals occurring before the commencement of that section.

[16] The *Industrial Relations Legislation Amendment and Repeal Act 1995* s. 12 and 13 contain transitional provisions in relation to awards, orders and industrial agreements in force when those sections came into operation.

[17] The *Vocational Education and Training Act 1996* Sch. 2 had not come into operation when it was deleted by the *Training Legislation Amendment and Repeal Act 2008* s. 48.

[18] Reprints before Reprint 9 are not numbered. Reprint 9 and subsequent reprints are numbered consecutively but are out by one number.

[19] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[20] The *Petroleum Legislation Amendment and Repeal Act 2005* s. 49(2)(a) and (4)(a) were repealed by the *Statutes (Repeals and Minor Amendments) Act 2011* s. 24(2).

[21] The *Labour Relations Legislation Amendment Act 2006* s. 22 contains transitional provisions.

[22] On the date as at which this compilation was prepared the *Police Amendment (Medical Retirement) Act 2019* Pt. 3 had not come into operation. It reads as follows:

Part 3 — *Industrial Relations Act 1979* amended

8. Act amended

This Part amends the *Industrial Relations Act 1979*.

9. Section 113 amended

In section 113(1)(d)(i) after "33P" insert:

or 33ZI

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
adopting provision	71A(2)
affected person	23B(1)
alteration	7(1)
amended Act	Sch. 6 cl. 1
amending Act	Sch. 6 cl. 1
applicable order	48A(3)
applicant	97WR
application	103(3)
apprentice	7(1)
arbitration functions	32A(1)
Arbitrator	80C(1), Sch. 3 cl. 1
arbitrator	97WH
area and scope provisions	29A(1a)
association	7(1)
Association	80C(1)
auditor	65
authorised representative	49G
award	7(1), 46(5), 97U(1), 97UG(7)
bargaining agent	51O(1), 97U(1)
bargaining in good faith	42B(2), 51S(2)
Board	80C(1), 80M(1)
Branch	71(1)
breach	103(3)
calling	7(1)
cancellation agreement	97U(1)
canvasser	7(1)
CEO	7(1)
Chamber	7(1)
Chief Commissioner	7(1)
Chief Magistrate	81B(6)
civil penalty provision	7(1)
collective agreement	51O(2)
collegiate electoral system	52
commencement	16(2E)
commencement day	20(8b), Sch. 6 cl. 1
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Commission in Court Session	7(1)
commissioner	7(1)
Commonwealth Act	7(1)

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employing authority ..... 80C(1)
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employment record ..... 7(1)
employment services for persons with disabilities ..... 97U(1)
enterprise ..... 72A(1)
enterprise order ..... 7(1), 42I(1)
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exposure draft ..... 97WA(1)
Fair Work Commission ..... 7(1), 80ZF
final decision ..... 35(1A)
final offer arbitration ..... 7(1)
finance official ..... 74(1)
finding ..... 7(1)
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former ..... Sch. 6 cl. 1
former Act ..... Sch. 6 cl. 5(1)
former acting President ..... Sch. 6 cl. 1, 2(1)

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