



Western Australia

Industrial Relations Legislation Amendment Act 2021

As at 22 Dec 2021

No. 30 of 2021

Published on www.legislation.wa.gov.au

Industrial Relations Legislation Amendment Act 2021

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Industrial Relations Act 1979* amended

3.	Act amended	3
4.	Section 6 amended	3
5.	Section 7 amended	3
6.	Section 10 amended	8
7.	Section 16 amended	9
8.	Section 20 amended	11
9.	Section 22 amended	11
10.	Section 23 amended	12
11.	Section 23A amended	12
12.	Section 26 amended	12
13.	Section 29 amended	13
14.	Section 31 amended	14
15.	Section 37 amended	14
16.	Sections 37A to 37D inserted	14
	37A. Public sector awards and enterprise awards	14
	37B. Private sector awards: general	15
	37C. Private sector awards: limitations on making and varying	16
	37D. Private sector awards: variations of the Commission's own motion	16

Contents

17.	Section 38 amended	18
18.	Section 40 amended	19
19.	Part II Division 2F heading amended	20
20.	Section 49D amended	20
21.	Section 49DA inserted	24
	49DA. Employer obligations in relation to pay slips	24
22.	Section 49E amended	26
23.	Section 49F amended	27
24.	Section 49I amended	27
25.	Section 49K replaced	28
	49K. No entry to premises used for habitation	28
26.	Section 50 amended	29
27.	Section 50A amended	30
28.	Section 50B amended	32
29.	Part II Division 3AA inserted	32
	Division 3AA — Workers bullied or sexually harassed at work	
	51BF. Terms used	32
	51BG. Person conducting a business or undertaking	33
	51BH. Worker	34
	51BI. Worker bullied or sexually harassed at work	35
	51BJ. Stop bullying or sexual harassment application	36
	51BK. Dealing with a stop bullying or sexual harassment application	36
	51BL. Power to dismiss stop bullying or sexual harassment applications involving covert operations	37
	51BM. Commission may make stop bullying or sexual harassment orders	37
	51BN. Contravening stop bullying or sexual harassment order	38
30.	Section 51BJ amended	39
31.	Part II Division 3B replaced	39
	Division 3B — Equal remuneration	
	51O. Equal remuneration orders	39
	51P. Employer not to reduce remuneration	41
	51Q. Alternative remedies	41
	51R. Remuneration-related action	42

32.	Section 52 amended	42
33.	Section 52A inserted	43
	52A. Counterpart federal body	43
34.	Section 55 amended	45
35.	Section 59 amended	45
36.	Section 71 amended	45
37.	Section 71A amended	47
38.	Part 2AA inserted	48
	Part 2AA — Employers declared not to be national system employers	
	Division 1 — Declarations	
80A.	Employers declared not to be national system employers	48
	Division 2 — Change from federal to State system	
80B.	Terms used	48
80BA.	Operation of awards, industrial agreements or orders	49
80BB.	New State instruments	50
80BC.	Amendment of new State instruments	51
80BD.	Ability to carry over matters	52
80BE.	References in new State instruments to federal industrial authority and General Manager	52
80BF.	References in new State instruments to provisions of Commonwealth laws	53
80BG.	References in new State instruments to federal organisations	53
80BH.	Named parties to new State instruments	54
80BI.	Employment under old federal instrument	54
80BJ.	Leave accrued immediately before relevant day	55
80BK.	Leave taken under old federal instrument	55
39.	Section 80E amended	56
40.	Section 80I amended	56
41.	Section 80R amended	56
42.	Part III Division 1 heading inserted	56
	Division 1 — Industrial magistrate's court	
43.	Section 81B amended	56
44.	Section 81CA amended	57
45.	Section 81G inserted	58
	81G. Industrial inspectors may assist industrial magistrate's court	58

46.	Part III Division 2 heading inserted	58
	Division 2 — Enforcement generally	
47.	Section 83 amended	58
48.	Section 83A amended	61
49.	Section 83B amended	62
50.	Section 83C amended	63
51.	Section 83E amended	64
52.	Sections 83EA and 83EB inserted	66
	83EA. Serious contravention of entitlement provision or civil penalty provision	66
	83EB. Employer to have burden of disproving certain allegations by applicant under s. 83	68
53.	Section 84 amended	68
54.	Section 84AA inserted	69
	84AA. Illegal contracts of employment may be treated as valid	69
55.	Section 84A amended	70
56.	Part III Divisions 3 to 5 inserted	70
	Division 3 — Civil infringement notices	
	84B. Terms used	70
	84C. Giving civil infringement notice	71
	84D. Content of civil infringement notice	71
	84E. Amount of civil infringement notice penalty	73
	84F. Time for payment of civil infringement notice penalty	73
	84G. Extension of time to pay civil infringement notice penalty	73
	84H. Withdrawal of civil infringement notice	74
	84I. Effect of payment of civil infringement notice penalty	75
	84J. Refund of civil infringement notice penalty	75
	Division 4 — Enforceable undertakings	
	84K. Terms used	75
	84L. Application of Division	76
	84M. Enforceable undertaking	76
	84N. Enforcement of enforceable undertakings	76
	Division 5 — Compliance notices	
	84O. Terms used	77
	84P. Application of Division	77
	84Q. Giving compliance notice	77
	84R. Relationship with enforceable undertakings	78
	84S. Relationship with proceedings under s. 83	79

	84T. Person must comply with compliance notice	79	
	84U. Review of compliance notices	80	
	84V. Withdrawal of compliance notice	80	
57.	Section 86 amended	81	
58.	Section 91A inserted	81	
	91A. Court's power to order costs and expenses	81	
59.	Section 93 amended	82	
60.	Section 96 amended	82	
61.	Part 6B inserted	82	
	Part 6B — Protection of employee rights		
	Division 1 — Preliminary		
	97. Terms used	82	
	Division 2 — Damaging action		
	97A. Damaging action because of inquiry or complaint	83	
	97B. Court orders to employers	84	
	97C. Court orders to third parties	85	
	Division 3 — Sham contracts for services		
	97D. Misrepresenting contract of employment as contract for services	85	
	97E. Dismissing to engage under contract for services	86	
	97F. False statement to engage under contract for services	86	
	97G. Court orders to employers	87	
	Division 4 — Miscellaneous		
	97H. Certain advertising prohibited	88	
62.	Section 97U amended	88	
63.	Section 97UF amended	89	
64.	Section 97YA amended	89	
65.	Section 98 amended	89	
66.	Section 98A inserted	93	
	98A. Information obtained under s. 98 not to be disclosed	93	
67.	Section 102 amended	94	
68.	Section 103 amended	95	
69.	Section 112A amended	95	
70.	Section 117 inserted	96	
	117. Savings and transitional provisions for <i>Industrial Relations Legislation Amendment Act 2021</i>	96	

71.	Schedule 4 amended	97
72.	Various penalties amended	97
73.	Various references to “prescribed” amended	100
74.	Various references to “Federal” amended	101
75.	Various references to titles amended	101
76.	Various references to “shall” replaced	105
77.	Various references to gender removed	116
78.	Various other modernisations	129

**Part 3 — Courts and Tribunals
(Electronic Processes
Facilitation) Act 2013 amended**

79.	Act amended	137
80.	Section 6 amended	137

**Part 4 — Long Service Leave Act 1958
amended**

81.	Act amended	138
82.	Part II Division 1 heading inserted	138
	Division 1 — General	
83.	Section 4 amended	138
84.	Sections 5 and 6 replaced	140
	4A. Employees with equivalent separate LSL entitlements	140
	5. Cashing out of accrued long service leave	141
	6. Continuous employment	142
	6A. Calculating length of continuous employment	145
85.	Part II Division 2 heading inserted	146
	Division 2 — Ordinary pay	
86.	Section 7 replaced	146
	7. Ordinary pay: general	146
	7A. Ordinary pay: shift premiums, overtime, penalty rates or allowances	148
	7B. Ordinary pay: casual employees' loading	148
	7C. Ordinary pay: board and lodging	149
87.	Part II Division 3 inserted	149
	Division 3 — Transfer of business	
	7D. Terms used	149
	7E. Transfer of business, old employer, new employer, transferring work	150

7F.	Transferring employee	150
7G.	Connection between old employer and new employer	150
7H.	Status of transferring employees on transfer of business	152
7I.	Transfer of employment records	152
88.	Part III heading amended	152
89.	Section 8 amended	153
90.	Section 9 amended	153
91.	Section 11 amended	155
92.	Section 26 amended	156
93.	Section 26A amended	158
94.	Section 39 amended	159
95.	Part 8 inserted	159
	Part 8 — Savings provisions for <i>Industrial Relations Legislation Amendment Act 2021</i>	
40.	Terms used	159
41.	Business transmitted before commencement day	159
96.	Various references to “shall” replaced	160
97.	Various references to gender removed	160
98.	Various other modernisations	161
	Part 5 — <i>Minimum Conditions of Employment Act 1993</i> amended	
99.	Act amended	163
100.	Section 3 amended	163
101.	Section 5 amended	164
102.	Section 7 replaced	164
	7. Enforcement of minimum conditions	164
103.	Section 8 amended	165
104.	Section 9 deleted	165
105.	Section 9A amended	165
106.	Section 9B amended	165
107.	Part 3 Division 1 heading inserted	165
	Division 1 — General	
108.	Section 10 amended	166
109.	Part 3 Division 2 inserted	166
	Division 2 — Employees with disabilities	
15.	Terms used	166

	16.	Application of Act to employee with disability	168	
	17.	Minimum pay for employee with disability	168	
110.		Section 17A amended		169
111.		Section 17B replaced		170
	17B.	Employee not to be compelled to accept other than money for pay	170	
112.		Section 17BA inserted		171
	17BA.	Employees and prospective employees not to be unreasonably compelled to spend or pay amount	171	
113.		Section 17C amended		173
114.		Section 17E inserted		174
	17E.	Certain terms of no effect	174	
115.		Section 18 amended		175
116.		Part 4 Division 2 replaced		177
		Division 2 — Personal leave		
	19.	Personal leave	177	
	20.	Entitlement to paid personal leave	177	
	21.	Entitlement to unpaid personal leave	178	
	22.	Certain matters as to personal leave not minimum conditions	179	
	22A.	Employee to prove entitlements to personal leave	179	
117.		Part 4 Division 7 inserted		179
		Division 7 — Unpaid family and domestic violence leave		
	39A.	Terms used	179	
	39B.	Entitlement to unpaid family and domestic violence leave	180	
	39C.	Taking unpaid family and domestic violence leave	181	
	39D.	Employee to prove entitlements to unpaid family and domestic violence leave	181	
	39E.	Confidentiality	181	
118.		Part 6 deleted		182
119.		Part 8 inserted		182
		Part 8 — Transitional provisions for <i>Industrial Relations Legislation Amendment Act 2021</i>		
	48.	Term used: commencement day	182	
	49.	Employees with disabilities	182	
	50.	“Under rate employee” provisions in awards	183	
120.		Schedule 1 amended		185
121.		Various references to gender removed		185

Part 6 — *Public and Bank Holidays Act 1972* amended

122.	Act amended	187
123.	Section 3 amended	187
124.	Second Schedule amended	188

Part 7 — Consequential amendments to *Work Health and Safety Act 2020*

Division 1 — *Work Health and Safety Act 2020* amended

Subdivision 1 — Preliminary

125.	Act amended	189
------	-------------	-----

Subdivision 2 — Amendments if this Act commences before *Work Health and Safety Act 2020*

126.	Section 360 amended	189
127.	Section 361 amended	189

Subdivision 3 — Other amendments linked to commencement of this Act

128.	Schedule 1 amended	190
------	--------------------	-----

Division 2 — Provisions that do not commence and are deleted in certain circumstances

129.	Non-commencement and deletion of Division 1 Subdivision 2	191
------	---	-----



Western Australia

Industrial Relations Legislation Amendment Act 2021

No. 30 of 2021

An Act —

- to amend the *Industrial Relations Act 1979*, the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*, the *Long Service Leave Act 1958*, the *Minimum Conditions of Employment Act 1993* and the *Public and Bank Holidays Act 1972*; and
- to make consequential amendments to the *Work Health and Safety Act 2020*.

[Assented to 22 December 2021]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Industrial Relations Legislation Amendment Act 2021*.

2. Commencement

- (1) This Act comes into operation as follows —
 - (a) Part 1 — on the day on which this Act receives the Royal Assent;
 - (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
- (2) Subsection (1)(b) is subject to sections 5(3), 30 and 128.

Part 2 — *Industrial Relations Act 1979* amended

3. Act amended

This Part amends the *Industrial Relations Act 1979*.

4. Section 6 amended

In section 6(ac) delete “remuneration for men and women for work of equal value; and” and insert:

remuneration; and

5. Section 7 amended

- (1) In section 7(1) delete the definitions of:

award

canvasser

Commonwealth Act

employee

employer

Fair Work Commission

- (2) In section 7(1) insert in alphabetical order:

approved form means a form approved by the Chief Commissioner for the purposes of the provision in which the term is used;

award —

- (a) means an award made by the Commission under this Act; and
- (b) for the purposes of section 37C(1), includes an award made under a law of the Commonwealth,

another State or a Territory extending to and binding employees;

employee means —

- (a) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or
- (b) a person whose usual status is that of an employee;

employer means —

- (a) a person or public authority employing 1 or more employees; or
- (b) except as provided in the *Foreign States Immunities Act 1985* (Commonwealth) section 12, a foreign state or consulate employing 1 or more employees; or
- (c) 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;

enterprise award means an award that extends to and binds a single employer who is not a body or entity referred to in the definition of public sector award;

entitlement provision means —

- (a) a provision of any of the following —
 - (i) an award;
 - (ii) an industrial agreement;
 - (iii) an employer-employee agreement;

- (iv) an order made by the Commission,
other than an order made under
section 23A, 32(8), 44(6) or 66;

or

- (b) a provision of the LSL Act Part III; or
- (c) a minimum condition of employment as
defined in the MCE Act section 3(1);

equal remuneration means equal remuneration for men and women for work of equal or comparable value;

equal remuneration order has the meaning given in section 51O(2);

federal organisation means an organisation of employees registered under the FW (Registered Organisations) Act;

FW Act means the *Fair Work Act 2009* (Commonwealth);

FW Commission means the body established by the FW Act section 575;

FW (Registered Organisations) Act means the *Fair Work (Registered Organisations) Act 2009* (Commonwealth);

FW (Transitional) Act means the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Commonwealth);

industrial instrument means —

- (a) an award; or
- (b) an order of the Commission under this Act; or
- (c) an industrial agreement; or
- (d) for the purposes of section 49D or in relation to a SWIIP — an employer-employee agreement;

LSL Act means the *Long Service Leave Act 1958*;

MSI Act means the *Mines Safety and Inspection Act 1994*;

OSH Act means the *Occupational Safety and Health Act 1984*;

private sector award means an award other than a public sector award or enterprise award;

produce includes exhibit, send or deliver;

public sector award means an award that only extends to and binds the following —

- (a) a public sector body as defined in the *Public Sector Management Act 1994* section 3(1);
- (b) an entity specified in the *Public Sector Management Act 1994* Schedule 1 column 2;

record-related civil penalty provision means the following —

- (a) section 49D(1), (6) or (8);
- (b) section 49DA(1) or (3);
- (c) section 49E(1);
- (d) section 102(1)(a);
- (e) the LSL Act section 7I(2), 26(1) or (2) or 26A(1);

serious contravention has the meaning given in section 83EA(2);

supported wage industrial instrument provision or **SWIIP** means a provision of an industrial instrument that —

- (a) applies to an employee with a disability; and
- (b) provides a means (a **wage assessment tool**) for the assessment of whether, and the extent to which, the employee's productive capacity is reduced because of the disability; and

- (c) provides that the employer may pay a wage that —
 - (i) relates to the employee’s productive capacity as assessed using the wage assessment tool; and
 - (ii) may be less than the applicable minimum wage in the industrial instrument;

Supported Wage System or ***SWS*** means the scheme known by that name established by the Commonwealth Government to enable the assessment of whether, and the extent to which, a person’s productive capacity is reduced because of a disability;

- (3) In section 7(1) delete the definitions of:

MSI Act

OSH Act

Notes for this subsection:

1. If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation on or before the day on which subsection (2) comes into operation, this subsection will be proclaimed to come into operation on the same day as subsection (2).
2. If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation after the day on which subsection (2) comes into operation, this subsection will be proclaimed to come into operation on the day on which Part 15 Division 4 Subdivision 5 of that Act comes into operation.

- (4) In section 7(1) in the definition of ***industry*** delete paragraph (b) and insert:

- (b) the performance of the functions of any public authority;

s. 6

- (5) In section 7(1) in the definition of *public authority* after “means” insert:

the Crown,

- (6) After section 7(1a) insert:

- (2) In subsection (2A) —
bullying or sexual harassment means behaviour to which section 51BI(1) or (3) applies;
worker has the meaning given in section 51BH.

- (2A) A matter relating or pertaining to the bullying or sexual harassment of a worker is an industrial matter.

- (7) Delete section 7(5).

- (8) In section 7(7) delete “section 29(1)(b)(ii)” and insert:

section 29(1)(d)

6. Section 10 amended

In section 10:

- (a) delete “attained the age of 65 years” and insert:

reached 70 years of age

- (b) delete “attaining the age of 65 years.” and insert:

reaching 70 years of age.

7. Section 16 amended

- (1) In section 16(1) delete “(1aa)” and insert:

(1AA)

- (2) Delete section 16(1aa) and insert:

- (1AA) The Chief Commissioner is responsible for matters of an administrative nature relating to the Commission and commissioners, including the following —
- (a) giving directions about the practices and procedures to be followed by the Commission;
 - (b) developing and implementing performance standards and setting benchmarks for the Commission;
 - (c) overseeing the proper use of the resources of the Commission;
 - (d) managing the business of the Commission, including by ensuring that the Commission operates efficiently and effectively and continually improves the way in which it carries out its functions;
 - (e) providing leadership and guidance to the Commission and engendering cohesiveness and collaboration amongst commissioners;
 - (f) being responsible for promoting the training, education and professional development of commissioners.

s. 7

- (3) After section 16(1ac) insert:
- (1AD) Except as provided in subsection (1AE), subsections (1AA) to (1ac) apply, with the necessary modifications, to commissioners appointed under section 81B(2A) as industrial magistrates.
 - (1AE) Directions under subsection (1AA)(a) cannot limit the judicial independence of commissioners appointed as industrial magistrates.
- (4) Delete section 16(2D) and (2E).
- (5) If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation on or before the day on which section 5(2) of this Act comes into operation, subsection (4) —
- (a) does not come into operation; and
 - (b) is deleted when section 5(2) of this Act comes into operation.

Notes for this subsection:

1. If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation after the day on which section 5(2) of this Act comes into operation, see Part 7 Division 1 Subdivision 2.
2. See also section 129.

- (6) After section 16(3) insert:
- (4) The Chief Commissioner may do all things necessary or convenient to be done in the performance of the Chief Commissioner's functions.

8. Section 20 amended

After section 20(2) insert:

- (3) If a commissioner has, under section 81B(2A), been appointed as an industrial magistrate, the commissioner's remuneration must be the higher of that provided under —
 - (a) subsection (2); or
 - (b) the *Magistrates Court Act 2004* Schedule 1 clause 5(2).
- (4) The Chief Commissioner may, in exceptional circumstances, approve the taking by a commissioner appointed as an industrial magistrate of paid sick leave in addition to any paid sick leave that the commissioner's conditions of service may have entitled the commissioner to take.
- (5) A commissioner appointed as an industrial magistrate may, subject to section 22(3), at the same time hold the office of commissioner and industrial magistrate but not otherwise.

9. Section 22 amended

After section 22(2) insert:

- (3) A commissioner appointed as an industrial magistrate must not work as a legal practitioner (whether for financial reward or not), or engage in other work for financial reward, outside the functions of a commissioner and industrial magistrate, unless permitted to do so by the Governor.

s. 10

10. Section 23 amended

In section 23(3)(c) before “make” insert:

except as provided in section 49K(3),

11. Section 23A amended

Delete section 23A(2) and insert:

- (2) In determining whether the dismissal of an employee was harsh, oppressive or unfair the Commission must have regard to the following —
- (a) whether, at the time of the dismissal, the employee —
 - (i) was employed for a probationary period agreed between the employer and employee; and
 - (ii) had been employed on that basis for a period of less than 3 months;
 - (b) whether, at the time of the dismissal, the employee was employed in a private home to provide services directly to the employer or a member of the employer’s family or household.

12. Section 26 amended

In section 26(2B) in the definition of *public sector decision* paragraph (c) delete “decision that” and insert:

decision (except an equal remuneration order) that

13. Section 29 amended

- (1) Delete section 29(1)(b) and insert:
- (b) except as provided in section 51Q(2), in the case of an equal remuneration order — by an application made by any of the following —
 - (i) an employee to be covered by the order;
 - (ii) an organisation in which employees to be covered by the order are eligible to be enrolled as members;
 - (iii) an organisation in which employers of employees to be covered by the order are eligible to be enrolled as members;
 - (iv) UnionsWA;
 - (v) the Chamber;
 - (vi) the Minister;
 - (vii) the Commissioner for Equal Opportunity;and
 - (c) in the case of a claim by an employee that the employee has been harshly, oppressively or unfairly dismissed from the employee's employment — by the employee; and
 - (d) in the case of a claim by an employee that the employer has not allowed the employee a benefit, other than a benefit under an award or order, to which the employee is entitled under the contract of employment — by the employee; and
 - (e) in the case of an industrial matter mentioned in section 7(2A) — by the worker.

s. 14

- (2) In section 29(2) and (3) delete “subsection (1)(b)(i)” and insert:

subsection (1)(c)

14. Section 31 amended

In section 31(1)(c)(ii) delete “section 29(1)(b)” and insert:

section 29(1)(c) or (d)

15. Section 37 amended

Delete section 37(1) and insert:

- (1) An award has effect according to its terms.
- (2) Except as provided in its terms, an award operates throughout the State, other than in the areas to which section 3(1) applies.

Note: The heading to amended section 37 is to read:

Effect, area of operation and duration of award

16. Sections 37A to 37D inserted

After section 37 insert:

37A. Public sector awards and enterprise awards

Except as provided in its terms, a public sector award or enterprise award extends to and binds —

- (a) employees employed in a calling specified in the award in the industry or industries to which the award applies; and

- (b) employers employing those employees.

37B. Private sector awards: general

- (1) Except as provided in its terms, a private sector award extends to and binds —
 - (a) employers —
 - (i) of a class or classes specified in the award; or
 - (ii) specified by name in the award;and
 - (b) employees —
 - (i) of employers referred to in paragraph (a); and
 - (ii) of a class or classes specified in the award.
- (2) For the purposes of subsection (1)(a)(i) and (b)(ii), the class may be described by reference to —
 - (a) a particular industry or part of an industry; or
 - (b) a particular kind of work.
- (3) A private sector award may be made or varied to —
 - (a) prevent any overlap with another award; and
 - (b) extend to and bind a labour hire agency, and any employees of a labour hire agency, conducting business —
 - (i) in an industry to which the award relates; and
 - (ii) in relation to employees to whom a classification in the award applies.

37C. Private sector awards: limitations on making and varying

- (1) A private sector award must not be made or varied to extend to and bind a class of employees —
 - (a) who, because of the seniority of their role, have traditionally not been covered by awards (whether made under laws of the State, the Commonwealth, another State or a Territory);
or
 - (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Example for this subsection:

In some industries, managerial employees have traditionally not been covered by awards.

- (2) The scope of a private sector award must not be fixed by reference to an industry or part of an industry carried on by an employer if the Commission makes or varies the private sector award to extend to and bind an employer specified by name in the award.
- (3) A private sector award must not be made or varied to extend to and bind an employee and employer if a public sector award or enterprise award extends to and binds the employee and employer.

37D. Private sector awards: variations of the Commission's own motion

- (1) Except as provided in this section, the Commission may vary the scope of a private sector award of its own motion.

- (2) A variation must not be made in relation to —
 - (a) an application under section 50(2) that does not seek the variation of the scope of the private sector award; or
 - (b) a State Wage order under section 50A.
- (3) A variation must specify that the scope of the private sector award extends to and binds —
 - (a) employers of a class or classes specified in the award, whether or not the employers are also specified by name in the award; and
 - (b) employees —
 - (i) of employers referred to in paragraph (a); and
 - (ii) of a class or classes specified in the award.
- (4) For the purposes of subsection (3)(a) and (b)(ii), the class may be described by reference to —
 - (a) a particular industry or part of an industry; or
 - (b) a particular kind of work.
- (5) A variation that stops the private sector award from extending to and binding particular employers or employees must not be made unless the Commission is satisfied that another appropriate award will extend to and bind them.
- (6) The Commission must not make a variation under this section until it has —
 - (a) published the proposed variation in the required manner; and

s. 17

- (b) given notice of the proposed variation to —
 - (i) UnionsWA, the Chamber, the Mines and Metals Association and the Minister; and
 - (ii) any organisations, associations and employers as the Commission may direct (being, in the case of employers, employers constituting, in the opinion of the Commission, a sufficient number of employers reasonably representative of the employers who would be bound by the proposed variation);and
- (c) afforded the persons or bodies referred to in paragraph (b) an opportunity to be heard in relation to the proposed variation.

17. Section 38 amended

- (1) In section 38(3):

- (a) delete “an award” and insert:

a public sector award or enterprise award

- (b) delete “shall for the purposes of section 37(1) be expressly limited to that industry.” and insert:

is expressly limited to that industry for the purposes of section 37A.

- (2) In section 38(4) delete “an award” and insert:

a public sector award or enterprise award

18. Section 40 amended

- (1) In section 40(1) delete “sections 29A” and insert:

sections 29A, 37C, 37D(5)

- (2) After section 40(2) insert:

- (2A) A variation to the scope of a private sector award must specify that it extends to and binds —

(a) employers of a class or classes specified in the award, whether or not the employers are also specified by name in the award; and

(b) employees —

(i) of employers referred to in paragraph (a); and

(ii) of a class or classes specified in the award.

- (2B) For the purposes of subsection (2A)(a) and (b)(ii), the class may be described by reference to —

(a) a particular industry or part of an industry; or

(b) a particular kind of work.

Note: The heading to amended section 40 is to read:

Varying and cancelling awards generally

19. Part II Division 2F heading amended

In the heading to Part II Division 2F after “**records**” insert:

and pay slips

20. Section 49D amended

(1) Delete section 49D(1) and insert:

(1) Employment records relating to an employee must be kept in accordance with this section.

(2) In section 49D(2):

(a) delete “details are recorded of —” and insert:

the following employment records are kept —

(b) in paragraph (a) delete “birth; and” and insert:

birth;

(c) after paragraph (a) insert:

(aa) the employer’s name and Australian Business Number (if any);

(d) in paragraph (b) delete “applies; and” and insert:

applies;

- (e) in paragraph (c) delete “employer; and” and insert:

employer;
- (f) after paragraph (d)(iii) delete “and”;
- (g) in paragraph (e)(ii) delete “the industrial instrument; and” and insert:

an industrial instrument or the MCE Act and any amount withheld as tax; and
- (h) after paragraph (e)(iii) delete “and”;
- (i) after paragraph (e) insert:
 - (ea) any incentive based payment, bonus, loading, penalty rates or another monetary allowance or separately identifiable entitlement;
- (j) in paragraph (f) delete “unpaid; and” and insert:

unpaid;
- (k) delete paragraph (g) and insert:
 - (fa) any agreement under the MCE Act section 8(1), including details of —
 - (i) the benefit for, and the amount of, annual leave that was foregone; and
 - (ii) when the benefit was paid;

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

- (l) in paragraph (h) delete “the industrial instrument to be recorded; and” and insert:

an industrial instrument to be recorded;

- (m) in paragraph (i) delete “the industrial instrument.” and insert:

an industrial instrument or other entitlement provision;

- (n) after paragraph (i) insert:
 - (j) the following matters relating to superannuation —
 - (i) the amount of the superannuation contributions made;
 - (ii) the period over which the superannuation contributions were made;
 - (iii) the date on which each superannuation contribution was made;
 - (iv) the name of any fund to which a superannuation contribution was made;
 - (v) how the employer worked out the amount of superannuation owed;

- (vi) any election made by the employee as to the fund to which the contributions are to be made and the date the election was made;
 - (k) termination-related matters, including —
 - (i) whether the employee’s employment was terminated by consent, notice, summarily or in some other specified manner; and
 - (ii) the name of the person who terminated the employee’s employment.
- (3) In section 49D(3):
- (a) in paragraph (b) after “to” insert:

annual and
 - (b) in paragraph (c) delete “entry” and insert:

employment record
- (4) Delete section 49D(4) and insert:
- (4) An employer who enters into an agreement under the MCE Act section 8(1) must ensure that a copy of the agreement is kept as an employment record.
 - (5) If the SWS or a SWIIP applies to an employee with a disability, an employer must ensure that the following are kept as employment records in relation to the employee —
 - (a) any agreement entered into under the SWS or a SWIIP by the employer and the employee;

s. 21

- (b) any other document required to be kept by the SWS or a SWIIP relating to the determination of a wage for the employee.
- (6) The employer must, as soon as practicable, lodge with the Registrar a copy of an agreement entered into under the SWS that is required to be kept under subsection (5)(a).
- (7) If an employer makes a payment to an employee in cash, the employer must provide a record of payment to the employee and ensure that a copy of the record of payment is kept as an employment record.
- (8) An employer must not make or keep an employment record for the purposes of this section that the employer knows, or could reasonably be expected to know, is false or misleading.
- (9) Subsection (8) does not apply if the employment record is not false or misleading in a material particular.

21. Section 49DA inserted

After section 49D insert:

49DA. Employer obligations in relation to pay slips

- (1) An employer must, in accordance with this section, give a pay slip (in hard copy or electronic form) to each employee within 1 working day after paying an amount to the employee in relation to the performance of work.
- (2) The pay slip must include the following information —
 - (a) the employer's name and Australian Business Number (if any);

- (b) the employee's name;
- (c) the period to which the pay slip relates;
- (d) the date on which the payment referred to in the pay slip was made;
- (e) the gross and net amounts of the payment and any amount withheld as tax;
- (f) any incentive based payment, or payment of a bonus, loading, penalty rates or another monetary allowance or separately identifiable entitlement;
- (g) if an amount is deducted from the gross amount of the payment —
 - (i) the name of the person in relation to whom or which the deduction was made; and
 - (ii) if the deduction was paid into a fund or account — the name, or the name and number, of the fund or account; and
 - (iii) the purpose of the deduction;
- (h) if the employee is paid at an hourly rate of pay —
 - (i) the rate of pay for the employee's ordinary hours; and
 - (ii) the number of hours worked during the period to which the pay slip relates; and
 - (iii) the amount of the payment made at that rate;
- (i) if the employee is paid at a weekly or an annual rate of pay — the rate as at the latest date to which the payment relates;

- (j) if the employer is required to make superannuation contributions for the benefit of the employee —
 - (i) the amount of each contribution that the employer made during the period to which the pay slip relates and the name, or the name and number, of any fund to which the contribution was made; or
 - (ii) the amounts of contributions that the employer is liable to make in relation to the period to which the pay slip relates, and the name, or the name and number, of any fund to which the contributions will be made.
- (3) An employer must not give a pay slip for the purposes of this section if the pay slip is false or misleading.
- (4) Subsection (3) does not apply if —
 - (a) the employer gives the pay slip without knowing, or being reasonably expected to know, that it is false or misleading; or
 - (b) the pay slip is not false or misleading in a material particular.

22. Section 49E amended

In section 49E(2)(a):

- (a) after “the” insert:

employment

(b) delete “section 49D(3); and” and insert:

section 49D; and

23. Section 49F amended

In section 49F delete “section 49D(2), 49D(3)” and insert:

section 49D(1), (6) or (8), 49DA(1) or (3)

24. Section 49I amended

(1) In section 49I(1) delete “*Long Service Leave Act 1958*, the MCE Act, the *Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994*” and insert:

LSL Act, the MCE Act, the OSH Act, the MSI Act, the *Construction Industry Portable Paid Long Service Leave Act 1985*

(2) If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation on or before the day on which section 5(2) of this Act comes into operation, subsection (1) —

- (a) does not come into operation; and
- (b) is deleted when section 5(2) of this Act comes into operation.

- (3) In section 49I(1) delete “*Long Service Leave Act 1958*, the MCE Act, the *Work Health and Safety Act 2020*” and insert:

LSL Act, the MCE Act, the *Work Health and Safety Act 2020*, the *Construction Industry Portable Paid Long Service Leave Act 1985*

- (4) If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation after the day on which section 5(2) of this Act comes into operation, subsection (3) —
- (a) does not come into operation; and
 - (b) is deleted when section 5(2) of this Act comes into operation.

Notes for subsections (2) to (4):

1. If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation after the day on which section 5(2) of this Act comes into operation, see also Part 7 Division 1 Subdivision 2.
2. See also section 129.

- (5) In section 49I(2)(c) delete “view” and insert:

view, and take photographs, films and audio, video or other recordings of,

25. Section 49K replaced

Delete section 49K and insert:

49K. No entry to premises used for habitation

- (1) Except as provided in subsection (3), an authorised representative does not have authority under this Division to enter any part of premises principally used

for habitation by an employer or a member of the employer's household (*habitation premises*).

- (2) An authorised representative may apply to the Commission for an order permitting the authorised representative to enter habitation premises under section 49I(1).
- (3) The Commission may make the order only if it is satisfied that exceptional circumstances exist warranting the making of the order.

26. Section 50 amended

After section 50(4) insert:

- (5) A General Order that varies the scope of a private sector award must specify that it extends to and binds —
 - (a) employers of a class or classes specified in the award, whether or not the employers are also specified by name in the award; and
 - (b) employees —
 - (i) of employers referred to in paragraph (a); and
 - (ii) of a class or classes specified in the award.
- (6) For the purposes of subsection (5)(a) and (b)(ii), the class may be described by reference to —
 - (a) a particular industry or part of an industry; or
 - (b) a particular kind of work.

s. 27

27. Section 50A amended

(1) Before section 50A(1) insert:

(1AA) In this section —

instrument-governed employee with a disability means an employee —

- (a) whose contract of employment is governed by an industrial instrument that includes a SWIIP that incorporates the SWS; and
- (b) whose productive capacity has been assessed under the SWS as being reduced because of a disability; and
- (c) who is not employed by a supported employment service as defined in the *Disability Services Act 1986* (Commonwealth) section 7; and
- (d) who is being paid a weekly rate of pay determined by the SWS under the SWIIP.

(2) In section 50A(1):

(a) in paragraph (a) delete “setting —” and insert:

setting the following —

(b) after paragraph (a)(ii) insert:

- (iii) the minimum amount payable under the MCE Act section 17(2);

- (c) delete paragraph (d) and insert:
- (d) setting out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under this Act to —
- (i) set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment; and
 - (ii) ensure employees receive equal remuneration.
- (3) After section 50A(1) insert:
- (1A) The amount set by the Commission under subsection (1)(a)(iii) must be the same as that set by the FW Commission in the national minimum wage order under the FW Act section 285(2)(c) for an eligible employee whose productive capacity is, under the SWS, assessed as reduced because of a disability.
- (1B) For the purposes of subsection (1)(b), the Commission must, in relation to an instrument-governed employee with a disability, order the highest of the following —
- (a) that the minimum amount payable is to be the same as in the previous State Wage order;
 - (b) that the minimum amount payable is to be the same as that set by the FW Commission in the national minimum wage order under the FW Act section 285(2)(c) for an eligible employee whose productive capacity is, under the SWS, assessed as reduced because of a disability.

s. 28

- (4) In section 50A(3)(a)(vii) delete “remuneration for men and women for work of equal or comparable value;” and insert:

remuneration;

28. Section 50B amended

In section 50B(1) delete “section 50A(1)(a)(ii) and (iii),” and insert:

section 50A(1)(a)(ii),

29. Part II Division 3AA inserted

After Part II Division 3 insert:

Division 3AA — Workers bullied or sexually harassed at work

51BF. Terms used

In this Division —

bullied, at work, has the meaning given in section 51BI(1);

person conducting a business or undertaking includes a public authority conducting the business or undertaking;

sexually harassed, at work, has the meaning given in section 51BI(3);

stop bullying or sexual harassment application has the meaning given in section 51BJ(1);

stop bullying or sexual harassment order has the meaning given in section 51BM(1);

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses);

WA Police means the Police Force of Western Australia provided for by the *Police Act 1892*;

worker has the meaning given in section 51BH.

51BG. Person conducting a business or undertaking

- (1) A reference in section 51BH to a person conducting a business or undertaking includes a reference to the following —
 - (a) a person conducting the business or undertaking —
 - (i) whether alone or with others; and
 - (ii) whether or not for profit or gain;
 - (b) a partnership, or an unincorporated association, conducting the business or undertaking;
 - (c) in the case of a partnership (other than an incorporated partnership) referred to in paragraph (b) — each partner in the partnership.
- (2) A reference in section 51BH to a person conducting a business or undertaking does not include a reference to the following —
 - (a) an individual engaged solely as a worker in the business or undertaking;
 - (b) in the case of a business or undertaking conducted by a local government or a regional local government — a member of the council of the local government or regional local government;

- (c) a volunteer association;
 - (d) a person of a prescribed class.
- (3) In subsection (2)(c) —
- volunteer association*** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

51BH. Worker

- (1) A person is a ***worker*** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as any of the following —
- (a) an employee;
 - (b) a contractor or subcontractor;
 - (c) an employee of a contractor or subcontractor;
 - (d) an employee of a labour hire agency who has been assigned to work in the person's business or undertaking;
 - (e) an outworker;
 - (f) an apprentice or trainee;
 - (g) a student gaining work experience;
 - (h) a volunteer;
 - (i) a person of a prescribed class.
- (2) A police officer is —
- (a) a worker of WA Police; and
 - (b) at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.
- (3) A person conducting the business or undertaking referred to in subsection (1) is also a ***worker*** if the

person is an individual who carries out work in that business or undertaking.

51BI. Worker bullied or sexually harassed at work

- (1) A worker is ***bullied*** at work if, while the worker is at work —
 - (a) an individual, or group of individuals, repeatedly behaves unreasonably towards —
 - (i) the worker; or
 - (ii) a group of workers of which the worker is a member;
 - and
 - (b) that behaviour creates a risk to the safety or health of the worker.
- (2) Subsection (1) does not apply to reasonable management action carried out in a reasonable manner.
- (3) A worker is ***sexually harassed*** at work if, while the worker is at work, an individual, or group of individuals —
 - (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the worker in circumstances a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the worker would be offended, humiliated or intimidated; or
 - (b) engages in other unwelcome conduct of a sexual nature in relation to the worker in circumstances a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the worker would be offended, humiliated or intimidated.

- (4) In subsection (3)(b) —
- conduct of a sexual nature***, in relation to a worker, includes the following —
- (a) making to, or in the presence of, the worker or another person a statement of a sexual nature concerning the worker, whether by visual, oral, written or electronic communication;
 - (b) publishing a statement of a sexual nature concerning the worker on the Internet or any other form of communication.

51BJ. Stop bullying or sexual harassment application

- (1) A worker who reasonably believes that the worker has been bullied or sexually harassed at work may make an application (a ***stop bullying or sexual harassment application***) to the Commission for a stop bullying or sexual harassment order.
- (2) The application must be accompanied by any fee prescribed by the regulations.

51BK. Dealing with a stop bullying or sexual harassment application

- (1) The Commission must start to deal with a stop bullying or sexual harassment application within 14 days after the application is made.
- (2) Section 44 does not apply to a stop bullying or sexual harassment application.
- (3) Section 48A(2) or any other enactment providing for the resolution of grievances or disputes by workers does not limit the power of the Commission to deal with a stop bullying or sexual harassment application under this Division.

51BL. Power to dismiss stop bullying or sexual harassment applications involving covert operations

- (1) In this section —
exercise of a power includes the performance of a function.
- (2) The Commission may dismiss a stop bullying or sexual harassment application if the Commission considers that the application might involve matters that relate to the exercise of a power of a police officer in circumstances where —
 - (a) a covert operation is undertaken by WA Police for the purpose of obtaining information about criminal activity; and
 - (b) unless the exercise of the power is secret or confidential, it would be likely that —
 - (i) the effectiveness of the exercise of the power is reduced; or
 - (ii) a person is exposed to the danger of physical harm arising from the actions of another person.

51BM. Commission may make stop bullying or sexual harassment orders

- (1) The Commission may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount by way of compensation to a worker) to prevent a worker from being bullied or sexually harassed at work by an individual or group of individuals (a *stop bullying or sexual harassment order*) if —
 - (a) the worker has made a stop bullying or sexual harassment application; and

- (b) the Commission is satisfied that —
 - (i) the worker has been bullied or sexually harassed at work by an individual or group of individuals; and
 - (ii) there is a risk that the worker will continue to be bullied or sexually harassed at work by the individual or group of individuals.
- (2) In considering the terms of the order, the Commission must take into account —
 - (a) if the Commission is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body — those outcomes; and
 - (b) if the Commission is aware of any procedure available to the worker to resolve grievances or disputes — that procedure; and
 - (c) if the Commission is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes — those outcomes; and
 - (d) any matters that the Commission considers relevant.

51BN. Contravening stop bullying or sexual harassment order

- (1) A person to whom a stop bullying or sexual harassment order applies must not contravene a term of the order.
- (2) A contravention of subsection (1) is not an offence but the subsection is a civil penalty provision for the purposes of section 83E.

30. Section 51BJ amended

After section 51BJ(2) insert:

- (3) The *Work Health and Safety Act 2020* section 115 does not apply in relation to a stop bullying or sexual harassment application.

Notes for this section:

1. If the *Work Health and Safety Act 2020* section 115 comes into operation on or before the day on which section 29 of this Act comes into operation, this section will be proclaimed to come into operation on the same day as section 29.
2. If the *Work Health and Safety Act 2020* section 115 comes into operation after the day on which section 29 of this Act comes into operation, this section will be proclaimed to come into operation on the day on which section 115 comes into operation.

31. Part II Division 3B replaced

Delete Part II Division 3B and insert:

Division 3B — Equal remuneration

51O. Equal remuneration orders

- (1) In this section —
statement of principles means the statement of principles referred to in section 50A(1)(d)(ii).
- (2) On an application under section 29(1)(b), the Commission must make an order (an *equal remuneration order*) to ensure that an employee receives equal remuneration if the Commission is satisfied that the employee does not receive that remuneration.

s. 31

- (3) The equal remuneration order may relate to any matter the Commission considers appropriate, including (but not limited to) the following —
 - (a) reclassifying work;
 - (b) establishing new career paths;
 - (c) implementing changes to incremental pay scales;
 - (d) providing for increases in remuneration rates, including —
 - (i) minimum rates of pay in awards, industrial agreements and enterprise orders; and
 - (ii) new allowances;
 - (e) reassessing definitions and descriptions of work to properly reflect the value of the work.
- (4) The Commission must apply the statement of principles, with any necessary modifications, in —
 - (a) determining whether an employee receives equal remuneration; and
 - (b) deciding the terms of an equal remuneration order.
- (5) For the purposes of subsection (3), this Division prevails over the statement of principles to the extent of any inconsistency.
- (6) An equal remuneration order may introduce measures to ensure equal remuneration —
 - (a) immediately; or
 - (b) progressively, in stages specified in the order.

51P. Employer not to reduce remuneration

- (1) An employer must not reduce an employee's remuneration because an equal remuneration order, or an application for the order, has been made in relation to the employee.
- (2) The purported reduction is of no effect.

51Q. Alternative remedies

- (1) Except as provided in subsection (3), this Division does not limit a right a person might otherwise have to a remedy (an *alternative remedy*) to secure equal remuneration under another provision of this Act or another enactment.
- (2) A person who has applied for an alternative remedy in relation to an employee cannot apply for an equal remuneration order in relation to the employee unless the proceedings for the alternative remedy have been withdrawn or determined.
- (3) A person who has applied for an equal remuneration order in relation to an employee cannot commence proceedings for an alternative remedy in relation to the employee unless the application for the equal remuneration order has been withdrawn or determined.
- (4) Subsection (3) does not prevent an organisation from commencing proceedings —
 - (a) that relate, in part or as a whole, to the securing of equal remuneration for the employee; and
 - (b) that comprise any of the following —
 - (i) an application to vary an award under section 40;
 - (ii) an application for the registration of an industrial agreement under section 41;

- (iii) an initiation of bargaining under section 42(1);
- (iv) an application under section 42G for an order regarding provisions of an industrial agreement;
- (v) an application under section 42I for an enterprise order.

51R. Remuneration-related action

- (1) In this section —
remuneration-related action means —
 - (a) the registration of an industrial agreement under section 41; or
 - (b) the making of an award under this Act; or
 - (c) the making of an order under this Act.
- (2) The Commission must not take remuneration-related action that —
 - (a) prohibits or restricts the making of an application for an equal remuneration order; or
 - (b) is inconsistent with, or prohibits or restricts the application of, an equal remuneration order.

32. Section 52 amended

- (1) In section 52 insert in alphabetical order:

counterpart federal body has the meaning given in section 52A;

State organisation means an organisation that is registered under this Division.

- (2) In section 52 in the definition of *postal ballot* delete “him.” and insert:

the person;

33. Section 52A inserted

After section 52 insert:

52A. Counterpart federal body

- (1) In this section —
rules, of a branch of a federal organisation, means —
- (a) rules relating to the qualifications of persons for membership; and
 - (b) rules prescribing the offices that exist within the branch.
- (2) A Western Australian branch of a federal organisation is a *counterpart federal body* in relation to a State organisation if the rules of the branch are, or in accordance with section 71(2) or (4) are taken to be, the same as the rules of the State organisation relating to the corresponding subject matter.
- (3) A federal organisation is a *counterpart federal body* of a State organisation even though the body does not have or comprise a Western Australian branch of the federal organisation if the Commission in Court Session is of the opinion that the federal organisation is a counterpart federal body in relation to a State organisation.

- (4) The Commission in Court Session may form the opinion referred to in subsection (3) only if —
- (a) a substantial number of members of the State organisation are —
 - (i) members or eligible to be members of the federal organisation; or
 - (ii) engaged in the same work, in aspects of the same work or in similar work as members of the federal organisation; or
 - (iii) employed in the same or similar work by employers engaged in the same industry as members of the federal organisation; or
 - (iv) engaged in work or in industries for which there is a community of interest between the federal organisation and the State organisation;
 - or
 - (b) there is an agreement in force under the FW (Registered Organisations) Act section 151 between the federal organisation and the State organisation.
- (5) The Commission in Court Session may form the opinion referred to in subsection (3) despite the fact that a person who is 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.
- (6) The Commission in Court Session may form the opinion referred to in subsection (3) despite the fact that a person who is eligible to be a member of the counterpart federal body is, by reason of being a

member of a particular class of persons, ineligible to be a member of the State organisation.

- (7) A State organisation may apply to the Commission in Court Session for a declaration that, for the purposes of subsection (2) or (3), a Western Australian branch of a federal organisation, or a federal organisation, is a counterpart federal body in relation to the State organisation.

34. Section 55 amended

In section 55(1)(b) delete “3 copies” and insert:

a copy

35. Section 59 amended

In section 59(3) delete “Federal body under that section.” and insert:

federal body.

36. Section 71 amended

- (1) Delete section 71(1) and (2) and insert:

- (2) The rules of a State organisation and a counterpart federal body described in section 52A(2) are taken to be the same if the rules of the organisation and the body —
- (a) relate to the qualifications of persons for membership; and

- (b) are, in the opinion of the Commission in Court Session, substantially the same.

(2) Delete section 71(4) and insert:

- (4) The rules of a State organisation and a counterpart federal body described in section 52A(2) are taken to be the same if —
 - (a) the rules prescribe the offices existing in the body; and
 - (b) for every office in the organisation there is a corresponding office in the body.

(3) In section 71(5)(a) delete “Federal body, holds the corresponding office in that body; and” and insert:

federal body, holds an office described in subsection (5A) in that body; and

(4) After section 71(5) insert:

- (5A) The office referred to in subsection (5)(a) is —
 - (a) in the case of a counterpart federal body referred to in section 52A(2) — the corresponding office in the body;
 - (b) in the case of a counterpart federal body referred to in section 52A(3) — an office that is specified in the rules of the State organisation for the purposes of this subsection and in relation to which the members of the State

organisation are, under the rules of the counterpart federal body, entitled to —

- (i) nominate a person to be the office holder; and
- (ii) vote for a person to be the office holder.

(5) In section 71(6):

(a) after “State organisation” insert:

referred to in section 52A(2) or (3)

(b) delete “organisation of which the State organisation’s counterpart Federal body is the Branch,” and insert:

branch or organisation that is the State organisation’s counterpart federal body,

Note: The heading to amended section 71 is to read:

Rules of State and federal organisations as to membership and offices

37. Section 71A amended

(1) Delete section 71A(1).

(2) After section 71A(2)(b) insert:

- (ba) a rule described in section 71(5)(a) relating to an office described in section 71(5A)(b); and
- (bb) a rule described in section 71(5A)(b); and

Note: The heading to amended section 71A is to read:

State organisation may adopt rules of federal organisation

38. Part 2AA inserted

After section 80 insert:

Part 2AA — Employers declared not to be national system employers

Division 1 — Declarations

80A. Employers declared not to be national system employers

- (1) This section applies to an employer who, under the FW Act section 14(2), may be declared by or under a law of the State not to be a national system employer.
- (2) The regulations may —
 - (a) declare the employer not to be a national system employer for the purposes of the FW Act; and
 - (b) fix a day (the *relevant day*) for the purposes of that declaration.

Division 2 — Change from federal to State system

80B. Terms used

In this Division —

declared employee means a person employed by a declared employer;

declared employer means an employer declared not to be a national system employer in regulations under section 80A(2)(a);

federal award means —

- (a) a modern award under the FW Act; or
- (b) an award under the repealed Workplace Act continued in existence under the FW (Transitional) Act;

federal industrial authority means —

- (a) the Australian Industrial Relations Commission under the repealed Workplace Act; or
- (b) the FW Commission;

federal industrial instrument means a fair work instrument under the FW Act;

national fair work legislation means —

- (a) the FW Act; or
- (b) the FW (Transitional) Act;

new State instrument has the meaning given in section 80BB(2);

old federal instrument has the meaning given in section 80BB(1)(b);

relevant day has the meaning given in section 80A(2)(b);

repealed Workplace Act means the *Workplace Relations Act 1996* (Commonwealth);

terms includes conditions, restrictions and other provisions.

80BA. Operation of awards, industrial agreements or orders

- (1) The regulations may provide that, on and from the relevant day, an award, industrial agreement or order specified in the regulations applies to the employees of a declared employer specified in the regulations.

- (2) If regulations are made under subsection (1), on and from the relevant day the award, industrial agreement or order applies to each of the following —
 - (a) the declared employer;
 - (b) the declared employees of the declared employer;
 - (c) an organisation that is a party to the award or industrial agreement or that is bound by the order.

80BB. New State instruments

- (1) This section applies —
 - (a) to the extent section 80BA does not provide for a declared employee of a declared employer; and
 - (b) if, immediately before the relevant day, a federal industrial instrument (the *old federal instrument*) applies to, or purports to apply to, the declared employee.
- (2) On the relevant day, an industrial agreement (the *new State instrument*) applies to the declared employer and declared employees.
- (3) The new State instrument is taken —
 - (a) to have been registered under this Act on the relevant day; and
 - (b) except as provided in this section or section 80BC, to have the same terms as the old federal instrument including those terms as added to or modified by any of the following —
 - (i) terms of a federal award incorporated by the old federal instrument;

- (ii) orders of a federal industrial authority;
 - (iii) another instrument under the national fair work legislation or the repealed Workplace Act;
- and
- (c) to have a nominal expiry date that is the earlier of the following —
 - (i) a day that is 2 years after the relevant day;
 - (ii) the day that, immediately before the relevant day, was the nominal expiry day of the old federal instrument.
- (4) This Act applies in relation to the new State instrument subject to any modifications or exclusions prescribed by regulations for this subsection.
- (5) The new State instrument applies except as provided in the MCE Act.

80BC. Amendment of new State instruments

- (1) A declared employer, a declared employee or an organisation may apply to the Commission to amend a new State instrument.
- (2) On the application, the Commission may make the amendment if it is satisfied it is fair and reasonable to do so in the circumstances.
- (3) The amendment may be provided to take effect —
 - (a) immediately; or
 - (b) progressively, in stages specified in the amendment.

80BD. Ability to carry over matters

The Commission may, in connection with the operation of this Part, or any matter arising directly or indirectly out of the operation of this Part —

- (a) accept, recognise, adopt or rely on any step taken under, or for, the national fair work legislation; and
- (b) accept or rely on anything (including in the nature of evidence presented for the purpose of any proceedings) that has been presented, filed or provided under, or for, the national fair work legislation; and
- (c) give effect in any other way to any other thing done under, or for, the national fair work legislation.

80BE. References in new State instruments to federal industrial authority and General Manager

- (1) In this section —
General Manager means the General Manager under the FW Act.
- (2) On and from the relevant day, a term of a new State instrument expressed to confer a power or function on a federal industrial authority has effect as if it conferred the power or function on the Commission.
- (3) On and from the relevant day, a term of a new State instrument expressed to confer a power or function on the General Manager has effect as if it conferred the power or function on the Registrar.

80BF. References in new State instruments to provisions of Commonwealth laws

- (1) In this section —
corresponding provision of this Act, to a provision of the FW Act, means —
 - (a) if paragraph (b) does not apply — a provision of this Act that is of similar effect to the provision of the FW Act; or
 - (b) a provision of this Act declared by regulations to be a corresponding provision.
- (2) On and from the relevant day, a term of a new State instrument expressed to refer to a provision of the FW Act is taken to refer to the corresponding provision of this Act.

80BG. References in new State instruments to federal organisations

- (1) In this section —
federal counterpart has the meaning given in the FW (Registered Organisations) Act section 9A.
- (2) On and from the relevant day, a term of a new State instrument expressed to refer to a federal organisation is taken to refer to an organisation under this Act of which the federal organisation is a federal counterpart.
- (3) If the federal organisation is not a federal counterpart of an organisation under this Act, the federal organisation is taken to be an organisation under this Act representing the declared employees of the relevant declared employer in proceedings or other matters arising under this Act.

- (4) Subsection (3) ceases to apply to the federal organisation when the new State instrument ceases to apply to the relevant declared employer and declared employees.

80BH. Named parties to new State instruments

- (1) An organisation of employees, or an industrial association of employees registered under section 67, may apply to the Commission to make an order naming the organisation or association as a party to a new State instrument.
- (2) On the application, the Commission must grant the order if, in the opinion of the Commission, the instrument applies to an employee who is eligible to be a member of the organisation or industrial association.

80BI. Employment under old federal instrument

- (1) Subsection (2) applies in relation to deciding the entitlements of a declared employee under a new State instrument.
- (2) Employment of the declared employee with a declared employer before the relevant day that counted under the old federal instrument also counts as employment of the declared employee with the declared employer under the new State instrument.
- (3) If, before the relevant day, the declared employee has already had the benefit of an entitlement determined by reference to a period of service, the period of service cannot be counted again under subsection (2) for calculating the declared employee's entitlements of that type under the new State instrument.

80BJ. Leave accrued immediately before relevant day

- (1) This section applies to any paid or unpaid leave accrued under an old federal instrument, the national fair work legislation or a law of this State.
- (2) Leave accrued immediately before the relevant day by a declared employee to whom a new State instrument applies is taken to have accrued under the new State instrument.

80BK. Leave taken under old federal instrument

- (1) A declared employee who was, immediately before the relevant day, taking a period of leave under the old federal instrument or under the FW Act is entitled to continue on that leave under the new State instrument or a law of this State for the remainder of the period.
- (2) A declared employee who has, before the relevant day, taken a step under the old federal instrument or the FW Act that the employee is required to take so the employee can, on and from the relevant day, take a period of leave under the old federal instrument or the FW Act, is taken to have taken the step under the new State instrument or a law of this State.
- (3) The regulations may deal with other matters relating to how a new State instrument applies to leave that, immediately before the relevant day, is being, or is to be, taken by a declared employee under the old federal instrument or the FW Act.

39. Section 80E amended

In section 80E(1) delete “Subject to Division 3 of Part II” and insert:

Except as provided in Part II Divisions 3, 3AA and 3B

40. Section 80I amended

In section 80I(1)(c) delete “subsection (1)(b)” and insert:

subsection (1)

41. Section 80R amended

In section 80R(1) delete “Subject to Division 3 of Part II” and insert:

Except as provided in Part II Divisions 3, 3AA and 3B

42. Part III Division 1 heading inserted

At the beginning of Part III insert:

Division 1 — Industrial magistrate’s court

43. Section 81B amended

(1) After section 81B(2) insert:

(2A) The Governor may appoint a commissioner who meets the qualifications referred to in the *Magistrates Court*

Act 2004 Schedule 1 clause 2 (a *qualified commissioner*) to be an industrial magistrate.

- (2) In section 81B(3)(a) delete “magistrate; or” and insert:

magistrate or commissioner; or

- (3) In section 81B(4):

- (a) delete “may, on the recommendation of the Chief Magistrate,” and insert:

may

- (b) after “a magistrate” insert:

or a qualified commissioner

- (4) After section 81B(4) insert:

- (4A) Subsections (2) and (2A) apply, with the necessary modifications, to an appointment of an acting industrial magistrate.

44. Section 81CA amended

Delete section 81CA(2) and (3).

45. Section 81G inserted

After section 81F insert:

81G. Industrial inspectors may assist industrial magistrate's court

- (1) An industrial inspector may, with the leave of the industrial magistrate's court, assist the court.
- (2) The industrial magistrate's court may grant the leave in respect of —
 - (a) proceedings that, in the opinion of the court, have significant implications for the administration of this Act, the LSL Act or the MCE Act; or
 - (b) proceedings that involve special circumstances that satisfy the court that it would be in the public interest for the industrial inspector to assist the court.

46. Part III Division 2 heading inserted

Before section 82 insert:

Division 2 — Enforcement generally

47. Section 83 amended

- (1) Before section 83(1) insert:
 - (1A) In this section —

contravene, in relation to an entitlement provision, includes fail to comply with that provision.

- (2) In section 83(1):
- (a) delete “where a person contravenes or fails to comply with a provision of an instrument to which this section applies” and insert:

if a person contravenes an entitlement provision,
 - (b) delete paragraph (e) and insert:
 - (e) a person —
 - (i) who is a party to the award, agreement or order or to whom the award, agreement or order applies; or
 - (ii) to whom the entitlement provision applies under the LSL Act or MCE Act;
- (3) Delete section 83(2) and insert:
- (2) A person who is involved in a contravention of an entitlement provision is taken to contravene that provision.
 - (2A) A person is *involved in* a contravention of an entitlement provision if, and only if, the person —
 - (a) aids, abets, counsels or procures the contravention; or
 - (b) induces the contravention, whether by threats or promises or otherwise; or
 - (c) is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(d) conspires with others to effect the
contravention.

(4) In section 83(3) delete “instrument to which this section applies
shall” and insert:

entitlement provision must

(5) In section 83(4):

- (a) in paragraph (a) delete “or failure to comply”;
- (b) delete paragraph (a)(ii) and insert:

- (ii) impose a pecuniary penalty in
accordance with subsection (4A);

(6) After section 83(4) insert:

(4A) The pecuniary penalty may be an amount not
exceeding —

- (a) in the case of a body corporate —
 - (i) if the contravention is a serious
contravention — \$650 000; or
 - (ii) if the contravention is not a serious
contravention — \$65 000;

and

- (b) in the case of an individual —
 - (i) if the contravention is a serious
contravention — \$130 000; or
 - (ii) if the contravention is not a serious
contravention — \$13 000.

- (7) In section 83(5):
- (a) delete “or failure to comply with a provision of an instrument to which this section applies” and insert:

of an entitlement provision
 - (b) delete “or failure to comply with” (second occurrence) and insert:

of

- (8) In section 83(8) delete the Penalty and insert:

Penalty for this subsection:

- (a) a fine of \$13 000;
 - (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.
- (9) After section 83(8) insert:
- (9) A contravention of an entitlement provision is not an offence and section 83E(8) applies to the contravention as if it were a contravention of a civil penalty provision.

48. Section 83A amended

- (1) In section 83A(1):
- (a) delete “an employer” and insert:

a person

s. 49

- (b) delete “of that employer has not been paid by that employer” and insert:

has not been paid

- (c) delete “instrument to which that section applies” and insert:

entitlement provision,

- (d) delete “employer to” and insert:

person to

- (2) In section 83A(2):

- (a) in paragraph (b) delete “employer” and insert:

person

- (b) in paragraph (b)(iii) delete “employer’s” and insert:

person’s

49. Section 83B amended

- (1) In section 83B(3) and (4) after “contravention” (1st occurrence) insert:

of

- (2) In section 83B(5):
- (a) in paragraph (a) delete “\$5 000; and” and insert:

\$13 000; and
 - (b) in paragraph (b) after “contravention” insert:

of
- (3) In section 83B(10) delete the Penalty and insert:
- Penalty for this subsection:
- (a) a fine of \$13 000;
 - (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

50. Section 83C amended

Delete section 83C(2) and insert:

- (2) In proceedings under section 83 or 83B costs must not be given to any party to the proceedings for the services of a legal practitioner or agent of that party unless —
- (a) the industrial magistrate’s court finds that the other party has committed a serious contravention; or
 - (b) 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.

51. Section 83E amended

(1) Delete section 83E(1) and insert:

- (1) If a person contravenes a civil penalty provision, the industrial magistrate's court may, on an application to the court, make an order imposing a pecuniary penalty on the person, not exceeding —
- (a) in the case of a body corporate —
 - (i) if the contravention is a serious contravention — \$650 000; or
 - (ii) if the contravention is not a serious contravention — \$65 000;
 - (b) in the case of an individual —
 - (i) if the contravention is a serious contravention — \$130 000; or
 - (ii) if the contravention is not a serious contravention — \$13 000.
- (1A) A person who is involved in a contravention of a civil penalty provision is taken to contravene that provision.
- (1B) A person is *involved in* a contravention of a civil penalty provision if, and only if, the person —
- (a) aids, abets, counsels or procures the contravention; or
 - (b) induces the contravention, whether by threats or promises or otherwise; or
 - (c) is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) conspires with others to effect the contravention.

- (2) In section 83E(3) delete “section 49D(2) or (3),” and insert:

section 49D(1) or (8) or section 49DA(1) or (3), or the LSL Act section 26(1) or (2),

- (3) In section 83E(6a) delete “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*.” and insert:

the MCE Act section 8(3) or the LSL Act section 7I(2), 26(1) or (2) or 26A(1).

- (4) In section 83E(9) delete the Penalty and insert:

Penalty for this subsection:

- (a) a fine of \$13 000;
- (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

- (5) Delete section 83E(12) and insert:

- (12) In proceedings under this section costs must not be given to any party to the proceedings for the services of a legal practitioner or agent of that party unless —
- (a) the industrial magistrate’s court finds that the other party has committed a serious contravention; or
 - (b) 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.

52. Sections 83EA and 83EB inserted

After section 83E insert:

83EA. Serious contravention of entitlement provision or civil penalty provision

- (1) In this section —
contravention means a contravention of or failure to comply with —
 - (a) a civil penalty provision; or
 - (b) an entitlement provision.
- (2) A contravention by a person is a *serious contravention* if —
 - (a) the person knowingly commits the contravention; and
 - (b) the person's conduct constituting the contravention is part of a systematic pattern of conduct relating to 1 or more other persons.
- (3) For the purposes of subsection (2), a body corporate knowingly commits a contravention if the body corporate expressly, tacitly or impliedly authorises the contravention.
- (4) In determining whether the person's conduct constituting the contravention was part of a systematic pattern of conduct, the industrial magistrate's court may have regard to all or any of the following —
 - (a) the number of contraventions (the *relevant contraventions*) committed by the person;

- (b) the period over which the relevant contraventions were committed;
 - (c) the number of other persons affected by the relevant contraventions;
 - (d) the person's response, or failure to respond, to any complaints made about the relevant contraventions;
 - (e) unless the provision contravened is a record-related civil penalty provision — whether the person also failed to comply with a record-related civil penalty provision relating to the conduct constituting the relevant contraventions.
- (5) Subsection (4) does not limit the matters to which the industrial magistrate's court may have regard.
- (6) A person (the *involved person*) who is involved in a contravention by another person (the *principal*) commits a serious contravention only if —
- (a) the principal's contravention is a serious contravention; and
 - (b) the involved person knows that the principal's contravention is a serious contravention.
- (7) Subsection (8) applies in proceedings for an order in relation to a serious contravention.
- (8) The industrial magistrate's court may, instead of imposing a pecuniary penalty on a person for the serious contravention, impose a pecuniary penalty on the person for the contravention if the court —
- (a) is not satisfied that the person has committed a serious contravention; but
 - (b) is satisfied that the person has committed a contravention.

83EB. Employer to have burden of disproving certain allegations by applicant under s. 83

- (1) In proceedings under section 83, the employer has the burden of disproving an allegation by an applicant in relation to a matter if the employer —
 - (a) was required under this Act or the LSL Act to —
 - (i) make or keep a record in relation to the matter; or
 - (ii) give a pay slip in relation to the matter; or
 - (iii) make available for inspection a record in relation to the matter;
 - and
 - (b) failed to comply with the requirement.
- (2) Subsection (1) does not apply if the employer provides a reasonable excuse for the failure to comply with the requirement.

53. Section 84 amended

Delete section 84(5) and insert:

- (5) In proceedings under this section costs must not be given to any party to the proceedings for the services of a legal practitioner or agent of that party except —
 - (a) in respect of an appeal from proceedings under section 83 or 83E — to the party that was the applicant in those proceedings, if the Full Bench finds, or upholds a finding, that the other party has committed a serious contravention; or

- (b) if, 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.
- (6) At any time after an appeal to the Full Bench has been instituted under this section, a party to the proceedings 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.
- (7) For the purposes of hearing and determining an application under subsection (6) 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.

54. Section 84AA inserted

After section 84 insert:

84AA. Illegal contracts of employment may be treated as valid

- (1) In this section —
contravention means a contravention of or failure to comply with —
 - (a) a civil penalty provision; or
 - (b) an entitlement provision.
- (2) If in any proceedings under section 83 or 83E the industrial magistrate's court finds that an employee was employed or engaged under an illegal contract at the time a contravention occurred, the court may

nonetheless deal with the matter as if the contract was valid.

55. Section 84A amended

- (1) In section 84A(1) delete “44(3), 51S” and insert:

44(3)

- (2) In section 84A(5)(a)(ii) delete “\$2 000 in the case of an employer, organisation, or association and \$500 in any other case; or” and insert:

\$10 000; or

56. Part III Divisions 3 to 5 inserted

At the end of Part III insert:

Division 3 — Civil infringement notices

84B. Terms used

In this Division —

civil infringement notice has the meaning given in section 84C(2);

civil infringement notice penalty has the meaning given in section 84C(2);

nominated person means the person to whom a recipient can apply —

- (a) to have a civil infringement notice withdrawn;
or

- (b) to be allowed more time to pay a civil infringement notice penalty;

recipient means a person to whom a civil infringement notice is given under section 84C(2).

84C. Giving civil infringement notice

- (1) This section applies if an industrial inspector reasonably believes that a person has committed 1 or more contraventions of a record-related civil penalty provision other than section 49D(8) or 49DA(3).
- (2) The industrial inspector may give to the person a notice (a *civil infringement notice*) relating to the alleged contravention or contraventions inviting the person, as an alternative to proceedings under section 83E, to pay to the Treasurer a penalty specified in the notice (a *civil infringement notice penalty*).
- (3) The civil infringement notice must be given within 12 months after the day on which the contravention or contraventions are alleged to have taken place.
- (4) This section does not authorise the giving of 2 or more civil infringement notices to a person in relation to contraventions of a record-related civil penalty provision that allegedly —
 - (a) took place on the same day; and
 - (b) relate to the same action or conduct by the person.

84D. Content of civil infringement notice

- (1) A civil infringement notice must —
 - (a) specify the recipient's full name; and
 - (b) specify the recipient's address; and

- (c) specify the name of the industrial inspector who issued it; and
 - (d) specify its date of issue; and
 - (e) set out brief details of the alleged contravention or contraventions, including the record-related civil penalty provision that has been allegedly contravened; and
 - (f) specify the civil infringement notice penalty; and
 - (g) state how the civil infringement notice penalty can be paid; and
 - (h) specify the maximum penalty that the industrial magistrate's court could impose on the recipient for the alleged contravention or contraventions; and
 - (i) identify the nominated person; and
 - (j) explain how the recipient can apply to the nominated person —
 - (i) to have the civil infringement notice withdrawn; or
 - (ii) to be allowed more time to pay the civil infringement notice penalty;and
 - (k) state the effect of the recipient paying the civil infringement notice penalty within the required time, as explained in section 84I; and
 - (l) be signed by the industrial inspector who issued it.
- (2) The civil infringement notice may contain any other information that the industrial inspector who issues it thinks necessary.

84E. Amount of civil infringement notice penalty

A civil infringement notice penalty must not exceed one-tenth of the statutory penalty that the industrial magistrate's court could have ordered the recipient to pay under section 83E(1) for contravening the record-related civil penalty provision specified in the civil infringement notice.

84F. Time for payment of civil infringement notice penalty

- (1) A civil infringement notice penalty must be paid within 28 days after the day on which the notice is served on the recipient unless subsection (2), (3) or (4) applies.
- (2) If the recipient applies for a further period of time in which to pay the civil infringement notice penalty and the application is granted, the penalty must be paid within the further period allowed.
- (3) If the recipient applies for a further period of time in which to pay the civil infringement notice penalty and the application is refused, the penalty must be paid within 7 days after the notice of the refusal is served on the recipient.
- (4) If the recipient applies for the notice to be withdrawn and the application is refused, the civil infringement notice penalty must be paid within 28 days after the notice of the refusal is served on the recipient.

84G. Extension of time to pay civil infringement notice penalty

- (1) Before the end of 28 days after receiving a civil infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the civil infringement notice penalty.

- (2) Within 14 days after receiving the application, the nominated person must —
 - (a) grant or refuse a further period not longer than the period sought (but less than 28 days); and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

84H. Withdrawal of civil infringement notice

- (1) Before the end of 28 days after receiving the civil infringement notice, the recipient may apply, in writing, to the nominated person for the civil infringement notice to be withdrawn.
- (2) Within 14 days after receiving the application, the nominated person must —
 - (a) withdraw or refuse to withdraw the civil infringement notice; and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (3) If the nominated person has not approved the withdrawal of the civil infringement notice within the period allowed by subsection (2), the application is taken to have been refused.
- (4) The inspector who issued it may also withdraw the civil infringement notice at any time by serving a notice of withdrawal on the recipient.
- (5) A notice of the withdrawal of a civil infringement notice under subsection (4) must —
 - (a) specify the recipient's full name; and
 - (b) specify the recipient's address; and
 - (c) specify its date of issue; and

- (d) state that the civil infringement notice is withdrawn.

84I. Effect of payment of civil infringement notice penalty

If a civil infringement notice is not withdrawn and the recipient pays the civil infringement notice penalty —

- (a) any liability of the recipient for the alleged contravention is discharged; and
- (b) no proceedings may be brought against the recipient, by any person, for the alleged contravention; and
- (c) the recipient is not taken to have admitted to having contravened the record-related civil penalty provision; and
- (d) the recipient is not taken to have committed a contravention of the provision in relation to which the civil infringement notice was issued.

84J. Refund of civil infringement notice penalty

If a civil infringement notice is withdrawn after the civil infringement notice penalty has been paid, the Treasurer must refund the amount of the penalty to the person who paid it.

Division 4 — Enforceable undertakings

84K. Terms used

In this Division —

contravention means a contravention of or failure to comply with —

- (a) a civil penalty provision; or
- (b) an entitlement provision.

enforceable undertaking means a written undertaking accepted under section 84M(1).

84L. Application of Division

This Division applies if an industrial inspector reasonably believes that a person has committed a contravention.

84M. Enforceable undertaking

- (1) Except as provided by subsection (4), an industrial inspector may accept a written undertaking given by a person in relation to a contravention.
- (2) The person may withdraw or vary the enforceable undertaking at any time, but only with the industrial inspector's consent.
- (3) An industrial inspector must not apply for an order under section 83 or 83E in relation to the contravention unless the enforceable undertaking has been —
 - (a) withdrawn; or
 - (b) cancelled under section 84N(2)(c).
- (4) The industrial inspector must not accept an enforceable undertaking in relation to a contravention if the person has been given a compliance notice as defined in section 84Q in relation to the contravention.

84N. Enforcement of enforceable undertakings

- (1) If an industrial inspector considers that a person who gave an enforceable undertaking has contravened any of its terms, the industrial inspector may apply to the industrial magistrate's court for an order under subsection (2).
- (2) If the industrial magistrate's court is satisfied that the person has contravened a term of the enforceable

undertaking, the court may make 1 or more of the following orders —

- (a) an order directing the person to comply with the term of the undertaking;
- (b) an order awarding compensation for loss that a person has suffered because of the contravention;
- (c) an order varying or cancelling the enforceable undertaking;
- (d) any other order that the court considers appropriate.

Division 5 — Compliance notices

84O. Terms used

In this Division —

compliance notice has the meaning given in section 84Q;

contravention means a contravention of or failure to comply with an entitlement provision.

84P. Application of Division

This Division applies if an industrial inspector (the *industrial inspector*) reasonably believes that a person has contravened an entitlement provision.

84Q. Giving compliance notice

- (1) Except as provided in section 84R, the industrial inspector may give the person a notice (a *compliance notice*) requiring the person to do either or both of the following within a reasonable time specified in the notice —
 - (a) take specified action to remedy the direct effects of the contravention;

- (b) produce reasonable evidence of the person's compliance with the notice.
- (2) The compliance notice must also set out all of the following —
- (a) the name of the person to whom the notice is given;
 - (b) the name of the industrial inspector who gave the notice;
 - (c) brief details of the contravention;
 - (d) an explanation that a failure to comply with the notice may contravene a civil penalty provision;
 - (e) an explanation that the person may apply to the industrial magistrate's court for a review of the notice on either or both of the following grounds —
 - (i) the person has not committed a contravention set out in the notice;
 - (ii) the notice does not comply with subsection (1) or this subsection;
 - (f) any other matters prescribed by the regulations.

84R. Relationship with enforceable undertakings

The industrial inspector must not give a person a compliance notice in relation to a contravention if —

- (a) the person has given an enforceable undertaking as defined in section 84M(1) in relation to the contravention; and
- (b) the undertaking has not been withdrawn under section 84M(2) or cancelled under section 84N(2)(c).

84S. Relationship with proceedings under s. 83

- (1) The industrial inspector must not apply for an order under section 83 in relation to a contravention by a person if —
 - (a) the inspector has given the person a compliance notice in relation to the contravention; and
 - (b) the compliance notice has not been withdrawn; and
 - (c) either of the following applies —
 - (i) the person has complied with the notice;
 - (ii) the person has made an application under section 84U(1) in relation to the compliance notice and that application has not been completely dealt with.
- (2) A person who complies with a compliance notice is not taken to have —
 - (a) admitted to contravening an entitlement provision to which the compliance notice relates; or
 - (b) been found to have contravened an entitlement provision to which the compliance notice relates.

84T. Person must comply with compliance notice

- (1) A person must comply with a compliance notice.
- (2) A contravention of subsection (1) is not an offence but the subsection is a civil penalty provision for the purposes of section 83E, except that the pecuniary penalty cannot exceed —
 - (a) in the case of a body corporate — \$30 000;
 - (b) in the case of an individual — \$6 000.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

84U. Review of compliance notices

- (1) A person who has been given a compliance notice may apply to the industrial magistrate's court for a review of the notice on either or both of the following grounds —
 - (a) the person has not committed a contravention set out in the notice;
 - (b) the notice does not comply with section 84Q.
- (2) At any time after the application has been made, the industrial magistrate's court may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) In an application made on the ground referred to in subsection (1)(a), the person making the application has the burden of proving that the person has not committed the contravention.
- (4) The industrial magistrate's court may confirm, cancel or vary the notice after reviewing it.

84V. Withdrawal of compliance notice

- (1) The industrial inspector may withdraw the compliance notice at any time by serving a notice of withdrawal on the person (the *recipient*) who has been given the compliance notice.
- (2) The notice of withdrawal must —
 - (a) specify the full name of the recipient; and
 - (b) specify the recipient's address; and

- (c) specify its date of issue; and
- (d) state that the compliance notice is withdrawn.

57. Section 86 amended

Delete section 86(2).

58. Section 91A inserted

After section 91 insert:

91A. Court's power to order costs and expenses

- (1) Except as provided in subsection (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.
- (2) Costs for the services of any legal practitioner or agent of any party to the proceedings must not be given to that party except as follows —
 - (a) costs can be given to that party if, in the opinion of the Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party;
 - (b) in respect of an appeal from proceedings under section 83 or 83E — costs can be given to the party that was the applicant in those proceedings, if the Court finds, or upholds a finding, that the other party has committed a serious contravention.

59. Section 93 amended

- (1) In section 93(6) delete “Subject to subsection (6a), the” and insert:

The

- (2) Delete section 93(6a).

60. Section 96 amended

In section 96(2)(a) delete “section 29(1)(b);” and insert:

section 29(1)(c) or (d);

61. Part 6B inserted

After section 96L insert:

Part 6B — Protection of employee rights

Division 1 — Preliminary

97. Terms used

In this Part —

damaging action, against an employee, means —

- (a) in the case of an employee —
- (i) dismissing the employee; or
 - (ii) altering the employee’s position to the employee’s disadvantage; or
 - (iii) refusing to promote or transfer the employee; or

- (iv) otherwise injuring the employee in relation to the employee's employment with the employer or another person; or
- (v) threatening to do anything referred to in subparagraphs (i) to (iv);

and

- (b) in the case of a prospective employee —
 - (i) refusing to employ the prospective employee; or
 - (ii) discriminating against the prospective employee in the terms or conditions on which the employer offers to employ the prospective employee; or
 - (iii) threatening to do anything referred to in subparagraphs (i) and (ii);

employee includes a prospective employee;

employer includes a former employer or prospective employer.

Division 2 — Damaging action

97A. Damaging action because of inquiry or complaint

- (1) An employer must not take damaging action against an employee for the reason, or for reasons that include, that the employee is able to make an employment-related inquiry or complaint to the employer or another person.
- (2) In any proceedings for a contravention of subsection (1), if it is proved that an employer took the damaging action against the employee, it is for the employer to prove that the employer did not do so because the employee made the inquiry or complaint or proposed to make the inquiry or complaint.

- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

97B. Court orders to employers

- (1) This section applies if the industrial magistrate's court determines that an employer has contravened section 97A(1) in respect of an employee.
- (2) Except as provided in subsection (5), the industrial magistrate's court may order the employer to do 1 or more of the following —
- (a) if the employee was dismissed from employment — to reinstate the employee;
 - (b) if the employee was refused employment — to employ the employee;
 - (c) to pay to the employee compensation for any loss or injury suffered as a result of the contravention.
- (3) The employer must comply with the order.
- Penalty for this subsection:
- (a) a fine of \$13 000;
 - (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.
- (4) The industrial magistrate's court may make the order in addition to imposing a penalty under section 83E.
- (5) The industrial magistrate's court must not make the order if the employee has applied under another provision of this Act or any other written law for relief in relation to the same damaging action unless the proceedings for that relief have been withdrawn or failed for want of jurisdiction.

- (6) The employee is not entitled to compensation for the same damaging action under both subsection (2)(c) and another provision of this Act or any other written law.

97C. Court orders to third parties

- (1) In this section —
third party, in relation to proceedings for a contravention of section 97A(1), means a person, other than the employer, on whom a copy of the application under section 83E(1) has been served.
- (2) This section applies if the industrial magistrate's court determines that an employer has contravened section 97A(1) in respect of an employee.
- (3) The industrial magistrate's court may order a third party —
- (a) to refrain from taking any damaging action against the employee; and
 - (b) to take any action necessary or desirable to give effect to an order under section 97B(2).
- (4) The third party must comply with the order.
- Penalty for this subsection:
- (a) a fine of \$13 000;
 - (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

Division 3 — Sham contracts for services

97D. Misrepresenting contract of employment as contract for services

- (1) An employer must not represent to an employee that a contract of employment is a contract for services.

- (2) Subsection (1) does not apply if the employer proves that, when the representation was made, the employer did not know, and could not reasonably be expected to have known, that the contract was a contract of employment rather than a contract for services.
- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

97E. Dismissing to engage under contract for services

- (1) An employer must not dismiss or threaten to dismiss an employee performing particular work for the employer in order to engage the employee to perform the same, or substantially the same, work under a contract for services.
- (2) In any proceedings for a contravention of subsection (1), if it is proved that an employer dismissed, or threatened to dismiss, the employee, it is for the employer to prove that the employer did not do so in order to engage the employee under the contract for services.
- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

97F. False statement to engage under contract for services

- (1) An employer must not make a statement that the employer knows, or could reasonably be expected to know, is false in order to persuade or influence an employee performing particular work for the employer to enter into a contract for services under which the employee will perform the same, or substantially the same, work.

- (2) In any proceedings for a contravention of subsection (1), if it is proved that an employer made the statement, it is for the employer to prove that the employer did not do so in order to persuade or influence the employee to enter into the contract for services.
- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

97G. Court orders to employers

- (1) This section applies if an industrial magistrate's court determines that an employer has contravened section 97D(1), 97E(1) or 97F(1) in respect of an employee.
- (2) Except as provided in subsection (5), the industrial magistrate's court may order the employer to do 1 or more of the following —
 - (a) if the employee was dismissed from employment — to reinstate the employee;
 - (b) if the employee was refused employment — to employ the employee;
 - (c) to pay to the employee compensation for any loss or injury suffered as a result of the contravention.
- (3) The employer must comply with the order.

Penalty for this subsection:

- (a) a fine of \$13 000;
- (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

- (4) The court may make the order in addition to imposing a penalty under section 83E.
- (5) The industrial magistrate's court must not make the order if the employee has applied under another provision of this Act or any other written law for relief in relation to the same act or omission unless the proceedings for that relief have been withdrawn or failed for want of jurisdiction.
- (6) The employee is not entitled to compensation for the same act or omission under both subsection (2)(c) and another provision of this Act or any other written law.

Division 4 — Miscellaneous

97H. Certain advertising prohibited

- (1) A person must not advertise the availability of employment at a rate of pay that is less than the minimum wage applicable to the position under the MCE Act or an award, order of the Commission or an industrial agreement.
- (2) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of section 83E.

62. Section 97U amended

- (1) In section 97U(1) delete the definitions of:
supported wage provisions
Supported Wage System

- (2) In section 97U(1) in the definition of *section 97UM signatory* delete “97UM(2);” and insert:

97UM(2).

63. Section 97UF amended

In section 97UF(3)(a) delete “supported wage provisions; and” and insert:

a SWIIP; and

64. Section 97YA amended

In section 97YA(1)(a) delete “supported wage provisions” and insert:

a SWIIP

65. Section 98 amended

- (1) In section 98(3):

(a) delete paragraph (a) and insert:

(a) with or without giving notice to the owner or occupier, enter —

- (i) a place (*industrial location*) at which there are reasonable grounds to suspect that an industry is being or has been carried on or any work is being done or has been done or commenced in relation to an industry; or

- (ii) a place (*business premises*) at which there are reasonable grounds to suspect that records relevant to an industry are kept or can be accessed;

and

- (b) in paragraph (b) delete “location; and” and insert:

location or business premises, or any record accessible from a computer kept at the industrial location or business premises; and

- (c) delete paragraphs (c) to (f) and insert:

- (c) take with the inspector into an industrial location or business premises any person or persons the inspector considers necessary to provide assistance to the inspector; and
 - (d) require (either alone or in the presence, or with the assistance, of some other person) any person the inspector finds in an industrial location or business premises to answer questions by the inspector —
 - (i) orally; or
 - (ii) if the inspector thinks fit — in writing;
- and
- (e) by notice in writing or orally require a person having the control of, or access to, a record to produce the record for inspection by the inspector; and

- (f) in relation to a record referred to in paragraph (b) or (e), do all or any of the following —
- (i) seize the record;
 - (ii) retain the record for as long as is necessary for the purposes of carrying out the function to which the record is relevant;
 - (iii) take extracts from or copies of the record;

and

- (fa) post at an industrial location, in a place where it may be viewed by employees at the location, a notice containing information regarding any of the following —
- (i) the rights and obligations under any law of the State or Commonwealth relating to employment (an *employment law*) of the employees or their employer;
 - (ii) a conviction of the employer of an offence under an employment law;
 - (iii) a finding that the employer has contravened an entitlement provision or civil penalty provision under this Act or a civil remedy provision under the FW Act;

and

- (d) In paragraph (h) delete “(f)” and insert:

(f), (fa)

- (2) After section 98(3) insert:
- (3A) If an industrial inspector proposes to exercise the power under subsection (3)(a) to enter an industrial location or business premises that also comprises premises principally used for habitation, the inspector must give the owner or occupier of the location or premises at least 24 hours' written notice of the proposed entry unless —
 - (a) the owner or occupier is carrying on an industry at the location or premises; or
 - (b) the Commission has made an order waiving the requirement under this subsection to give the notice.
 - (3B) An industrial inspector may apply to the Commission for an order under subsection (3A)(b).
 - (3C) The application may be heard in the absence of the owner or occupier of the industrial location or business premises.
 - (3D) The Commission may make the order if it is satisfied that a notice under subsection (3A) would defeat the purpose for which the power in subsection (3)(a) is intended to be exercised.
- (3) Delete section 98(5) and insert:
- (5) The power of an industrial inspector under subsection (3)(e) may be exercised —
 - (a) whether or not the industrial inspector has entered, or proposes to enter, an industrial location or business premises; and

- (b) if exercised when the industrial inspector has entered an industrial location or business premises — in relation to any record whether or not it is kept at the location or premises.
- (5A) The regulations may prescribe the form and manner in which records may be produced for inspection under subsection (3)(e).
- (4) In section 98(6) delete the definition of *conveyance*.
- (5) In section 98(7) delete “subsection (2), (3) or (5)” and insert:

subsection (2) or (3)

66. Section 98A inserted

After section 98 insert:

98A. Information obtained under s. 98 not to be disclosed

- (1) This section applies to a person who is —
 - (a) an industrial inspector; or
 - (b) a person assisting an industrial inspector under section 98(3)(c) or (d).
- (2) The person must not, directly or indirectly, record, disclose or make use of information obtained in the course of performing functions under section 98 except —
 - (a) in the course of performing those functions; or
 - (b) as required or allowed by this Act or any other written law or a law of the Commonwealth, another State or a Territory; or

s. 67

- (c) to assist in the administration or enforcement of a written law or a law of the Commonwealth, another State or a Territory; or
- (d) for the purpose of proceedings in a court; or
- (e) with the written authority of each person to whom the information relates; or
- (f) in other circumstances prescribed by the regulations.

Penalty for this subsection: a fine of \$5 000.

67. Section 102 amended

(1) After section 102(2) insert:

(2A) For the purposes of subsection (2)(a), a person who destroys, defaces, alters, takes, or otherwise interferes with a notice posted at an industrial location by an industrial inspector under section 98(3)(fa) is taken to obstruct the industrial inspector in the performance of the inspector's function under that section.

(2) After section 102(3) insert:

(4) If in proceedings under section 83E an industrial magistrate's court is required to consider whether a contravention of subsection (1)(a) has occurred it may, as an alternative, determine that a contravention of a record-related civil penalty provision has occurred.

(5) If in proceedings under section 83E an industrial magistrate's court is required to consider whether a contravention of a record-related civil penalty provision has occurred it may, as an alternative,

determine that a contravention of subsection (1)(a) has occurred.

68. Section 103 amended

In section 103(3) in the definition of *breach* after “contravention” (first occurrence) insert:

of

69. Section 112A amended

After section 112A(3) insert:

(3A) Subsection (3) does not apply to a disqualified person.

(3B) In subsection (3A) —

disqualified person means a disqualified person as defined in the *Legal Profession Act 2008* section 3 except that —

(a) it includes —

(i) a person whose name has been removed from a foreign roll as defined in section 3 of that Act; and

(ii) a person in relation to whom the grant or renewal of a local practising certificate as defined in section 3 of that Act has been refused;

but

(b) it does not include —

(i) a person whose name has, for reasons other than or in connection with disciplinary action, been removed from

an Australian roll or foreign roll as those terms are defined in section 3 of that Act; or

- (ii) a person whose local practising certificate as defined in section 3 of that Act has, for reasons other than or in connection with disciplinary action, been suspended or cancelled.

70. Section 117 inserted

At the end of Part VII insert:

117. Savings and transitional provisions for *Industrial Relations Legislation Amendment Act 2021*

- (1) In this section —
commencement day means the day on which the *Industrial Relations Legislation Amendment Act 2021* section 15 comes into operation;
former section means a section of this Act as in operation immediately before the commencement day;
transitioned private sector award means a private sector award that was in force immediately before the commencement day.
- (2) On and after the commencement day, former section 37(1) continues in operation in relation to a transitioned private sector award until the award is —
 - (a) cancelled; or
 - (b) varied under section 37D, 40(2A) or 50(5).
- (3) Sections 37B and 37C do not apply to a transitioned private sector award until it is varied under section 37D, 40(2A) or 50(5).

- (4) This section does not affect the operation of the *Interpretation Act 1984* Part V.

71. Schedule 4 amended

Delete Schedule 4 clause 1(2)(a) and insert:

- (a) there is no industrial instrument containing a SWIIP that extends to the employee; and

72. Various penalties amended

- (1) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 48B(4)	Penalty individual, \$1 000 case, \$5 000	Penalty for this subsection individual — a fine of \$1 000 case — a fine of \$5 000
s. 73(14) s. 97WF(1) s. 97XV(1) s. 111(2) s. 112A(2)	Penalty:	Penalty for this subsection: a fine of
s. 99A(3)	Penalty	Penalty for this subsection

s. 72

Provision	Delete	Insert
Sch. 5 cl. 2 Sch. 5 cl. 3	\$2 000	a fine of \$2 000
Sch. 5 cl. 4(1) and (2)	Penalty:	Penalty for this subclause: a fine of

- (2) In section 78 delete “is guilty of an offence and liable to a penalty of \$5 000 and a daily penalty of \$500.” and insert:

commits an offence.

- (3) At the end of section 78 insert:

Penalty:

- (a) a fine of \$5 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (4) At the end of the provisions listed in the Table insert:

Penalty for this subsection:

- (a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;
- (b) in any other case —
 - (i) a fine of not less than \$1 000 or more than \$10 000;

- (ii) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

Table

s. 96C(1) and (2)	s. 96D(1) and (2)
s. 96E(1) and (2)	

- (5) In section 96C(3) delete the Penalty.
- (6) In section 96D(3) delete the Penalty and insert:

Penalty for this subsection:

- (a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;
- (b) in any other case —
 - (i) a fine of not less than \$1 000 or more than \$10 000;
 - (ii) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (7) In section 96E(3) delete the Penalty and insert:

Penalty for this subsection:

- (a) in the case of an individual — a fine of not less than \$400 or more than \$5 000;
- (b) in any other case —
 - (i) a fine of not less than \$1 000 or more than \$10 000;

s. 73

- (ii) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (8) In section 97YC(4) delete the Penalty and insert:

Penalty for this subsection:

- (a) a fine of \$5 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (9) In section 97YG(7) delete the Penalty and insert:

Penalty for this subsection:

- (a) a fine of \$5 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

73. Various references to “prescribed” amended

In the provisions listed in the Table delete “prescribed” and insert:

approved

Table

s. 33(1)(a)	s. 41(7)
s. 55(1)(c)	s. 58(1) (first occurrence)

74. Various references to “Federal” amended

In the provisions listed in the Table delete “Federal” (each occurrence) and insert:

federal

Table

s. 71(3)(a) and (b)	s. 71(7)
s. 71(9)(b) and (c)	s. 71A(2)
s. 71A(4)(b)	

Note: The heading to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 14A	Dual federal and State appointments
s. 14B	Performance of duties by dual federal and State appointees

75. Various references to titles amended

(1) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 31(1)(c)(i) s. 73(3)(a)(ii) and (7b) s. 80ZJ(1) s. 97VS(5)(a)	<i>Fair Work Act 2009</i> (Commonwealth)	FW Act

s. 75

Provision	Delete	Insert
s. 73(3)(a)(ii) and (7b) s. 97VS(5)(a)	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Commonwealth)	FW (Transitional) Act
s. 7(1) def. of <i>secondary office</i> s. 14A s. 14B(1) s. 22(2)(c) s. 29AA(1) and (2) s. 80ZF def. of <i>Fair Work Commission</i> s. 80ZG(1)(a), (b) and (c), (2) and (3) s. 80ZH(1), (2) and (4) s. 80ZI(2) and (3)	Fair Work Commission (each occurrence)	FW Commission
s. 80ZF def. of <i>Fair Work Commission</i>	<i>Fair Work Commission</i>	<i>FW Commission</i>
s. 80H(6)	<i>Fair Work (Registered Organisations) Act 2009</i> (Commonwealth)	FW (Registered Organisations) Act

Provision	Delete	Insert
s. 81AA(ba) s. 81CA(1)(b)	Part IV of the <i>Long Service Leave Act 1958</i>	the LSL Act Part IV
s. 97VS note Sch. 4 cl. 1(1)(f) note	<i>Minimum Conditions of Employment Act 1993</i>	MCE Act

Note: The heading to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
s. 80ZF	Term used: FW Commission
s. 80ZG	Joint proceedings of Commission and FW Commission
s. 80ZH	Referring matters to FW Commission for determination under this Act
s. 80ZJ	Commission may exercise powers conferred by FW Act or prescribed enactments

(2) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 7(3) s. 8(3A)(b) s. 16(2A) and (2C) s. 113(1)(d)(ii)(I)	<i>Occupational Safety and Health Act 1984</i>	OSH Act

s. 75

s. 7(3)(b)	section 102(1) of the <i>Mines Safety and Inspection Act 1994</i>	the MSI Act section 102(1)
s. 7(3)(c)	clause 69(1) of Schedule 1 to the <i>Petroleum and Geothermal Energy Resources Act 1967</i> , clause 69(1) of Schedule 1 to the <i>Petroleum Pipelines Act 1969</i> , or clause 70(1) of Schedule 5 to the <i>Petroleum (Submerged Lands) Act 1982</i>	the <i>Petroleum and Geothermal Energy Resources Act 1967</i> Schedule 1 clause 69(1), the <i>Petroleum Pipelines Act 1969</i> Schedule 1 clause 69(1), or the <i>Petroleum (Submerged Lands) Act 1982</i> Schedule 5 clause 70(1)
s. 8(3A)(b) s. 113(1)(d)(ii)(II)	<i>Mines Safety and Inspection Act 1994</i>	MSI Act

- (3) If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation on or before the day on which section 5(2) of this Act comes into operation, subsection (2) —
- (a) does not come into operation; and
 - (b) is deleted when section 5(2) of this Act comes into operation.

Notes for this subsection:

1. If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation after the day on which section 5(2) of this Act comes into operation, see Part 7 Division 1 Subdivision 2.
2. See also section 129.

76. Various references to “shall” replaced

- (1) In the provisions listed in the Table delete “shall”.

Table

s. 67(3)	s. 72(3)
s. 80G(1)	s. 80L(1)
s. 80W(1)	

- (2) In the provisions listed in the Table delete “shall” and insert:

must

Table

s. 3(5)	s. 9(2)
s. 12(1) and (2) (each occurrence)	s. 14B(2), (3) and (4) (each occurrence)
s. 15(2)	s. 16(2)(b)
s. 20(9)	s. 23(3)
s. 26(1)(a), (b), (c) and (d) and (3)	s. 27(1a)
s. 29A(1), (2), (3) and (4)	s. 32(1), (2), (4) and (7)
s. 33(1)(a), (c) and (e), (3), (4) and (5) (each occurrence)	s. 38(1)
s. 40(3)(b)	s. 40A(1) (each occurrence)

s. 76

s. 40B(2) and (3)	s. 41(2) and (4)
s. 41A(1) and (2)	s. 42B(1)
s. 42C(2) and (5)	s. 44(3), (5), (5a), (11) and (12d) (each occurrence)
s. 46(2)	s. 47(3) and (5)
s. 48(2), (8), (9) and (12) (each occurrence)	s. 48A(1) and (1a)
s. 48B(2) and (4) (each occurrence)	s. 49(3), (4)(a) and (b) and (6)
s. 50(7)	s. 50A(1), (3), (4) and (7)
s. 50B(3)	s. 51A(4) and (5)
s. 51BA(1)	s. 51BB
s. 51BE	s. 51J
s. 51K	s. 51L
s. 51M	s. 55(1), (2), (3) and (4)(e)(i)
s. 56(1) (each occurrence)	s. 56(3) (1 st occurrence)
s. 56A(3)	s. 57(1)
s. 59(2)	s. 62(2) and (3)
s. 63(1), (2), (3), (6) and (7)	s. 64(2)
s. 64A(2)	s. 64D

s. 65	s. 66(2)(f)(ii) and (4) (each occurrence)
s. 69(3), (4), (6), (8), (9) and (11) (each occurrence)	s. 70(1) and (2)
s. 71(5) (1 st occurrence)	s. 71(9)(a)
s. 71A(5)(a)	s. 72(2) (each occurrence)
s. 72B(4), (5) and (6)	s. 73(3)(a) and (b), (4), (5), (7)(a), (7b)(a), (11), (12a), (13) and (14) (each occurrence)
s. 77(6) and (7)	s. 80C(2) and (4)
s. 80J(a)	s. 80K(3) (each occurrence)
s. 80M(3) (1 st and 3 rd occurrences)	s. 80N(3), (4) and (5)(a)
s. 80U(3)	s. 80V(2) (each occurrence)
s. 80ZE(1)	s. 81(2) and (4) (each occurrence)
s. 81C(2)	s. 81D(1) (1 st occurrence)
s. 82(2)	s. 82A
s. 83(8)	s. 83A(1)
s. 83A(3) (2 nd occurrence)	s. 83B(6)(a) and (10)
s. 83F(1)	s. 84(3)

s. 76

s. 84A(4)(a) and (b) and (7)	s. 85(4) and (5) (each occurrence)
s. 87(1)	s. 90(2) and (3a)
s. 93(3), (4), (5) and (6) (each occurrence)	s. 95(2) (2 nd occurrence)
s. 96F(4)(b) and (c)	s. 96J(2)(a)
s. 98(2) (each occurrence)	s. 102(1) and (2)
s. 103(2)	s. 106
s. 109	s. 110(1)
s. 111(1) and (2)	s. 112(2)
s. 112A(4)	s. 113(2)
s. 113(3b) (2 nd occurrence)	s. 114(2) (2 nd occurrence)

Note: The heading to amended section 41A is to read:

Which industrial agreements must not be registered under s. 41

(3) In the provisions listed in the Table delete “shall be” and insert:

is

Table

s. 8(3)(c)	s. 31(2)
s. 33(1)(b)	s. 34(4)
s. 56A(5)	s. 80H(1)

s. 80H(4) (2 nd occurrence)	s. 80M(2)
s. 80N(1) and (2)(a), (b) and (c) (each occurrence)	s. 80ZG(3)
s. 80ZH(3)	s. 81B(1)
s. 81CA(8)	s. 81D(1)
s. 83A(3) (1 st occurrence)	s. 84A(8)
s. 85(2)(a) and (b) and (3a)	s. 92(2)
s. 96I(1) and (2)	s. 114(2) (1 st occurrence)

(4) In the provisions listed in the Table delete “shall be” and insert:

are

Table

s. 27(1)(c)	s. 29B
s. 56(3)	s. 61 (each occurrence)
s. 72(5)(b)	s. 80H(4) (1 st occurrence)
s. 80M(3)	s. 85(2)(c) and (3) (each occurrence)
s. 93(2)	s. 96F(4)(d)
s. 114(1)	

s. 76

- (5) In the provisions listed in the Table delete “shall not” and insert:

cannot

Table

s. 34(3)	s. 51N(2)
s. 83D(3)	s. 84A(6)

- (6) In the provisions listed in the Table delete “shall” and insert:

can

Table

s. 83C(1)	s. 83E(11)
s. 84A(5)	s. 107

- (7) In the provisions listed in the Table delete “shall” and insert:

is

Table

s. 71(9)(c)	s. 80ZH(4)
s. 80ZJ(2)	s. 105

(8) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 3(2)	An employer shall, for the purposes of subsection (1), be	For the purposes of subsection (1), an employer is
s. 3(4)	process	process is, in the absence of proof to the contrary, taken to be proved if it is either of the following
s. 3(4)(b)	(3),	(3).
s. 3(4)	shall, in the absence of proof to the contrary, be deemed to be proved.	
s. 3(6)	Effect shall be given to subsections (1), (2), and (3)	Subsections (1), (2), and (3) have effect
s. 7(4)	no regard shall	regard must not
s. 20(8)	shall, while he holds his office, be deemed	holding office is taken
s. 20(8a)	<i>1938</i> the duration of	<i>1938</i> , the following are taken to be increased by 100%

s. 76

Provision	Delete	Insert
s. 20(8a)(a)	any	the period of any
s. 20(8a)(c)(ii)	duties,	duties.
s. 20(8a)	shall be deemed to be increased by 100%.	
s. 20(10)	shall be not	cannot be
s. 29A(1b)	(2A)	(2A), the following must be published in the required manner
s. 29A(1b)(b)	agreement,	agreement.
s. 29A(1b)	shall be published in the required manner.	
s. 33(1)(d)	whenever it shall appear	if the Commission considers it
s. 34(3)	shall they	can they
s. 35(3)	shall, at a time fixed by the Commission, be	are, at a time fixed by the Commission,

Provision	Delete	Insert
s. 37(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	Subject to any variation made under this Act, an award, and any provision of an award, whether or not it has been made for a specified term, remains
s. 37(4)	shall cease	ceases
s. 41(5)	shall operate	operates
s. 41(6)	shall, subject to this Act, continue	continues
s. 41(7)	such filing, and such party shall on the expiration of that period cease	the filing, and, on the expiration of that period, the party ceases
s. 44(12c)	no appeal shall	an appeal does not
s. 48(1)	shall be	is established
s. 50(3) s. 80G(2) s. 99	shall	does
s. 60(1)	shall, upon and during registration, become and be,	is, upon and during registration,

s. 76

Provision	Delete	Insert
s. 62(1) s. 71A(5)(b)	shall not be or become	is not
s. 71(5)(d)	shall, for all purposes, be	are, for all purposes,
s. 73(9)	shall	will
s. 80D(4) s. 80O(1)(a) and (b)	shall hold	holds
s. 80E(5)	shall affect or interfere	affects or interferes
s. 80H(2) s. 80N(2) s. 85(2)	shall consist	consists
s. 80L(2)	shall apply	applies
s. 80M(2)	shall have and enjoy	has and enjoys
s. 80O(5)	shall become	becomes
s. 80R(2)(c)	shall be advanced	advance
s. 80U(2) s. 87(2) s. 114(1)	shall not be	is not

Provision	Delete	Insert
s. 81B(5)	An industrial magistrate or acting industrial magistrate shall, if the industrial magistrate's court constituted by him	If an industrial magistrate's court constituted by an industrial magistrate or acting industrial magistrate
s. 85(3)	shall nominate	nominates
s. 85(3)	such judges as the Chief Justice of Western Australia shall from time to time nominate	judges the Chief Justice of Western Australia from time to time nominates
s. 85(3b)	shall	is to
s. 93(1a)	shall appoint	may appoint
s. 93(1a)	shall not be	are not
s. 93(7)	shall forthwith	must immediately
s. 95(1) and (2)	shall have	has
s. 98(4)	shall for all purposes be deemed (each occurrence)	is taken
s. 102A(1) s. 104(4)	his own motion, and shall, if he is	the Registrar's or deputy registrar's own motion, and must, if

s. 77

Provision	Delete	Insert
s. 108	shall not, on and from the date of its registration, and while so registered, be	is not, on and from the date of its registration, and while so registered,
s. 113(3b)	what fees shall	the fees to
s. 114(1)	shall, to that extent, be null and void	is, to that extent, void

77. Various references to gender removed

- (1) In the provisions listed in the Table delete “chairman” and insert:

chairperson

Table

s. 7(1) def. of <i>principal executive officer</i>	s. 44(6)(a) (each occurrence)
s. 48(2), (5), (8) and (9)	s. 80H(4)(a)
s. 80K(1) and (2)	s. 80M(1) def. of <i>member</i>
s. 80N(2)(a)	s. 80O(1)(a), (2), (3), (7) and (8)(a)
s. 80V(1) and (3)	Sch 1 it. 5

(2) In the provisions listed in the Table delete “he” and insert:

the person

Table

s. 9(2)(a) and (b)	s. 33(1)(b) and (c) and (2)
s. 44(2)(b)	s. 69(5)
s. 70(1)(d)	s. 80O(9)
s. 80P(1)	s. 102(1)(d)

(3) In the provisions listed in the Table delete “his”.

Table

s. 16(3)	s. 20(8a)(b)
s. 44(11)(a)	s. 80D(4)
s. 80M(1) def. of <i>head of branch</i> and <i>sub-head of branch</i>	s. 80O(1)(a)
s. 91(1)(a)	s. 93(10)
s. 111(1)	

(4) In the provisions listed in the Table delete “his” and insert:

the person’s

s. 77

Table

s. 20(8a)(c) (each occurrence)	s. 33(1)(a) (each occurrence)
s. 70(1)(h)	s. 102(1)(b)
s. 114(1)	

(5) In the provisions listed in the Table delete “him” and insert:

the person

Table

s. 33(1)(c) and (2)	s. 44(3)
s. 56(1)(b)	s. 69(5)(c)
s. 80P(1)	s. 114(1)

(6) In the provisions listed in the Table delete “his” and insert:

the Registrar’s

Table

s. 48(9)	s. 56(2) and (3)
s. 57(3)	s. 73(11)
s. 93(3)	

- (7) In the provisions listed in the Table delete “his or her” and insert:

the employee’s

Table

s. 49D(2)(a)	s. 49E(4) def. of <i>relevant person</i> para. (b)
s. 83(1)(f)	s. 97U def. of <i>party</i> para. (b)
s. 97UF(2)(b)	s. 97UG(1)(b) and (4)(a)
s. 97UH(b)(i)	s. 97UL(1)(d)(ii) and (3)(b)
s. 97UU(1)(b)	s. 97UY(6) def. of <i>day of execution</i> para. (a)(ii)
s. 97VA(1)(b)	s. 97VK(1)(b)
s. 97VS(1) and (6)	s. 97VV
s. 97YF(b) and (d)	

- (8) In the provisions listed in the Table delete “he or she” and insert:

the person

Table

s. 49L(1)	s. 97WY(1)
s. 97XI(2)(b)	s. 97XZ(1)(b)
s. 97YG(2)(a)	

s. 77

- (9) In the provisions listed in the Table delete “his or her” and insert:

the person’s

Table

s. 49L(1)(b)	s. 83E(6)(a)
s. 97WV(2)	

- (10) In the provisions listed in the Table delete “he” and insert:

the Registrar

Table

s. 56(2)	s. 57(3)
s. 64(1) (each occurrence)	s. 69(3), (4) and (11)
s. 93(6) and (7)	

- (11) In the provisions listed in the Table delete “him or her” and insert:

the person

Table

s. 83(8)	s. 83E(9)
s. 97YC(4)	s. 97YG(7)

- (12) In the provisions listed in the Table delete “he or she” and insert:

the Registrar

Table

s. 97WZ(1)	s. 97XA
s. 97XN(1)	s. 97XP

- (13) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 7(1) def. of <i>public authority</i>	his or her	the Governor’s
s. 7(1a)(b)	his	the employee’s
s. 11(2) s. 14(2) s. 44(11)	he (each occurrence)	the commissioner
s. 16(3)	himself	
s. 18(2)	him he	the Governor the Governor
s. 20(9)	his appointment he retains his existing his service	being appointed the commissioner retains any existing the service

s. 77

Provision	Delete	Insert
s. 23(3)(c)(i) s. 80E(5) (1 st occurrence)	his	the employer's
s. 25(1)(c) s. 44(12) s. 93(1a)	he (each occurrence)	the Chief Commissioner
s. 27(1)(i)	his	the expert's
s. 29AA(4)	his or her	an
s. 30(1) s. 73(3)(a)	his	the Minister's
s. 41(7)	his	the party's
s. 44(3)	his	that
s. 44(7)(a)(iii)	his	an
s. 44(11)	his (1 st occurrence)	the commissioner's
s. 44(11)(b)	him	the commissioner
s. 48(9) s. 80K(1) s. 80V(1)	him	the chairperson
s. 49E(2)(b)	him or her	the employee

Provision	Delete	Insert
s. 56(1)(b) s. 80C(3)	he	the officer
s. 56(1)(b)	his being so	the person is
s. 56(2) and (3) s. 63(7)	him	the Registrar
s. 63(1)(a)	financial status of each member in respect of his	status of each member in respect of the financial requirements for
s. 73(3)(a) s. 80N(3)	him	the Minister
s. 73(12a)	him or her	the Registrar
s. 80D(5)(a)	he	the arbitrator
s. 80D(5)(b)	his appointment	the appointment of the commissioner
s. 80E(2)(a) s. 94	him (each occurrence)	the officer
s. 80E(5)	by him of his	of the Arbitrator's
s. 80F(2) s. 80J(b)	his (each occurrence)	the officer's
s. 80G(1)	his	the Arbitrator's

s. 77

Provision	Delete	Insert
s. 80N(4)	him	the Electoral Commissioner
s. 80N(5)(b)	he	the Minister
s. 80O(2)(a)	he	the chairperson
s. 80O(2)(b)	his	the chairperson's
s. 80O(5)(b), (c) and (e) s. 87(3)	he	the member
s. 80O(5)(d), (6) and (9)(a) s. 85(6)	his	the member's
s. 80O(6) s. 80ZH(4)	him	the member
s. 80O(9)	his (1 st occurrence)	the person's
s. 80P(1)	member (1 st occurrence)	person as a member
s. 80P(2)	him he	the Chief Commissioner or Governor the Chief Commissioner or Governor
s. 80R(2)(d)	his or their	of the relevant

Provision	Delete	Insert
s. 80R(2)(f)	his or their position	of the relevant position or positions
s. 80S(2)	on his or their behalf	
s. 80ZH(1)	where in his opinion	if
s. 80ZH(3)	him under subsection (2), the member of the Fair Work Commission	the member of the FW Commission under subsection (2), the member
s. 81B(3)	when	when the industrial magistrate
s. 81B(3)(a)	he	
s. 81B(3)(b)	he resigns his	in the case of a person appointed under subsection (2), resigns from
s. 81B(4)	his	
s. 81B(5)	he	the magistrate
s. 85(6)	him he (each occurrence)	the judge the judge
s. 95(1)(a) and (b)	him	the deputy registrar
s. 96(3)(b)	his or her (1 st occurrence)	an

s. 77

Provision	Delete	Insert
s. 96(3)(b) s. 97UM(4)	he or she	the employee
s. 96(3)(b)	his or her (2 nd occurrence)	a
s. 96(11)	his or her	the Chief Commissioner's
s. 96L(1)(a)(i)	he or she	the complainant
s. 96L(1)(a)(iii)	him or her	the complainant
s. 97UD(2) s. 97XJ(2)	his or her	the represented person's
s. 97UG(1) s. 97YH	he or she	the employer
s. 97UH	him or her	the employer
s. 97UJ(1)	his or her	a
s. 97UJ(1)(d)	him or her	the employer or employee
s. 97V(1) s. 97VJ(1)	he or she	the party
s. 97VB	satisfy himself or herself that	consider whether
s. 97VC(3)	his or her	the party's

Provision	Delete	Insert
s. 97VD(2)(a) s. 97WZ(2)	his or her	the Registrar's
s. 97WJ	his or her	a
s. 97WN(3)(b) and (4)(c)	he or she	the arbitrator
s. 97WS(3) s. 97XF(2)	he or she	the representative
s. 97WU(1)	he or she	the Public Advocate
s. 97WX(2) s. 97XM(7) Sch. 4 it. 1(h)(i)	his or her	
s. 97WZ(3)(a) s. 97XN(2)(a)	he or she	the applicant
s. 97XB(1)	his or her	that person's
s. 97XD(1)	his or her	performing
s. 97XF(1)	his or her	the representative's
s. 97XH(1)	of his or her wish	that the representative wishes
s. 97XI(2)(a) and (3)(c) s. 97XK(1)(b)	his or her behalf	behalf of the represented person

s. 77

Provision	Delete	Insert
s. 98(3) s. 102A(2) s. 104(3)	his (each occurrence)	the inspector's
s. 98(3)(g)	he	the inspector
s. 98(3)(h)	him	the inspector
s. 102(1)(c)	his	the returning officer's
s. 103(2)	he	the applicant
s. 107	by him	
s. 112(1)	his	a
s. 112A(2)	holds himself out as	represents that the person is
s. 114(2)	his (1 st occurrence) his (2 nd occurrence) him he	the employee's the the employee the employee
Sch. 4 it. 1(g) Sch. 4 it. 1(h)	he or she (each occurrence)	the employee
Sch. 4 it. 1(i)	his or her	that party's
Sch. 5 it. 1(c)	he or she	the authorised person

78. Various other modernisations

- (1) In the provisions listed in the Table delete “of the Commonwealth” and insert:

(Commonwealth)

Table

s. 3(2)(c)(iii)	s. 48B(1) def. of <i>complying superannuation fund or scheme</i> para. (a)
s. 65(a)	s. 96H(3) def. of <i>corporation</i>
s. 97U(1) def. of <i>employment services for persons with disabilities</i>	

- (2) In the provisions listed in the Table delete “hereby”.

Table

s. 4	s. 8(1)
s. 85(1)	s. 114(2)

- (3) In the provisions listed in the Table delete “deemed” and insert:

taken

Table

s. 20(8a)(b)	s. 31(2)
s. 44(2)(b)	s. 56(3)

s. 78

s. 66(2)(f)(ii)	s. 71A(3)
s. 80M(2) and (3)	s. 80ZH(3)
s. 92(2)	s. 96F(4)(d)

(4) In the provisions listed in the Table delete “thereto”.

Table

s. 27(1)(d)	s. 41(3)
s. 43(1)	s. 44(8)(a) and (11)

(5) In the provisions listed in the Table delete “any matter or thing” and insert:

anything

Table

s. 27(1)(p)	s. 48(6)(a) and (b) and (15)
s. 112A(5)(e)	

(6) In the provisions listed in the Table delete “be deemed” and insert:

taken

Table

s. 71(9)(c)	s. 80ZH(4)
s. 80ZJ(2)	s. 96F(4)(c)

(7) Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 3(1)	industrial matter or industrial action related thereto extends thereto	related industrial matter or industrial action extends to the matter or action
s. 6(b)	agreement, thereby	agreement and
s. 7(1) def. of <i>industrial matter</i> para. (c) s. 73(9)	therein (each occurrence)	
s. 7(1) def. of <i>industrial matter</i>	therein	in the industry
s. 7(1) def. of <i>industrial matter</i> para. (e)	thereof	of an organisation or association
s. 27(1)(a)	thereof (1 st and 3 rd occurrence) thereof (2 nd occurrence)	of it
s. 27(1)(d) s. 80E(6) s. 80R(3)	thereof	of the matter

s. 78

Provision	Delete	Insert
s. 27(1)(h) s. 49(3)(a) s. 84(3) s. 90(2)(a)	wherein	in which
s. 27(1)(p)	whatsoever, wherein of a matter before the Commission or is related thereto	in, of, or related to, a matter before the Commission
s. 27(1)(q)	thing whatsoever	other thing
s. 32(4)(a) s. 47(5)	thereafter	
s. 32(4)(c)	(8) and of the preamble thereto	(8), and of any preamble to it,
s. 33(5)	therefrom	from the documents
s. 35(4)	therein prescribed	prescribed in this section
s. 40(3)	thereof	of it
s. 41(1)	disputes, disagreements, or questions relating thereto	any related disputes, disagreements, or questions
s. 41(5)(a) and (b)	therein	in the agreement

Provision	Delete	Insert
s. 41(6) and (7)	thereto therefrom	to the agreement from the agreement
s. 44(2)(b)	shall, in any proceedings under this Act relating thereto, be	is, in any proceedings under this Act relating to the summons,
s. 44(3)	thereat	
s. 44(6)	the foregoing	this subsection,
s. 44(11) s. 56(3)	thereupon	
s. 46(1)(b)	therein or of giving fuller effect thereto	in, or giving fuller effect to, the provision
s. 48(10)	as prescribed therein	in accordance with that subsection
s. 51A(1)(a)	matter related thereto	related matter
s. 55(2)(b)	thereof	of this paragraph
s. 55(4)(d) s. 62(3)(b)(i)	therefor	for the alteration
s. 63(2)	therein	in the records
s. 64(2)	therewith	with the direction

s. 78

Provision	Delete	Insert
s. 65(a)	in this section called	
s. 66(2) s. 87(3)	the foregoing	this subsection
s. 66(2)(ca) s. 80E(5)	any act, matter or thing	anything
s. 66(2)(e)(ii)	thereof	of the irregularity
s. 69(9)	therefrom	from it
s. 69(10)	therein	in the register
s. 71(7)	howsoever	however
s. 73(4)	therewith	with the summons
s. 80M(3)	Forthwith under the hands of thereafter	Immediately by
s. 80ZE(1)	thereon	
s. 80ZI(3)	of the Commonwealth	
s. 81B(5)	be deemed notwithstanding that cessation	the magistrate is, despite the cessation, taken
s. 85(3)	such of those members as	members

Provision	Delete	Insert
s. 93(7)	Industrial	
s. 93(8)	deems	considers
s. 94	any act or thing act or	anything
s. 96C(3)	whereby	by which
s. 96F(2)	forthwith	immediately
s. 96F(4)(d) s. 98(3)(h)	thereunder	under this Act
s. 98(3)(b)	thing whatsoever	other thing
s. 105	be evidence therein	evidence in it
s. 109	thereof (each occurrence)	
s. 109 s. 110(1) and (2)	represented therein	
s. 113(1)(c)	the generality thereof	this paragraph
s. 113(1)(e)	any act or thing	anything
s. 113(2)	thereto of such	of
s. 113(3)	in respect thereof	

s. 78

Provision	Delete	Insert
s. 114(1)	deemed to be severable from any provisions hereby annulled	taken to be severable from any voided provisions

Part 3 — *Courts and Tribunals (Electronic Processes Facilitation) Act 2013 amended*

79. Act amended

This Part amends the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

80. Section 6 amended

After section 6(1)(k) insert:

(kaa) the *Industrial Relations Act 1979*;

Part 4 — Long Service Leave Act 1958 amended

81. Act amended

This Part amends the *Long Service Leave Act 1958*.

82. Part II Division 1 heading inserted

At the beginning of Part II insert:

Division 1 — General

83. Section 4 amended

- (1) In section 4(1) delete the definitions of:

employee

employer

industrial inspector

ordinary pay

- (2) In section 4(1) insert in alphabetical order:

continuous employment has the meaning given in section 6;

employee —

- (a) means —

(i) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or

(ii) a person whose usual status is that of an employee;

and

- (b) includes a casual or seasonal employee;

employer includes any of the following employing 1 or more employees —

- (a) a person or public authority as defined in the IR Act;
- (b) except as provided in the *Foreign States Immunities Act 1985* (Commonwealth) section 12, a foreign state or consulate;
- (c) a related body corporate of the employer if the employer is itself a body corporate;

employer-employee agreement has the meaning given in the IR Act section 7(1);

industrial inspector has the meaning given in the IR Act section 7(1);

IR Act means the *Industrial Relations Act 1979*;

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

ordinary pay has the meaning given in Division 2;

related body corporate, of an employer that is a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

- (3) In section 4(1) in the definitions of **award**, **industrial agreement** and **industrial magistrate's court** delete "*Industrial Relations Act 1979*;" and insert:

IR Act;

- (4) Delete section 4(2) and (3).

Note: The heading to amended section 4 is to read:

Terms used

84. Sections 5 and 6 replaced

Delete sections 5 and 6 and insert:

4A. Employees with equivalent separate LSL entitlements

(1) In this section —

award, agreement or enactment means —

- (a) an award or industrial agreement; or
- (b) an agreement between an employer and employee (including an employer-employee agreement); or
- (c) an enactment of the State, the Commonwealth, another State or a Territory;

entitlement, in relation to long service leave or payment on termination instead of long service leave, includes an eligibility to become entitled to the long service leave or payment on termination instead of long service leave;

WA LSL means long service leave, or payment on termination instead of long service leave, under Part III.

- (2) For the purposes of this section, a ***separate LSL entitlement*** is an entitlement to long service leave, and a payment on termination instead of long service leave, under an award, agreement or enactment.
- (3) For the purposes of this section, a payment (whether in the form of a loading, other additional incremental payment or otherwise) instead of an entitlement under subsection (2) is not a ***separate LSL entitlement***.
- (4) This Act does not apply to an employee who has a separate LSL entitlement to take long service leave and

to be paid on termination instead of long service leave that is at least equivalent to the entitlement to WA LSL to take long service leave and to be paid on termination instead of long service leave.

- (5) Subsection (6) applies to an employee —
- (a) who becomes entitled to WA LSL in relation to employment with an employer; and
 - (b) who, immediately before becoming entitled to WA LSL, had a separate LSL entitlement in relation to employment with the employer.
- (6) Any long service leave taken by, or payment on termination instead of long service leave made to, the employee under the separate LSL entitlement must be taken into account in the calculation of the employee's entitlement to WA LSL as if it were taken, or paid on termination, as WA LSL.

5. Cashing out of accrued long service leave

- (1) An employer and an employee may agree that the employee may forgo the employee's entitlement, or part of the employee's entitlement, to long service leave under section 8(2)(a) or (b) if —
- (a) the employee is given an adequate benefit instead of the entitlement; and
 - (b) the agreement is in writing, signed by the employer and employee.
- (2) For the purposes of subsection (1), a benefit is not adequate unless the employee is paid at least the amount of ordinary pay the employee would have received had the employee taken the long service leave or part of the leave.
- (3) Nothing in this section enables the employer and employee to reach the agreement before the

employee's entitlement to long service leave has accrued.

6. Continuous employment

- (1) An employee's *continuous employment* with an employer includes an absence from work by the employee comprising any of the following, whether paid or unpaid and irrespective of the duration —
 - (a) annual leave;
 - (b) leave for illness or injury, or carer's leave;
 - (c) long service leave;
 - (d) parental leave;
 - (e) compassionate leave;
 - (f) bereavement leave;
 - (g) family and domestic violence leave;
 - (h) public holidays;
 - (i) any other form of leave provided as part of the employee's employment.
- (2) An employee's *continuous employment* with an employer also includes any of the following absences from work, whether paid or unpaid and irrespective of the duration —
 - (a) a period following the termination of the employee's employment by the employer if the termination has been made with the intention of avoiding —
 - (i) obligations under this Act in respect of long service leave; or
 - (ii) obligations in respect of annual leave under an award, industrial agreement, employer-employee agreement, order of

- the Commission, the MCE Act or any other enactment;
- (b) if the employee resumes employment with the employer as soon as practicable after the absence — a period during which the employment is interrupted by service as a member of the naval, military or air forces of the Commonwealth other than as a member of the Permanent Forces of the Commonwealth of Australia.
- (3) An employee has *continuous employment* with an employer despite an absence from work comprising any of the following, whether paid or unpaid and irrespective of the duration —
- (a) an absence other than that referred to in subsection (1) or (2) which is authorised by the employer;
- (b) a standing-down of the employee in accordance with the provisions of —
- (i) an award, agreement, order or determination in force under the IR Act; or
- (ii) the *Fair Work Act 2009* (Commonwealth) or an enterprise agreement under that Act; or
- (iii) any other enactment;
- (c) an absence arising directly or indirectly from an industrial dispute if the employee returns to work in accordance with the terms of settlement of the dispute;
- (d) a reasonable absence from work on legitimate union business in respect of which the employee has requested and been refused leave;

- (e) an absence for a reason not specified in subsection (1) or (2) or in this subsection unless the employer gives, during or within 14 days after the absence, written notice to the employee that the continuity of the employment has been broken by the absence.
- (4) An employee has ***continuous employment*** with an employer despite a termination of the employment by the employer —
- (a) on any ground other than slackness of trade — if the employee is re-employed by the employer within a period not exceeding 2 months from the date of the termination;
 - (b) on the ground of slackness of trade — if the employee is re-employed by the employer within a period not exceeding 6 months from the date of the termination.
- (5) A casual or seasonal employee has ***continuous employment*** with an employer despite an absence from work comprising any of the following, irrespective of the duration —
- (a) an absence under the terms of the employment;
 - (b) an absence caused by seasonal factors;
 - (c) any other absence after which the employee has, due to the regular and systematic nature of the employment, a reasonable expectation of returning to work for the employer.
- (6) In addition, a casual or seasonal employee has ***continuous employment*** with an employer despite the fact that the employee —
- (a) is employed by the employer under 2 or more contracts of employment; or

- (b) is also employed by another person during the period of employment with the employer.
- (7) If an employee enters into a contract of employment with an employer within 52 weeks after completing an apprenticeship with the employer, the period of apprenticeship is taken to be a part of the employee's *continuous employment* with the employer.

6A. Calculating length of continuous employment

- (1) When calculating the length of continuous employment for the purposes of this Act, a period is counted if it is any of the following —
 - (a) leave referred to in section 6(1) for which the employee has received payment;
 - (b) an absence referred to in section 6(2);
 - (c) an absence referred to in section 6(5).
- (2) When calculating the length of continuous employment for the purposes of this Act, a period is not counted if it is any of the following —
 - (a) leave referred to in section 6(1) for which the employee has not received payment;
 - (b) an absence referred to in section 6(3);
 - (c) a period between a termination and re-employment referred to in section 6(4);
 - (d) in respect of an employee to whom section 6(7) applies, any period between —
 - (i) the completion of the employee's apprenticeship; and
 - (ii) the employment of the employee by the employer;

- (e) a period during the transfer of business as defined in section 7D where —
 - (i) the employment of an employee of the old employer as defined in section 7D has terminated; and
 - (ii) the employee has not yet been employed by the new employer as defined in section 7D.

85. Part II Division 2 heading inserted

Before section 7 insert:

Division 2 — Ordinary pay

86. Section 7 replaced

Delete section 7 and insert:

7. Ordinary pay: general

- (1) Except as provided in subsection (4), an employee's *ordinary pay* is the employee's remuneration for the employee's normal weekly number of hours of work calculated on the ordinary time rate of pay applicable to the employee as at the time when any period of long service leave granted to the employee under this Act commences, or is taken to commence.
- (2) For the purposes of subsection (1), the normal weekly number of hours of work of an employee whose hours have varied during a period of employment is the average weekly hours worked by the employee during the period, calculated by reference to ascertainable

hours worked by the employee during the period, excluding any period referred to in section 6A(2).

- (3) For the purposes of subsection (1), the rate of pay of an employee whose leave, or any portion of it, is postponed to meet the convenience of the employee by agreement between the employer and employee is the rate of pay applicable to the employee —
- (a) on the day on which the leave accrues; or
 - (b) if the employer and employee agree — on the day on which the employee commences the leave.
- (4) The **ordinary pay** of an employee employed on piecework, commission, bonus work, percentage reward, or any other system of payment, wholly or partly by results, is the employee's average weekly rate of pay earned over a period totalling 365 days ending on —
- (a) if the employee is in employment and —
 - (i) takes long service leave — the day immediately before the day on which the employee commences the long service leave; or
 - (ii) takes payment instead of long service leave under section 5 — the day immediately before the day on which an agreement under section 5 is reached in relation to the payment;
- or
- (b) if the employee is not in employment — the day immediately before the day on which the employee was last in employment; or
 - (c) if the employee is dead — the day immediately before the day on which the employee died.

- (5) For the purposes of subsection (4), the following periods must be disregarded —
- (a) any period of unpaid leave;
 - (b) any period during which there is a standing-down of the employee in accordance with the provisions of —
 - (i) an award, agreement, order or determination in force under the IR Act; or
 - (ii) the *Fair Work Act 2009* (Commonwealth) or an enterprise agreement under that Act; or
 - (iii) any other enactment.

7A. Ordinary pay: shift premiums, overtime, penalty rates or allowances

Except as provided in section 7B, an employee's **ordinary pay** does not include shift premiums, overtime, penalty rates, allowances or any similar payments.

7B. Ordinary pay: casual employees' loading

A casual employee's **ordinary pay** includes any casual loading payable under any of the following —

- (a) an award, industrial agreement, employer-employee agreement or order of the Commission;
- (b) a modern award, enterprise agreement or national minimum wage order made by the Fair Work Commission under the *Fair Work Act 2009* (Commonwealth);
- (c) a contract of employment;
- (d) an enactment.

7C. Ordinary pay: board and lodging

- (1) An employee's *ordinary pay* includes the cash value of board and lodging during a period of long service leave if the board and lodging —
 - (a) is provided to the employee by the employer; but
 - (b) is not provided to, and taken by, the employee during the period of long service leave.
- (2) For the purposes of subsection (1), the cash value of board and lodging provided to an employee is —
 - (a) if the value is fixed by or under the conditions of the employee's employment — that value; or
 - (b) if the value is not fixed by or under the conditions of the employee's employment — a value calculated by reference to a rate prescribed in the regulations.

87. Part II Division 3 inserted

At the end of Part II insert:

Division 3 — Transfer of business

7D. Terms used

In this Division —

connection between the old employer and the new employer has the meaning given in section 7G;

new employer has the meaning given in section 7E;

old employer has the meaning given in section 7E;

transfer of business has the meaning given in section 7E;

transferring employee has the meaning given in section 7F;

transferring work has the meaning given in section 7E.

7E. Transfer of business, old employer, new employer, transferring work

There is a *transfer of business* from an employer (the *old employer*) to another employer (the *new employer*) if the following requirements are satisfied —

- (a) the employment of an employee of the old employer has terminated;
- (b) within 3 months after the termination, the employee becomes employed by the new employer;
- (c) the work (the *transferring work*) the employee performs for the new employer is the same, or substantially the same, as the work the employee performed for the old employer;
- (d) there is a connection between the old employer and the new employer.

7F. Transferring employee

An employee in relation to whom the requirements in section 7E(a), (b) and (c) are satisfied is a *transferring employee*.

7G. Connection between old employer and new employer

- (1) There is a *connection between the old employer and the new employer* if, in accordance with an arrangement between them, the new employer owns or

has the beneficial use of some or all of the assets (whether tangible or intangible) that —

- (a) the old employer owned or had the beneficial use of; and
 - (b) relate to, or are used in connection with, the transferring work.
- (2) There is a ***connection between the old employer and the new employer*** if, because the old employer has outsourced the transferring work to the new employer, the transferring work is performed by 1 or more transferring employees as employees of the new employer.
- (3) There is a ***connection between the old employer and the new employer*** if —
- (a) because the new employer had outsourced the transferring work to the old employer, the transferring work had been performed by 1 or more transferring employees, as employees of the old employer; and
 - (b) because the new employer has ceased to outsource the work to the old employer, the transferring work is performed by those transferring employees, as employees of the new employer.
- (4) There is a ***connection between the old employer and the new employer*** if the new employer is a related body corporate of the old employer when the transferring employee becomes employed by the new employer.

7H. Status of transferring employees on transfer of business

For the purposes of this Act, on a transfer of business —

- (a) a transferring employee's employment before and after the transfer is taken to be a single period of continuous employment; and
- (b) the new employer is taken to have been the transferring employee's sole employer for the entire period.

7I. Transfer of employment records

- (1) In this section —
employment records means employment records required to be kept by an employer under section 26(1).
- (2) On the transfer of a business, the old employer must transfer copies of all transferring employees' employment records to the new employer.
- (3) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.
- (4) In proceedings under the IR Act section 83E for a contravention of subsection (2), an industrial magistrate's court may, as an alternative, determine that a contravention of section 26(1) or (2) has occurred.

88. Part III heading amended

In the heading to Part III delete "**in lieu thereof**" and insert:

on termination instead

89. Section 8 amended

- (1) In section 8(1) delete the passage that begins with “continuous employment” and continues to the end of the subsection and insert:

the length of continuous employment calculated under section 6A with the same employer.

- (2) Delete section 8(3)(b) and insert:

(b) in any circumstances other than by the employer for serious misconduct,

90. Section 9 amended

- (1) In section 9(1):

(a) in paragraph (a) delete “subject to any agreement between the employer and the employee,” and insert:

except as provided in subsection (1AA),

(b) in paragraph (b) delete “periods of not less than one week.” and insert:

periods.

- (2) After section 9(1) insert:

(1AA) The employee and employer may agree when the employee will take long service leave.

- (3) After section 9(1b) insert:
- (1C) The employee may request the employer to grant the employee a period of long service leave —
 - (a) twice as long as the period to which the employee would otherwise be entitled; and
 - (b) at a rate of pay equal to half the employee's ordinary pay.
 - (1D) The employee may request the employer to grant the employee a period of long service leave —
 - (a) half as long as the period to which the employee would otherwise be entitled; and
 - (b) at a rate of pay equal to twice the employee's ordinary pay.
- (4) Delete section 9(2) and insert:
- (2) An employee whose employment is terminated is taken to have commenced long service leave on the day of termination if —
 - (a) the employee is entitled to long service leave under section 8(2) or (3); and
 - (b) the employment is terminated before the employee has taken all the long service leave to which the employee is entitled.
 - (2A) On the day the employee commences long service leave under subsection (2), the employer must pay the full amount to which the employee is entitled in respect of the leave to —
 - (a) the employee; or

- (b) if the employee has died — on request, to the employee’s personal representative.

- (5) In section 9(3) after “a period of” insert:

accrued

Note: The heading to amended section 9 is to read:

Taking long service leave and payment on termination

91. Section 11 amended

- (1) In section 11(1):

- (a) in paragraph (b) delete “payment in lieu of long service leave;” and insert:

payment on termination instead of long service leave;

- (b) in paragraph (c) delete “rate of”;
- (c) in paragraph (d) delete “in order to avoid or to attempt” and insert:

with the intention of avoiding or attempting

- (d) in paragraph (e) delete “in lieu of” and insert:

instead of

- (2) After section 11(2) insert:

- (3) Jurisdiction granted under subsection (1) is in addition to jurisdiction an industrial magistrate's court has —
 - (a) under the IR Act section 83(1)(e) to enforce a provision of Part III as an entitlement provision as defined in the IR Act section 7(1); and
 - (b) under the IR Act section 83E to enforce a provision of this Act that is a civil penalty provision as defined in the IR Act section 7(1).

92. Section 26 amended

- (1) In section 26(1):
 - (a) delete “details are recorded of —” and insert:

the following employment records are kept —
 - (b) after paragraph (a) insert:
 - (aa) the employer's name and Australian Business Number (if any);
 - (ab) the date of any transfer of business as defined in section 7D during the employment of the employee;
 - (c) after paragraph (b) insert:
 - (ba) the weekly hours worked by the employee;

- (d) delete paragraph (e) and insert:
 - (e) any agreement made under section 5, including details of —
 - (i) the benefit for, and the amount of, long service leave that was foregone; and
 - (ii) when the benefit was paid;
 - (e) in paragraph (f) delete “Act; and” and insert:

Act;
- (2) In section 26(2):
- (a) in paragraph (a) before “records” insert:

employment
 - (b) in paragraph (b) delete “entry” and insert:

employment record
- (3) Delete section 26(3) and (4) and insert:
- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of the IR Act section 83E.

93. Section 26A amended

- (1) In section 26A(1):
 - (a) in paragraph (a) before “records” insert:

employment
 - (b) in paragraph (b) before “records.” insert:

employment
- (2) In section 26A(1a) delete “*Industrial Relations Act 1979*” and insert:

IR Act
- (3) Delete section 26A(1b).
- (4) In section 26A(3):
 - (a) in paragraph (a) before “record” insert:

employment
 - (b) in paragraph (c)(i) and (ii) before “records;” insert:

employment

Note: The heading to amended section 26A is to read:
Access to employment records kept by employer

94. Section 39 amended

In section 39 delete “*Industrial Relations Act 1979*” and insert:

IR Act

Note: The heading to amended section 39 is to read:

Application to this Act of certain regulations made under the IR Act

95. Part 8 inserted

After section 39 insert:

Part 8 — Savings provisions for *Industrial Relations Legislation Amendment Act 2021*

40. Terms used

In this Part —

commencement day means the day on which the *Industrial Relations Legislation Amendment Act 2021* section 84 comes into operation;

former section means a section of this Act as in operation immediately before the commencement day.

41. Business transmitted before commencement day

- (1) This section applies in relation to the transmission, as defined in former section 6(5), of a business before the commencement day.
- (2) For the purposes of determining whether an employee in the business has had continuous employment with an employer, on and after the commencement day —
 - (a) former sections 6 and 8 continue in operation;and

s. 96

(b) Part II Division 3 does not apply.

96. Various references to “shall” replaced

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 8(3) s. 27(2)	shall be	is
s. 10(1)	shall not become	is not
s. 27(1)	shall	must
s. 27(2)	shall thereupon forfeit his	forfeits the
s. 27(3)	shall	do
s. 39	shall	

97. Various references to gender removed

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 8(2)(c)(i) s. 8(3)(a)	his	the employee’s
s. 8(2)(c)(ii)	his	the
s. 8(5)	his or her	

Provision	Delete	Insert
s. 8(9)	his or her	the employee's
s. 27(3)	his	
s. 10(2) s. 27(1) and (2)	he (each occurrence)	the employee
s. 12	his or her	the inspector's
s. 38(1)	him to	

98. Various other modernisations

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 4(1) def. of <i>business</i>	thereof	of it
s. 8(2)	such continuous employment, as is referred to in subsection (1),	continuous employment
s. 8(3)	of such continuous employment since the commencement thereof, but less than 10 years	but less than 10 years of continuous employment
s. 27(3)	deemed	taken

s. 98

Provision	Delete	Insert
s. 10(1)	thereto	
s. 10(1)	hereunder	
s. 10(2)	thereto (1 st occurrence)	
s. 10(2)	prior thereto	before
s. 11(1)	the foregoing	this subsection
s. 26(2)(b)	7 years thereafter	7 years after that
s. 27(2)	hereunder	
s. 39	deemed	

Part 5 — *Minimum Conditions of Employment Act 1993* amended

99. Act amended

This Part amends the *Minimum Conditions of Employment Act 1993*.

100. Section 3 amended

- (1) In section 3(1) delete the definitions of:

carer's leave

employee

- (2) In section 3(1) insert in alphabetical order:

employee means —

- (a) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or
- (b) a person whose usual status is that of an employee;

industrial instrument means an award or employer-employee agreement;

- (3) In section 3(1) in the definition of *minimum condition of employment*:

- (a) in paragraph (e) delete “5;” and insert:

5; or

s. 101

(b) after paragraph (e) insert:

(f) the requirement as to confidentiality prescribed by section 39E(1);

101. Section 5 amended

(1) Delete section 5(1) and insert:

(1) The minimum conditions of employment extend to and bind all employees and employers and are taken to be implied —

- (a) in an industrial instrument; or
- (b) if a contract of employment is not governed by an industrial instrument — in that contract.

(2) In section 5(5) delete “sections 8 and 9(1).” and insert:

section 8.

102. Section 7 replaced

Delete section 7 and insert:

7. Enforcement of minimum conditions

A minimum condition of employment may be enforced under the IR Act section 83 —

- (a) as an entitlement provision; or
- (b) if the condition is implied in an industrial instrument — as a provision of the instrument.

103. Section 8 amended

In section 8(1)(c) delete “writing.” and insert:

writing, signed by the employer and the employee.

Note: The heading to amended section 8 is to read:

Cashing out of accrued annual leave

104. Section 9 deleted

Delete section 9.

105. Section 9A amended

- (1) In section 9A(4) delete the definition of *industrial instrument*.
- (2) In section 9A(4) in the definition of *authorised leave* paragraph (c) delete “Commonwealth;” and insert:

Commonwealth.

106. Section 9B amended

In section 9B(2)(a) delete “health and safety” and insert:

safety and health

107. Part 3 Division 1 heading inserted

At the beginning of Part 3 insert:

Division 1 — General

s. 108

108. Section 10 amended

- (1) In section 10:
 - (a) delete “An” and insert:
 - (1) Except as provided in section 16, an
 - (b) delete “13, 14 or 15,” and insert:

13 or 14,
- (2) At the end of section 10 insert:
 - (2) Nothing in this section prevents an industrial instrument from providing for minimum rates of pay for an employee with a disability.

109. Part 3 Division 2 inserted

At the end of Part 3 insert:

Division 2 — Employees with disabilities

15. Terms used

In this Division —

employee with a disability means an employee whose productive capacity —

- (a) has been assessed under —
 - (i) the SWS; or

(ii) a supported wage industrial instrument provision;

and

(b) is assessed as being reduced because of a disability;

instrument-free employee with a disability means an employee —

(a) whose contract of employment is not governed by an industrial instrument; and

(b) whose productive capacity has been assessed under the SWS as being reduced because of a disability;

instrument-governed employee with a disability means an employee —

(a) whose contract of employment is governed by an industrial instrument that includes a SWIIP that incorporates the SWS; and

(b) whose productive capacity has been assessed under the SWS as being reduced because of a disability; and

(c) who is not employed by a supported employment service as defined in the *Disability Services Act 1986* (Commonwealth) section 7; and

(d) who is being paid a weekly rate of pay determined by the SWS under the SWIIP;

supported wage industrial instrument provision or ***SWIIP*** means a provision of an industrial instrument that —

(a) applies to an employee with a disability; and

(b) provides a means (a ***wage assessment tool***) for the assessment of whether, and the extent to

which, the employee's productive capacity is reduced because of the disability; and

- (c) provides that the employer may pay a wage that —
 - (i) relates to the employee's productive capacity as assessed using the wage assessment tool; and
 - (ii) may be less than the applicable minimum wage in the industrial instrument;

Supported Wage System or **SWS** means the scheme known by that name established by the Commonwealth Government to enable the assessment of whether, and the extent to which, a person's productive capacity is reduced because of a disability.

16. Application of Act to employee with disability

- (1) Section 10 does not apply to an employee with a disability who has been assessed under the SWS or a SWIIP and is being paid a rate of pay in accordance with that assessment.
- (2) A person eligible to be employed under the SWS may be employed under its provisions for the purposes of this Act.

17. Minimum pay for employee with disability

- (1) This section applies to the following —
 - (a) an instrument-free employee with a disability;
 - (b) an instrument-governed employee with a disability;
 - (c) an employee who is employed for a trial period for the purpose of an assessment under the

SWS as to whether the employee will become an employee referred to in paragraph (a) or (b).

- (2) Except as provided in subsection (3), the minimum amount payable for each week worked by the employee is an amount not less than the amount in effect at that time under the IR Act section 50A(1)(a)(iii), regardless of the number of hours worked by the employee during the relevant week.
- (3) An instrument-free employee with a disability is entitled to be paid the higher of the following amounts —
 - (a) for each hour worked by the employee in a week, an amount calculated by —
 - (i) determining the weekly rate of pay applicable to the employee by reference to the percentage of the rate referred to in section 12 that corresponds to the employee's assessed productive capacity under the SWS, rounded up to the nearest 10 cents; and
 - (ii) dividing that weekly rate by 38;
 - (b) the amount referred to in subsection (2).

110. Section 17A amended

Before section 17A(1) insert:

- (1A) In this Part —
party related, to an employer or prospective employer, means a relative of the employer or prospective employer;

s. 111

relative, of an employer, means —

- (a) each of the following people, whether the relationship is established by, or traced through, consanguinity, marriage, a de facto relationship, a written law or a natural relationship —
 - (i) a parent, grandparent or other ancestor;
 - (ii) a step-parent;
 - (iii) a sibling;
 - (iv) an uncle or aunt;
 - (v) a cousin;
 - (vi) a spouse or de facto partner;

or

- (b) in the case of an employer who is an Aboriginal person or Torres Strait Islander — a person regarded under the customary law or tradition of the employer’s community as the equivalent of a person mentioned in paragraph (a).

111. Section 17B replaced

Delete section 17B and insert:

17B. Employee not to be compelled to accept other than money for pay

- (1) An employee is not to be directly or indirectly compelled by an employer to accept, instead of money as any part of the employee’s pay —
 - (a) goods of any kind; or
 - (b) accommodation or other services of any kind.

- (2) In proceedings under the IR Act section 83 to enforce an entitlement provision, anything given or provided by the employer contrary to subsection (1) is to be treated as if it had never been given or provided.

112. Section 17BA inserted

After section 17B insert:

17BA. Employees and prospective employees not to be unreasonably compelled to spend or pay amount

- (1) An employer must not directly or indirectly require an employee to spend, or pay to the employer or another person, an amount of the employee's money or the whole or any part of an amount payable to the employee in relation to the performance of work, if —
- (a) the requirement is unreasonable in the circumstances; and
 - (b) in the case of a payment — the payment is directly or indirectly for the benefit of the employer or a party related to the employer.
- (2) An employer (the *prospective employer*) must not directly or indirectly require another person (the *prospective employee*) to spend, or pay to the prospective employer or any other person, an amount of the prospective employee's money if —
- (a) the requirement is in connection with employment or potential employment of the prospective employee by the prospective employer; and
 - (b) the requirement is unreasonable in the circumstances; and

- (c) in the case of a payment — the payment is directly or indirectly for the benefit of the prospective employer or a party related to the prospective employer.
- (3) The regulations may prescribe circumstances in which a requirement referred to in subsection (1) or (2) is or is not reasonable.
- (4) A contravention of subsection (1) or (2) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.
- (5) In proceedings under the IR Act section 83E for a contravention of subsection (1), an industrial magistrate's court may, as an alternative, determine that a contravention of an entitlement provision has occurred for the purposes of the IR Act section 83.
- (6) If the industrial magistrate's court determines that an employer has contravened subsection (1) or (2) in respect of an employee or prospective employee, the industrial magistrate's court may order the employer to pay to the employee or prospective employee compensation for any loss or injury suffered as a result of the contravention.
- (7) The industrial magistrate's court may make an order under subsection (6) in addition to imposing a penalty under section 83E.
- (8) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term —
 - (a) permits, or has the effect of permitting, an employer to make a requirement that would contravene subsection (1); or

- (b) directly or indirectly requires an employee to spend or pay an amount, if the requirement would contravene subsection (1) if it had been made by an employer.
- (9) In proceedings under the IR Act section 83 to enforce an entitlement provision, any amount that the employee has been required to spend or pay contrary to subsection (1), or in accordance with a term to which subsection (8) applies, is taken to be a deduction, from an amount payable to the employee, made by the employer otherwise than in accordance with section 17D.

113. Section 17C amended

- (1) In section 17C(1) delete “To the extent that an employee receives his or her pay in money the” and insert:

An
- (2) After section 17C(2) insert:
- (3) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.
- (4) In proceedings under the IR Act section 83E for a contravention of subsection (1), an industrial magistrate’s court may, as an alternative, determine that a contravention of an entitlement provision has occurred for the purposes of the IR Act section 83.

s. 114

- (5) In proceedings under the IR Act section 83 to enforce an entitlement provision, anything given or provided by the employer contrary to subsection (1) is taken never to have been given or provided to the employee.

114. Section 17E inserted

After section 17D insert:

17E. Certain terms of no effect

- (1) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work, if the deduction is —
 - (a) directly or indirectly for the benefit of the employer or a party related to the employer; and
 - (b) unreasonable in the circumstances.
- (2) The regulations may prescribe circumstances in which a deduction referred to in subsection (1)(b) is or is not reasonable.
- (3) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee who has not reached 18 years of age in relation to the performance of work by the employee, unless the deduction is agreed to in writing by a parent or guardian of the employee.

- (4) A term of an award, employer-employee agreement or contract of employment has no effect to the extent that the term requires, or has the effect of requiring, an employee who has not reached 18 years of age to make a payment to an employer or another person, unless the payment is agreed to in writing by a parent or guardian of the employee.

115. Section 18 amended

- (1) In section 18(1) delete “Where” and insert:

Except as provided in subsection (3B), where

- (2) In section 18(2):

- (a) delete “cannot be determined under subsection (1),” and insert:

cannot be determined,

- (b) delete “in the 52 weeks” and insert:

during the period prescribed in subsection (2A)

- (3) After section 18(2) insert:

- (2A) For the purposes of subsection (2), the period prescribed is the shorter of the following —

- (a) a period totalling 365 days;
(b) the period of employment.

s. 115

- (4) After section 18(3) insert:
- (3A) Subsection (3) does not apply to prevent casual loading payable under an employer-employee agreement, award or contract of employment from being taken into account in determining the rate of pay for bereavement leave under section 27.
- (3B) An employee paid wholly by commission or percentage reward or at piece rates is entitled to be paid the highest of the following for a period of leave —
- (a) a rate payable under an employer-employee agreement, award or contract of employment for a period of leave;
 - (b) a rate calculated according to the employee's average weekly earnings over a period totalling 365 days immediately before the time the leave is taken;
 - (c) the applicable minimum rate of pay under section 10.
- (3C) For the purposes of subsection (2) and (3B)(b), the following periods must be disregarded —
- (a) any period of unpaid leave;
 - (b) any period during which there is a standing-down of the employee in accordance with the provisions of —
 - (i) an award or a determination under the IR Act; or
 - (ii) the *Fair Work Act 2009* (Commonwealth) or an enterprise agreement under that Act; or
 - (iii) any other enactment.

116. Part 4 Division 2 replaced

Delete Part 4 Division 2 and insert:

Division 2 — Personal leave

19. Personal leave

In this Part —

personal circumstances, in relation to an employee, means —

- (a) personal illness or injury affecting —
 - (i) the employee; or
 - (ii) a member of the employee’s family or household;
- (b) an unexpected emergency affecting a member of the employee’s family or household;

personal leave, in relation to an employee, means leave taken by the employee —

- (a) because of personal circumstances affecting the employee; or
- (b) to provide care or support to a member of the employee’s family or household because of personal circumstances affecting the member.

20. Entitlement to paid personal leave

- (1) In this section —
year does not include any period of unpaid leave.
- (2) An employee, other than a casual employee, is entitled for each year of service to paid personal leave for the number of hours the employee is required ordinarily to work in a 2 week period during that year, up to 76 hours.

- (3) Paid personal leave accrues pro rata on a weekly basis.
- (4) Entitlements to paid personal leave are cumulative.
- (5) Except as provided in subsection (6), the employee may take paid personal leave if the employee is unable to work as a result of personal circumstances.
- (6) The employee is not entitled to be paid for any period of absence from work resulting from personal circumstances involving personal illness or injury affecting the employee if the circumstances are attributable to either of the following in the course of the employee's employment —
 - (a) the employee's serious and wilful misconduct;
or
 - (b) the employee's gross and wilful neglect.

21. Entitlement to unpaid personal leave

- (1) An employee is entitled to unpaid personal leave of up to 2 days for each occasion (a *permissible occasion*) in which personal circumstances arise.
- (2) An employee is entitled to unpaid personal leave for a particular permissible occasion only if —
 - (a) the permissible occasion comprises a circumstance referred to in paragraphs (a)(ii) and (b) of the definition of *personal circumstances* in section 19; and
 - (b) the employee cannot take paid personal leave during the period under section 20.

22. Certain matters as to personal leave not minimum conditions

Nothing in this Division requires —

- (a) personal leave to be taken as a whole working day; or
- (b) an employer to pay an employee instead of the employee's untaken entitlement under section 20, on the termination of the employee's employment.

22A. Employee to prove entitlements to personal leave

An employee who claims to be entitled to paid personal leave or unpaid personal leave under this Division must provide to the employer evidence that would satisfy a reasonable person of the entitlement.

117. Part 4 Division 7 inserted

At the end of Part 4 insert:

Division 7 — Unpaid family and domestic violence leave

39A. Terms used

In this Division —

family and domestic violence means family violence as defined in the *Restraining Orders Act 1997* section 5A(1);

family and domestic violence leave means leave required for reasons relating to family and domestic violence.

39B. Entitlement to unpaid family and domestic violence leave

- (1) An employee is entitled to 5 days of unpaid family and domestic violence leave in a 12-month period.
- (2) Unpaid family and domestic violence leave —
 - (a) is available in full at the start of each 12-month period of the employee's employment; and
 - (b) does not accumulate from year to year; and
 - (c) is available in full to part-time and casual employees.
- (3) For the purposes of subsection (2), the start of an employee's employment is taken to be the start of the employee's first employment with that employer if the employee is employed by a particular employer —
 - (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season.
- (4) The employee may take unpaid family and domestic violence leave as —
 - (a) a single continuous 5 day period; or
 - (b) separate periods of 1 or more days each; or
 - (c) any separate periods to which the employee and the employer agree, including periods of less than 1 day.
- (5) Unpaid family and domestic violence leave can only be taken in accordance with section 39C.
- (6) Nothing in this section prevents the employee and the employer agreeing that the employee may take more than 5 days of unpaid leave to deal with the impact of family and domestic violence.

39C. Taking unpaid family and domestic violence leave

The employee may take unpaid family and domestic violence leave if —

- (a) the employee is experiencing family and domestic violence; and
- (b) the employee needs to do something to deal with the impact of the family and domestic violence; and
- (c) it is impractical for the employee to do that thing outside the employee’s ordinary hours of work.

39D. Employee to prove entitlements to unpaid family and domestic violence leave

An employee who claims to be entitled to unpaid family and domestic violence leave under this Division must, if required by the employer, provide to the employer evidence that would satisfy a reasonable person of the entitlement.

39E. Confidentiality

- (1) Employers must take steps to ensure information concerning any notice or evidence an employee has given of the employee taking leave under this Division is treated confidentially, as far as it is reasonably practicable to do so.
- (2) Nothing in this Division prevents an employer from disclosing information provided by an employee if the disclosure is required by a written law or is necessary to protect the life, health or safety of the employee or another person.

s. 118

118. Part 6 deleted

Delete Part 6.

119. Part 8 inserted

After section 47 insert:

Part 8 — Transitional provisions for *Industrial Relations Legislation Amendment Act 2021*

48. Term used: commencement day

In this Part —

commencement day means the day on which the *Industrial Relations Legislation Amendment Act 2021* section 100 comes into operation.

49. Employees with disabilities

(1) In this section —

assessment means assessment of an employee's productive capacity under the SWS as defined in section 15;

assessment period means a period starting on the commencement day and ending on the earlier of the following —

- (a) the day on which an assessment of the employee's productive capacity is completed for the purposes of determining the employee's minimum rate of pay under section 17(3)(a);
- (b) the day that is 6 months after the commencement day.

- (2) This section applies to a person who, immediately before the commencement day, was an employee with a disability whose contract of employment was not governed by an industrial instrument.
- (3) During the assessment period the employee is entitled to be paid, for each week worked by the employee, the higher of the following —
 - (a) the employee’s weekly wage immediately before the commencement day;
 - (b) the amount referred to in section 17(2).
- (4) If the employee’s assessment is completed, and the employee’s wage is determined, within the assessment period, subsection (3) ceases to apply to the employee on the day of completion.
- (5) If the employee is not assessed, or the employee’s assessment is not completed, within the assessment period, then on and after the expiry of the assessment period the employee is entitled to be paid in accordance with section 10(1) until such time as the employee’s productive capacity is determined, on an assessment, to be reduced by a disability.

50. “Under rate employee” provisions in awards

- (1) In this section —

assessment means assessment of an employee’s productive capacity under the SWS or a SWIIP, as those terms are defined in section 15;

assessment period means the period ending 6 months after the commencement day;

pre-commencement day wage means the weekly wage that an under rate employee was entitled to be paid immediately before the commencement day;

under rate employee means an employee who was, immediately before the commencement day, entitled to be paid under an under rate employee provision by reason of infirmity;

under rate employee provision means a provision in an award to the effect that an employee who by reason of old age or infirmity is unable to earn the minimum wage may be paid a lesser wage as is agreed in writing between a union and the employer.

- (2) On and from the commencement day each under rate employee provision is of no effect to the extent to which it applies to an employee who by reason of infirmity or old age is unable to earn the minimum wage.
- (3) During the assessment period, an under rate employee is entitled to be paid, for each week worked by the employee, the higher of the following amounts —
 - (a) the employee's pre-commencement day wage;
 - (b) the amount referred to in section 17(2).
- (4) If an employee's assessment is completed, and the employee's wage is determined, within the assessment period, subsection (3) ceases to apply to the employee on the day of completion.
- (5) If an employee is not assessed, or the employee's assessment is not completed, within the assessment period, then on and after the expiry of the assessment period the employee is entitled to be paid in accordance with the rate of pay applicable under the award until such time as the employee's productive capacity is determined, on an assessment, to be reduced by a disability.

120. Schedule 1 amended

In Schedule 1 after “Good Friday.” insert:

Easter Sunday.

121. Various references to gender removed

- (1) In the provisions listed in the Table delete “his or her” and insert:

the employee’s

Table

s. 3(3)(a)	s. 33(2)(b)
s. 35	s. 36(1)
s. 37(1)	s. 38(2)

- (2) In the provisions listed in the Table delete “he or she” and insert:

the employee

Table

s. 11(1)	s. 24(1), (2) and (3)
s. 30	s. 33(2)
s. 38(1)	s. 43(1)

s. 121

(3) In the provisions listed in the Table delete “his or her”.

Table

s. 18(1)	s. 24(2)(a) and (3)(a)
s. 25(1) and (2)	

Part 6 — *Public and Bank Holidays Act 1972* amended

122. Act amended

This Part amends the *Public and Bank Holidays Act 1972*.

123. Section 3 amended

(1) In section 3:

(a) delete “Unless” and insert:

(1) Unless

(b) delete “1979, prevails over any provision of or under this Act, to the extent of any inconsistency therewith.” and insert:

1979 (an *industrial instrument*) prevails over a provision of or under this Act to the extent of any inconsistency with the industrial instrument.

(2) At the end of section 3 insert:

(2) A provision of an industrial instrument relating to public holidays applies to Easter Sunday regardless of whether the instrument makes reference to Easter Sunday.

(3) However, a provision of an industrial instrument is of no effect to the extent that it substitutes another day for the Easter Sunday public holiday solely because Easter Sunday falls on a weekend.

s. 124

124. Second Schedule amended

In the Second Schedule after “Good Friday.” insert:

Easter Sunday.

Part 7 — Consequential amendments to *Work Health and Safety Act 2020*

Division 1 — *Work Health and Safety Act 2020* amended

Subdivision 1 — Preliminary

125. Act amended

This Division amends the *Work Health and Safety Act 2020*.

Subdivision 2 — Amendments if this Act commences before *Work Health and Safety Act 2020*

126. Section 360 amended

- (1) In section 360(2) delete “ “*Occupational Safety and Health Act 1984*” and insert:

“OSH Act

- (2) Delete section 360(3).

127. Section 361 amended

In section 361:

- (a) delete “ “*Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994*” ” and insert:

“OSH Act, the MSI Act,”

Industrial Relations Legislation Amendment Act 2021

Part 7 Consequential amendments to Work Health and Safety Act 2020

Division 1 Work Health and Safety Act 2020 amended

s. 128

(b) delete “*Act 2020*” and insert:

Act 2020,

Notes for this Subdivision:

1. If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation on or before the day on which section 5(2) of this Act comes into operation, see section 129.
2. See also sections 5(3), 7(5), 24(2) and (4) and 75(3).

Subdivision 3 — Other amendments linked to commencement of this Act

128. Schedule 1 amended

- (1) In Schedule 1 clause 27(2) delete “instrument to which the *Industrial Relations Act 1979* section 83 applies.” and insert:

entitlement provision as defined in the *Industrial Relations Act 1979* section 7(1).

- (2) In Schedule 1 clause 31(5)(a) delete “29(1)(b)(ii); and” and insert:

29(1)(d); and

Note for this Subdivision:

This Subdivision will be proclaimed to come into operation on the day on which section 5(2) of this Act comes into operation.

**Division 2 — Provisions that do not commence and are deleted
in certain circumstances**

129. Non-commencement and deletion of Division 1 Subdivision 2

If the *Work Health and Safety Act 2020* Part 15 Division 4 Subdivision 5 comes into operation on or before the day on which section 5(2) of this Act comes into operation, Division 1 Subdivision 2 —

- (a) does not come into operation; and
- (b) is deleted when section 5(2) of this Act comes into operation.

